
HOUSE BILL 2584

State of Washington 60th Legislature 2008 Regular Session

By Representatives McCoy, O'Brien, Lantz, Linville, VanDeWege, Appleton, Moeller, Morrell, Dunshee, Sells, Hunt, Roberts, McIntire, Goodman, Rolfes, Chase, and Loomis

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1 AN ACT Relating to rainwater collection facilities; amending RCW
2 90.03.250 and 90.03.370; and adding a new section to chapter 90.03 RCW.

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

4 **Sec. 1.** RCW 90.03.250 and 1987 c 109 s 83 are each amended to read
5 as follows:

6 (1) Any person, municipal corporation, firm, irrigation district,
7 association, corporation, or water users' association hereafter
8 desiring to appropriate water for a beneficial use shall make an
9 application to the department for a permit to make such appropriation,
10 and shall not use or divert such waters until ((he)) the entity has
11 received a permit from the department as provided in this chapter
12 ((provided)). The construction of any ditch, canal, or works, or
13 performing any work in connection with said construction or
14 appropriation, or the use of any waters, shall not be an appropriation
15 of such water nor an act for the purpose of appropriating water unless
16 a permit to make said appropriation has first been granted by the
17 department(~~PROVIDED, That~~).

18 (2) A temporary permit may be granted upon a proper showing made to

1 the department to be valid only during the pendency of such application
2 for a permit unless sooner revoked by the department(~~(~~PROVIDED,~~~~
3 ~~FURTHER, That~~)).

4 (3) Nothing in this chapter ((~~contained~~)) shall be deemed to affect
5 RCW 90.40.010 through 90.40.080 except that the notice and certificate
6 ((~~therein~~)) provided for in RCW 90.40.030 shall be addressed to the
7 department, and the department shall exercise the powers and perform
8 the duties prescribed by RCW 90.40.030.

9 (4) The appropriation and use of runoff from roofs, paved areas,
10 and other artificial surfaces is exempt from the permit requirement of
11 this section if:

12 (a) The total amount of water storage in rain barrels, cisterns,
13 and other similar facilities for capturing that runoff does not exceed
14 five thousand gallons; and

15 (b) The water is put to beneficial use on the same property where
16 the runoff is collected.

17 (5) Runoff collected under subsection (4) of this section does not
18 result in a water right under this section or RCW 90.03.370.

19 **Sec. 2.** RCW 90.03.370 and 2003 c 329 s 1 are each amended to read
20 as follows:

21 (1)(a) All applications for reservoir permits are subject to the
22 provisions of RCW 90.03.250 through 90.03.320. But the party or
23 parties proposing to apply to a beneficial use the water stored in any
24 such reservoir shall also file an application for a permit, to be known
25 as the secondary permit, which shall be in compliance with the
26 provisions of RCW 90.03.250 through 90.03.320. Such secondary
27 application shall refer to such reservoir as its source of water supply
28 and shall show documentary evidence that an agreement has been entered
29 into with the owners of the reservoir for a permanent and sufficient
30 interest in said reservoir to impound enough water for the purposes set
31 forth in said application. When the beneficial use has been completed
32 and perfected under the secondary permit, the department shall take the
33 proof of the water users under such permit and the final certificate of
34 appropriation shall refer to both the ditch and works described in the
35 secondary permit and the reservoir described in the primary permit.
36 The department may accept for processing a single application form

1 covering both a proposed reservoir and a proposed secondary permit or
2 permits for use of water from that reservoir.

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

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

7 (ii) Adding or changing one or more purposes of use of stored
8 water;

9 (iii) Adding to the storage capacity of an existing storage
10 facility; and

11 (iv) Applications for secondary permits to secure use from existing
12 storage facilities.

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

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

23 (i) Aquifer vulnerability and hydraulic continuity;

24 (ii) Potential impairment of existing water rights;

25 (iii) Geotechnical impacts and aquifer boundaries and
26 characteristics;

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

28 (v) Recharge and recovery treatment requirements;

29 (vi) System operation;

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

31 (viii) Environmental impacts.

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

1 status of a reservoir shall be through applicant-initiated studies
2 reviewed by the department.

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

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

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

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

31 (7) This section does not apply to facilities to recapture and
32 reuse return flow from irrigation operations serving a single farm
33 under an existing water right as long as the acreage irrigated is not
34 increased beyond the acreage allowed to be irrigated under the water
35 right.

