
HOUSE BILL 2508

State of Washington

61st Legislature

2010 Regular Session

By Representatives Blake and Chandler; by request of Department of Ecology

Prefiled 01/04/10. Read first time 01/11/10. Referred to Committee on Agriculture & Natural Resources.

1 AN ACT Relating to water right processing improvements; amending
2 RCW 90.03.265, 90.03.255, 90.14.065, and 90.44.055; adding a new
3 section to chapter 90.44 RCW; and adding a new section to chapter 90.03
4 RCW.

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

6 **Sec. 1.** RCW 90.03.265 and 2003 c 70 s 6 are each amended to read
7 as follows:

8 (1)(a) Any applicant for a new withdrawal or a change, transfer, or
9 amendment of a water right pending before the department(~~(7)~~) may
10 initiate a cost-reimbursement agreement with the department to provide
11 expedited review of the application. Except as provided in (b) of this
12 subsection, a cost-reimbursement agreement may (~~only~~) be initiated
13 under this subsection if the applicant agrees to pay for(~~(7) or as part~~
14 of a cooperative effort agrees to pay for,) the cost of processing his
15 or her application and all other applications from the same source of
16 supply which must be acted upon before the applicant's request because
17 they were filed prior to the date of when the applicant filed. Each
18 applicant is responsible for any appeal costs related to the processing
19 of his or her application.

1 (b) The requirement to pay for the cost of all other applications
2 from the same source of supply under (a) of this subsection does not
3 apply if:

4 (i) The application for a new appropriation or a change, transfer,
5 or amendment of a water right would not diminish the water available to
6 earlier pending applicants from the same source of supply, including an
7 application that provides a water impoundment or other water resource
8 management mitigation technique under RCW 90.03.255 or 90.44.055
9 acceptable to the department; or

10 (ii) The applicant agrees to pay for the cost of processing his or
11 her application as part of a coordinated cost-reimbursement agreement
12 entered under subsection (3) of this section.

13 (c) The department may enter into cost-reimbursement agreements in
14 its discretion and shall use the process established under RCW
15 43.21A.690 for entering into cost-reimbursement agreements.

16 (2) In pursuing a cost-reimbursement project, the department must
17 determine the source of water proposed to be diverted or withdrawn
18 from, including the boundaries of the area the department believes
19 delimits the source. The department must determine if any other water
20 right permit applications are pending from the same source. A water
21 source may include surface water only, ground water only, or surface
22 and ground water together if the department believes they are
23 hydraulically connected. The department shall consider technical
24 information submitted by the applicant in making its determinations
25 under this subsection.

26 (3)(a) If the department determines that the public interest is
27 best served by initiation of a coordinated cost-reimbursement project,
28 the department must notify in writing all persons who have pending
29 applications on file for a new appropriation or withdrawal of water
30 from the same source. Such a notice must be made by way of mail and by
31 publication in a newspaper of general circulation in the area where
32 affected properties are located. The notification must inform those
33 applicants that a coordinated cost-reimbursement process is being
34 initiated. The notice must offer the opportunity to voluntarily
35 participate in funding a cost-reimbursement contractor to investigate
36 and make recommendations to the department regarding the disposition of
37 the applications. The notice must also provide the estimated cost for
38 having an application processed using a cost-reimbursement contractor.

1 The notice must provide not less than sixty days for the applicants to
2 respond in writing as to their interest in participating in the
3 coordinated cost-reimbursement processing of their applications. The
4 department shall adjust the estimated costs for each participant based
5 on those applicants electing to participate. The department may
6 initiate a coordinated cost-reimbursement project: (i) On its own
7 volition; (ii) upon receipt of a written request from an applicant;
8 (iii) upon receipt of a written request or recommendation from a
9 watershed planning unit; or (iv) upon receipt of a resolution of a
10 county legislative authority with jurisdiction over the area in which
11 the water source is located.

12 (b) Each applicant who consents to participate in a coordinated
13 cost-reimbursement process must sign a contract with the department
14 agreeing to pay a pro rata share to the department of the cost of the
15 contractors and the department's costs, with an applicant's share of
16 cost being determined by the percentage of each applicant's
17 instantaneous quantity applied for relative to the sum of the
18 instantaneous quantities applied for by all the participating
19 applicants.

20 (c) For any applicant who elects to not participate in the
21 coordinated cost-reimbursement process or who fails to respond in
22 writing within the time allowed, the department shall retain the
23 application on file until such time as the department is able to
24 process it. Coordinated cost reimbursement under this section applies
25 only to the sequence of application processing and does not affect the
26 relative priority date of any resulting water rights.

