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SENATE BILL 6029

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State of Washington

59th Legislature

2005 Regular Session

By Senators Schoesler, Morton, Mulliken and Delvin

Read first time 02/23/2005. Referred to Committee on Water, Energy & Environment.

1 AN ACT Relating to providing certainty and clarity in the  
2 administration of agricultural water rights; and amending RCW  
3 90.03.380.

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)(a) 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 (i) 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; or

13 (ii) 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 (b) of this subsection.

17 (b) For the changes under (a)(ii) of this subsection, the water  
18 right holder shall give written notice to the department describing the  
19 proposed change and providing evidence of beneficial use of the right.  
20 The water right holder may proceed with the change unless the  
21 department notifies the water right holder within twenty calendar days  
22 that the proposed change raises concerns regarding potential impairment  
23 to other existing water rights. The director may extend the twenty-day  
24 period by an additional fifteen calendar days if notice is provided to  
25 the water right holder within the twenty day period and the water right  
26 holder consents. The department shall operate under a rebuttable  
27 presumption of no impairment of other water rights if the season of use  
28 is proposed to be changed from a period that is more critical for other  
29 water rights and streamflows to a period that is less critical. If the  
30 department determines that the proposed change raises concerns  
31 regarding impairment to other water rights, the proposed change may not  
32 proceed 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 sections.

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.

4 (d) The general category of an agricultural use of water under this  
5 subsection is composed of, but not limited to, the beneficial uses of  
6 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.

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