36 (8) In addition to the facilities exempted under subsection (7) of
37 this section, this section does not apply to small irrigation
38 impoundments. For purposes of this section, "small irrigation

1 impoundments" means lined surface storage ponds less than ten acre feet
2 in volume used to impound irrigation water under an existing water
3 right where use of the impoundment: (a)(i) Facilitates efficient use
4 of water; or (ii) promotes compliance with an approved recovery plan
5 for endangered or threatened species; and (b) does not expand the
6 number of acres irrigated or the annual consumptive quantity of water
7 used. Such ponds must be lined unless a licensed engineer determines
8 that a liner is not needed to retain water in the pond and to prevent
9 ground water contamination. Although it may also be composed of other
10 materials, a properly maintained liner may be composed of bentonite.
11 Water remaining in a small irrigation impoundment at the end of an
12 irrigation season may be carried over for use in the next season.
13 However, the limitations of this subsection (8) apply. Development and
14 use of a small irrigation impoundment does not constitute a change or
15 amendment for purposes of RCW 90.03.380 or 90.44.055.

16 (9) Rain barrels, cisterns, and other similar facilities for
17 capturing runoff from roofs, paved areas, and other artificial surfaces
18 are exempt from the reservoir and secondary permit requirements of this
19 chapter if the:

20 (a) Total amount of water storage does not exceed five thousand
21 gallons; and

22 (b) Water is put to beneficial use on the same property where the
23 runoff is collected.

24 (10) Runoff collected under subsection (9) of this section does not
25 result in a water right under this section or RCW 90.03.250.

26 NEW SECTION. Sec. 3. A new section is added to chapter 90.03 RCW
27 to read as follows:

28 (1) The owner of a rain barrel, cistern, or other similar
29 constructed water storage facility that has a storage capacity greater
30 than five thousand gallons for capture and use of runoff from roofs,
31 paved areas, and other artificial surfaces is exempt from the permit
32 requirements of RCW 90.03.250 and 90.03.370, provided the water is put
33 to beneficial use on the same property where the runoff is collected
34 and the capture, storage, and use is done in compliance with rules or
35 general permits developed by the department under this section for such
36 purpose.

1 (2) The department may either adopt rules or issue general permits,
2 or both, to specify conditions under which rainwater collection
3 facilities may be constructed and operated in order to protect existing
4 water rights and water quality and to prevent harm to existing streams
5 and water bodies. The rules or general permits adopted by the
6 department may address specific geographic areas. The department shall
7 give priority to adopting rules or issuing general permits to requests
8 from watershed planning groups under chapter 90.82 RCW, islands, urban
9 areas addressing storm water runoff, and urban areas that discharge
10 directly into saltwater. At a minimum, the rules or general permits
11 must address annual rainfall, basin geology, climate, population
12 density, impacts from runoff collection on the natural hydrology,
13 appropriate use of water collected in rainwater collection facilities,
14 possible impairment of water rights, and harm to existing streams and
15 water bodies. As appropriate, the department shall also review and
16 consider the use of rainwater collection facilities in programs
17 addressing storm water runoff, low-impact development, or other
18 hydrologic recharge options. In developing these rules and general
19 permits, the department shall work with representatives of a broad
20 range of interested parties, individuals with technical expertise, and
21 project proponents, as appropriate.

22 (3) Runoff used and collected under this exemption does not result
23 in a water right under RCW 90.03.250 or 90.03.370.

24 (4) Any person owning or using a rain barrel, cistern, or other
25 similar water storage facility greater than five thousand gallons that
26 was installed before the effective date of this section may continue to
27 use the facility without obtaining a permit under RCW 90.03.250 or
28 90.03.370 until the department adopts a final rule or issues a general
29 permit as provided in this section. After the adoption of final rules
30 or issuance of general permits, all persons using rain barrels,
31 cisterns, or other similar water storage facilities must comply with
32 the final rules or general permits.

33 (5) The department shall report to the appropriate committees of
34 the legislature by December 31, 2009, regarding the implementation of
35 this section. The authority provided under this section to issue
36 general permits that do not create a water right is not intended to

1 modify or in any way affect existing authority to issue general permits
2 that do create a water right.

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