27 (4) The department shall provide notice to potential contractors of
28 the opportunity to be considered for inclusion on the list of cost-
29 reimbursement contractors to whom work assignments will be made. The
30 department shall competitively select an appropriate number of
31 contractors who are qualified by training and experience to investigate
32 and make recommendations on the disposition of water rights
33 applications. The contractor list must be renewed at least every six
34 years, though the department may add qualified cost-reimbursement
35 contractors to the list at any time. The department shall enter a
36 master contract with each contractor selected and shall thereafter make
37 work assignments based on availability and qualifications.

1 (5) The department may remove any contractor from the contractor
2 list for poor performance, malfeasance, or excessive complaints from
3 cost-reimbursement participants. The department may interview any
4 cost-reimbursement contractor to determine whether the person is
5 qualified for this work, and shall spot check the work of contractors
6 to ensure that the public is being competently served.

7 (6) When assigned an application or set of applications to
8 investigate, the contractor must document its findings and recommended
9 disposition in the form of written draft reports of examination. The
10 department may modify the reports of examination submitted by the
11 contractor. The department's decision on a permit application is final
12 unless it is appealed to the pollution control hearings board under
13 chapter 43.21B RCW.

14 NEW SECTION. Sec. 2. A new section is added to chapter 90.44 RCW
15 to read as follows:

16 Applications to appropriate ground water under a cost-reimbursement
17 agreement must be processed in accordance with RCW 90.03.265 when an
18 applicant requests the assignment of a cost-reimbursement contractor as
19 provided in RCW 43.21A.690.

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

22 (1) The department shall establish and maintain a list of certified
23 water right examiners. Certified water right examiners on the list are
24 eligible to perform final proof examinations of permitted water uses
25 leading to the issuance of a water right certificate. The list must be
26 updated annually and must be made available to the public through
27 written and electronic media. In order to qualify for inclusion on the
28 list, an individual must be registered in Washington as a professional
29 engineer, professional land surveyor, or registered hydrogeologist.
30 Qualified individuals must also pass a written examination prior to
31 being certified by the department. Such an examination must be
32 administered by either the department or an entity formally approved by
33 the department. Each certified water right examiner must demonstrate
34 knowledge and competency regarding:

35 (a) Water law in the state of Washington;

1 (b) Measurement of the flow of water through open channels and
2 enclosed pipes;

3 (c) Water use and water level reporting;

4 (d) Estimation of the capacity of reservoirs and ponds;

5 (e) Irrigation crop water requirements;

6 (f) Aerial photo interpretation;

7 (g) Legal descriptions of land parcels;

8 (h) Location of land and water infrastructure through the use of
9 maps and global positioning;

10 (i) Proper construction and sealing of well bores; and

11 (j) Other topics related to the preparation and certification of
12 water rights in Washington state.

13 (2) Except as provided in subsection (7) of this section, upon
14 completion of a water appropriation and putting water to beneficial
15 use, in order to receive a final water right certificate, the permit
16 holder must secure the services of a certified water right examiner who
17 has been tested and certified by the department. The examiner shall
18 carry out a final examination of the project to verify its completion
19 and to determine and document for the permit holder and the department
20 the amount of water that has been appropriated for beneficial use, the
21 location of diversion or withdrawal and conveyance facilities, and the
22 actual place of use. The examiner shall take measurements or make
23 estimates of the maximum diversion or withdrawal, the capacity of water
24 storage facilities, the acreage irrigated, the type and number of
25 residences served, the type and number of stock watered, and other
26 information relevant to making a final determination of the amount of
27 water beneficially used. The examiner shall make photographs of the
28 facilities to document the use or uses of water and the photographs
29 must be submitted with the examiner's report to the department. The
30 department shall specify the format and required content of the reports
31 and may provide a form for that purpose.

32 (3) The department may suspend or revoke a certification based on
33 poor performance, malfeasance, failure to acquire continuing education
34 credits, or excessive complaints from the examiner's customers. The
35 department may require the retesting of an examiner. The department
36 may interview any examiner to determine whether the person is qualified
37 for this work. The department shall spot check the work of examiners
38 to ensure that the public is being competently served. Any person

1 aggrieved by an order of the department including the granting, denial,
2 revocation, or suspension of a certificate issued by the department
3 under this chapter may appeal pursuant to chapter 43.21B RCW.

4 (4) The decision regarding whether to issue a final water right
5 certificate and in what amounts and other particulars is solely the
6 responsibility and function of the department.

