
SUBSTITUTE SENATE BILL 5199

State of Washington

63rd Legislature

2013 Regular Session

By Senate Agriculture, Water & Rural Economic Development (originally sponsored by Senators Ericksen and Holmquist Newbry)

READ FIRST TIME 02/22/13.

1 AN ACT Relating to de facto changes in water rights for irrigation
2 purposes that involved conversion to more efficient irrigation
3 technologies; creating new sections; and providing an expiration date.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that for certain crops
6 grown in Washington, inefficient overhead irrigation technology was
7 replaced with microirrigation technology, and that this change resulted
8 in more efficient use of water and benefits to instream resources. The
9 legislature also finds that these beneficial water right changes have
10 been in place for over twenty years, resulting in significant economic
11 activity, job creation, and protection of agricultural land from
12 conversion to other uses. It is therefore the intent of the
13 legislature to protect the quantity of water historically used by
14 establishing a pilot project for certain water right changes that were
15 implemented prior to receiving approval from the department of ecology.

16 NEW SECTION. **Sec. 2.** (1) The department of ecology must initiate
17 a pilot project to enable water right holders to correct the current
18 status of water rights that are currently being put to a different

1 place or purpose of use than is indicated on the associated water right
2 certificate when that change was done prior to formal approval being
3 granted by the department of ecology and only if the following
4 conditions are met:

5 (a) The water right holder has implemented the requested change but
6 has not yet received approval for that change from the department of
7 ecology;

8 (b) The change enabled the water right holder to convert to more
9 efficient microirrigation technology without losing a portion of his or
10 her water right;

11 (c) The water right holder has beneficially used the water right
12 for irrigation purposes using microirrigation technology since
13 implementing the change of use; and

14 (d) After implementing the change, but before the effective date of
15 this section, the water right holder filed a water right change
16 application or an application for a new water right.

17 (2) The department of ecology must solicit applicants interested in
18 participating in the pilot project required by this section. For the
19 purposes of the pilot project, the department must focus on water right
20 holders who satisfy the criteria listed in subsection (1) of this
21 section and that are located in water resource inventory area 01 as
22 identified in WAC 173-500-040 as it existed on the effective date of
23 this section. Any applicants interested in participating in the pilot
24 project required by this section must:

25 (a) Indicate the date or dates on which the actual changes in water
26 use occurred;

27 (b) Identify the nature and extent of the changes, including any
28 improvements in water use efficiency or reductions in direct impact on
29 instream resources; and

30 (c) Make payment for the appropriate fee under RCW 90.03.470(3).

31 (3)(a) It is the responsibility of the applicant to provide the
32 department of ecology with evidence of:

33 (i) Water use both before and after the de facto changes; and

34 (ii) The points of diversion or withdrawal and place of use both
35 before and after the de facto change occurred.

36 (b) Evidence that may be submitted for a change may include crop
37 receipts, seed receipts, harvest-related receipts, aerial and other

1 photographs showing land in agricultural production or showing
2 irrigation facilities, irrigation equipment receipts, metering records,
3 or any other form of data acceptable to the department.

4 (4)(a) If, based on the confirmation of the information provided by
5 the applicant, the department of ecology finds that the water right
6 holder satisfies the requirements of subsections (1) and (2) of this
7 section, the department shall amend the appropriate water right
8 certificates to reflect the current place and purpose of use following
9 the requirements of RCW 90.03.380, except that the department shall use
10 the time period prior to the implementation of the associated change to
11 determine beneficial and consumptive use of the water right.

12 (b) In updating the appropriate certificates, the department of
13 ecology must reflect on the certificate the amount of water
14 beneficially used by the applicant in the five years prior to the water
15 right holder's application for participation in the pilot project
16 required by this section. To assist the department in determining the
17 amount of water diverted and withdrawn, and accurately assessing the
18 quantity of water actually applied to beneficial use, the applicant may
19 submit information related to the amount of land physically contacted
20 by irrigation water and information about the type of irrigation, row
21 spacing, and other variables employed by the holder of the water right.

22 (5) An applicant to participate in the pilot project required by
23 this section may, if agreed to by the department of ecology, utilize
24 the coordinated cost-reimbursement process created under RCW 90.03.265.

25 (6) The department of ecology must track the number of applicants
26 that expressed an interest in participating in the pilot project
27 required by this section, the number of water right certificates
28 amended under the pilot project, identified challenges to collecting or
29 confirming the necessary information for a change, lessons learned, and
30 applicability of a statewide streamlined change in place or purpose of
31 use based on de facto changes. This information must be submitted to
32 the legislature, consistent with RCW 43.01.036, by October 31, 2015.

33 (7) This section expires June 30, 2016.

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