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SENATE BILL 6299

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State of Washington

59th Legislature

2006 Regular Session

By Senators Mulliken, Schoesler, Morton, Benton, Benson, Delvin, Schmidt, Carrell, Deccio and Honeyford

Read first time 01/10/2006. Referred to Committee on Water, Energy & Environment.

1 AN ACT Relating to the annual consumptive quantity of a water  
2 right; and amending RCW 90.03.380.

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

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

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

1 estimated or actual annual amount of water diverted pursuant to the  
2 water right, reduced by the estimated annual amount of return flows(~~(~~  
3 ~~averaged over the two years of greatest use within the most recent~~  
4 ~~five-year period of continuous beneficial use of the water right)~~).  
5 The annual consumptive quantity of a water right may not be deemed to  
6 be less than the actual peak historic use of a water right, even if the  
7 right is not being fully exercised at the time of change or transfer,  
8 if: (a) The reduced use is due to cropping patterns or system  
9 efficiencies; (b) the water right holder intends to fully exercise the  
10 right; and (c) the water right holder has the ability to make  
11 beneficial use of the full right. Before any transfer of such right to  
12 use water or change of the point of diversion of water or change of  
13 purpose of use can be made, any person having an interest in the  
14 transfer or change, shall file a written application therefor with the  
15 department, and the application shall not be granted until notice of  
16 the application is published as provided in RCW 90.03.280. If it shall  
17 appear that such transfer or such change may be made without injury or  
18 detriment to existing rights, the department shall issue to the  
19 applicant a certificate in duplicate granting the right for such  
20 transfer or for such change of point of diversion or of use. The  
21 certificate so issued shall be filed and be made a record with the  
22 department and the duplicate certificate issued to the applicant may be  
23 filed with the county auditor in like manner and with the same effect  
24 as provided in the original certificate or permit to divert water.

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

31 (3) A change in place of use by an individual water user or users  
32 of water provided by an irrigation district need only receive approval  
33 for the change from the board of directors of the district if the use  
34 of water continues within the irrigation district, and when water is  
35 provided by an irrigation entity that is a member of a board of joint  
36 control created under chapter 87.80 RCW, approval need only be received  
37 from the board of joint control if the use of water continues within

1 the area of jurisdiction of the joint board and the change can be made  
2 without detriment or injury to existing rights.

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

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

9 (b) Applications relating to existing surface or ground water  
10 rights may be processed and decisions on them rendered independently of  
11 processing and rendering decisions on pending applications for new  
12 water rights within the same source of supply without regard to the  
13 date of filing of the pending applications for new water rights.

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

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

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

34 (7) In revising the provisions of this section and adding  
35 provisions to this section by chapter 237, Laws of 2001, the  
36 legislature does not intend to imply legislative approval or  
37 disapproval of any existing administrative policy regarding, or any

1 existing administrative or judicial interpretation of, the provisions  
2 of this section not expressly added or revised.

3 (8) The development and use of a small irrigation impoundment, as  
4 defined in RCW 90.03.370(8), does not constitute a change or amendment  
5 for the purposes of this section. The exemption expressly provided by  
6 this subsection shall not be construed as requiring a change or  
7 transfer of any existing water right to enable the holder of the right  
8 to store water governed by the right.

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