7 (5) Each certified water right examiner must complete eight hours
8 annually of qualifying continuing education in the water resources
9 field. The department shall determine and specify the qualifying
10 continuing education and shall inform examiners of the opportunities.
11 The department shall track whether examiners are current in their
12 continuing education and may suspend the certification of an examiner
13 who has not complied with the continuing education requirement.

14 (6) Each certified water right examiner must be bonded for at least
15 fifty thousand dollars.

16 (7) The department may waive the requirement to secure the services
17 of a certified water right examiner in situations in which the
18 department deems it unnecessary for purposes of issuing a certificate
19 of water right.

20 (8) The department shall establish and collect fees for the
21 examination, certification, and renewal of certification of water right
22 examiners. Pursuant to RCW 43.135.055, the department is authorized to
23 set fees for examination, certification, and renewal of certification
24 for water right examiners.

25 (9) The department may adopt rules appropriate to carry out the
26 purposes of this section.

27 **Sec. 4.** RCW 90.03.255 and 1997 c 360 s 2 are each amended to read
28 as follows:

29 (1) The department shall, when evaluating an application for a
30 water right, transfer, or change filed pursuant to RCW 90.03.250 or
31 90.03.380 that includes provision for any water impoundment or other
32 resource management technique, take into consideration the benefits and
33 costs, including environmental effects, of any water impoundment or
34 other resource management technique that is included as a component of
35 the application. The department's consideration shall extend to any
36 increased water supply that results from the impoundment or other
37 resource management technique, including but not limited to any

1 recharge of groundwater that may occur, as a means of making water
2 available or otherwise offsetting the impact of the diversion of
3 surface water proposed in the application for the water right,
4 transfer, or change. Except as provided in subsection (2) of this
5 section, provision for an impoundment or other resource management
6 technique in an application shall be made solely at the discretion of
7 the applicant and shall not otherwise be made by the department as a
8 condition for approving an application that does not include such
9 provision.

10 (2) If the department has determined by adoption of rules, order,
11 or other appealable agency action that no water remains available for
12 any unmitigated new appropriation from a water source, the department
13 shall notify all persons holding pending applications to divert water
14 from that source of the determination. Such a notice must be made by
15 way of mail and by publication in a newspaper of general circulation in
16 the area where affected properties are located, and must include
17 requirements as prescribed in subsection (3) of this section.

18 (3) Within three years after the date notification is mailed, the
19 department may issue an order requiring each applicant to amend their
20 application to include provisions for a water impoundment or other
21 resource management technique as provided in subsection (1) of this
22 section that would ensure that, if the application were granted, the
23 effects of the diversion would not impair any senior water right,
24 adopted instream flows, or closed water sources. The department shall
25 issue decisions on the water right applications for which proposals for
26 impoundment or other resource management techniques are included under
27 this subsection. The department shall issue an order denying any
28 application for which no acceptable proposal is submitted within the
29 three years provided. For good cause shown, including demonstrated
30 diligence in working to identify a water impoundment or resource
31 management technique, the department may, in response to a written
32 request from an individual applicant, extend the time to submit the
33 amended application required in this subsection by no more than two
34 additional years. The department may also place pending applications
35 for appropriation from a particular water source into project-dependent
36 status where a proposed water supply development project or projects
37 could feasibly make water available for such dormant applications. The
38 department may make such a determination: (a) On its own volition; (b)

1 upon receipt of a written request or recommendation from a watershed
2 planning unit; or (c) upon receipt of a resolution of a county
3 legislative authority with jurisdiction over the area in which the
4 water source is located. Pending applications in project-dependent
5 status terminate automatically ten years after placement into such
6 status unless extended by the department for good cause shown. In no
7 case may the department extend project-dependent status for any dormant
8 application by more than twenty years from the date such an application
9 was initially placed into project-dependent status.

10 (4) Upon the written request of any applicant who requests it, the
11 department shall provide a contact list of all other applicants who
12 received notification under this subsection for purposes of enabling
13 applicants to coordinate among each other to develop plans for water
14 impoundment or other resource management technique required by this
15 subsection.

16 (5) This section does not lessen, enlarge, or modify the rights of
17 any riparian owner, or any existing water right acquired by
18 appropriation or otherwise.

19 **Sec. 5.** RCW 90.14.065 and 1987 c 93 s 1 are each amended to read
20 as follows:

21 (1)(a) Any person or entity, or successor to such person or entity,
22 having a statement of claim on file with the water rights claims
23 registry (~~on April 20, 1987,~~) may submit to the department of ecology
24 for filing(~~7~~) an amendment to such a statement of claim if the
25 submitted amendment is based on:

26 ((~~1~~)) (i) An error in estimation of the quantity of the
27 applicant's water claim prescribed in RCW 90.14.051 if the applicant
28 provides reasons for the failure to claim such right in the original
29 claim;

30 ((~~2~~)) (ii) A change in circumstances not foreseeable at the time
31 the original claim was filed, if such change in circumstances relates
32 only to the manner of transportation or diversion of the water and not
33 to the use or quantity of such water; or

34 ((~~3~~)) (iii) The amendment is ministerial in nature.

35 (b) The department shall accept any such submission and file the
36 same in the registry unless the department by written determination

1 concludes that the requirements of (a)(i), (ii), or (iii) of this
2 subsection ((~~(1), (2), or (3)~~ of this section)) have not been
3 satisfied.

4 (2) A water right claim may be changed or amended in the same
5 manner as a permit or certificate under RCW 90.03.380 and 90.44.100.
6 However, RCW 90.44.100(4) applies as follows: For a water right claim,
7 the "location of the original well or wells" is the area up to one-
8 quarter mile radius from the current well or wells.

9 (3) Any person aggrieved by a determination of the department may
10 obtain a review thereof by filing a petition for review with the
11 pollution control hearings board within thirty days of the date of the
12 determination by the department. The provisions of RCW 90.14.081 shall
13 apply to any amendment (~~filed~~) approved under this section.

14 **Sec. 6.** RCW 90.44.055 and 1997 c 360 s 3 are each amended to read
15 as follows:

16 (1) The department shall, when evaluating an application for a
17 water right or an amendment filed pursuant to RCW 90.44.050 or
18 90.44.100 that includes provision for any water impoundment or other
19 resource management technique, take into consideration the benefits and
20 costs, including environmental effects, of any water impoundment or
21 other resource management technique that is included as a component of
22 the application. The department's consideration shall extend to any
23 increased water supply that results from the impoundment or other
24 resource management technique, including but not limited to any
25 recharge of groundwater that may occur, as a means of making water
26 available or otherwise offsetting the impact of the withdrawal of
27 groundwater proposed in the application for the water right or
28 amendment in the same water resource inventory area. Except as
29 provided in subsection (2) of this section, provision for an
30 impoundment or other resource management technique in an application
31 shall be made solely at the discretion of the applicant and shall not
32 be made by the department as a condition for approving an application
33 that does not include such provision.

34 (2) If the department has determined by adoption of rules, order,
35 or other appealable agency action that no water remains available for
36 any unmitigated new appropriation from a water source, the department
37 shall notify all persons holding pending applications to withdraw water

1 from that source of the determination. Such a notice must be made by
2 way of mail and by publication in a newspaper of general circulation in
3 the area where affected properties are located, and must include
4 requirements as prescribed in subsection (3) of this section.

5 (3) Within three years after the date notification is mailed, the
6 department may issue an order requiring each applicant to amend their
7 application to include provisions for a water impoundment or other
8 resource management technique as provided in subsection (1) of this
9 section that would ensure that, if their application were granted, the
10 effects of the withdrawal would not impair any senior water right,
11 adopted instream flow, or closed water sources. The department shall
12 issue decisions on the water right applications for which proposals for
13 impoundment or other resource management techniques are included under
14 this subsection. The department shall issue an order denying any
15 application for which no proposal is submitted within the three years
16 provided. For good cause shown, including demonstrated diligence in
17 working to identify a water impoundment or resource management
18 technique, the department may, in response to a written request from an
19 individual applicant, extend the time to submit the amended application
20 required in this subsection by no more than two additional years. The
21 department may also place pending applications for appropriation from
22 a particular water source into project-dependent status where a
23 proposed water supply development project or projects could feasibly
24 make water available for such dormant applications. The department may
25 make such a determination: (a) On its own volition; (b) upon receipt
26 of a written request or recommendation from a watershed planning unit;
27 or (c) upon receipt of a resolution of a county legislative authority
28 with jurisdiction over the area in which the water source is located.
29 Pending applications in project-dependent status terminate
30 automatically ten years after placement into such status unless
31 extended by the department for good cause shown. In no case may the
32 department extend project-dependent status for any dormant application
33 by more than twenty years from the date such an application was
34 initially placed into project-dependent status.

35 (4) Upon the written request of any applicant who requests it, the
36 department shall provide a contact list of all other applicants who
37 received notification under this subsection for purposes of enabling

1 applicants to coordinate among each other to develop plans for water
2 impoundment or other resource management technique required by this
3 subsection.

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

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