

2 **SHB 2994 - H AMD 473 ADOPTED 2-14-00**

3 By Representative G. Chandler

4

5 Strike everything after the enacting clause and insert the
6 following:

7 "**Sec. 1.** RCW 90.14.140 and 1998 c 258 s 1 are each amended to read
8 as follows:

9 (1) For the purposes of RCW 90.14.130 through 90.14.180,
10 "sufficient cause" shall be defined as the nonuse of all or a portion
11 of the water by the owner of a water right for a period of five or more
12 consecutive years where such nonuse occurs as a result of:

13 (a) Drought, or other unavailability of water;

14 (b) Active service in the armed forces of the United States during
15 military crisis;

16 (c) Nonvoluntary service in the armed forces of the United States;

17 (d) The operation of legal proceedings;

18 (e) Federal or state agency leases of or options to purchase lands
19 or water rights which preclude or reduce the use of the right by the
20 owner of the water right;

21 (f) Federal laws imposing land or water use restrictions either
22 directly or through the voluntary enrollment of a landowner in a
23 federal program implementing those laws, or acreage limitations, or
24 production quotas.

25 (2) Notwithstanding any other provisions of RCW 90.14.130 through
26 90.14.180, there shall be no relinquishment of any water right:

27 (a) If such right is claimed for power development purposes under
28 chapter 90.16 RCW and annual license fees are paid in accordance with
29 chapter 90.16 RCW;

30 (b) If such right is used for a standby or reserve water supply to
31 be used in time of drought or other low flow period so long as
32 withdrawal or diversion facilities are maintained in good operating
33 condition for the use of such reserve or standby water supply;

34 (c) If such right is claimed for a determined future development to
35 take place either within fifteen years of July 1, 1967, or the most
36 recent beneficial use of the water right, whichever date is later;

1 (d) If such right is claimed for municipal water supply purposes
2 under chapter 90.03 RCW;

3 (e) If such waters are not subject to appropriation under the
4 applicable provisions of RCW 90.40.030; (~~(e)~~)

5 (f) If such right or portion of the right is leased to another
6 person for use on land other than the land to which the right is
7 appurtenant as long as the lessee makes beneficial use of the right in
8 accordance with this chapter and a transfer or change of the right has
9 been approved by the department in accordance with RCW 90.03.380,
10 90.03.383, 90.03.390, or 90.44.100; or

11 (g) If such right is a trust water right under chapter 90.38 or
12 90.42 RCW.

13 **Sec. 2.** RCW 90.38.020 and 1989 c 429 s 3 are each amended to read
14 as follows:

15 (1)(a) The department may acquire water rights, including but not
16 limited to storage rights, by purchase, gift, or other appropriate
17 means other than by condemnation, from any person or entity or
18 combination of persons or entities. Once acquired, such rights are
19 trust water rights. A water right acquired by the state that is
20 expressly conditioned to limit its use to instream purposes shall be
21 administered as a trust water right in compliance with that condition.

22 (b) If an aquatic species is listed as threatened or endangered
23 under the federal endangered species act (16 U.S.C. Sec. 1531 et seq.)
24 for a body of water, certain instream flows are needed for the species,
25 and the holder of a right to water from the body of water chooses to
26 donate all or a portion of the person's water right to the trust water
27 system to assist in providing those instream flows on a temporary or
28 permanent basis, the department shall accept the donation on such terms
29 as the person may prescribe as long as the donation satisfies the
30 requirements of subsection (4) of this section. Once accepted, such
31 rights are trust water rights within the conditions prescribed by the
32 donor.

33 (2) The department may make such other arrangements, including
34 entry into contracts with other persons or entities as appropriate to
35 ensure that trust water rights acquired in accordance with this chapter
36 can be exercised to the fullest possible extent.

37 (3) The trust water rights may be acquired on a temporary or
38 permanent basis.

1 (4) A water right donated under subsection (1)(b) of this section
2 shall not exceed the extent to which the water right was exercised
3 during any of the five years before the donation nor may the total of
4 any portion of the water right remaining with the donor plus the
5 donated portion of the water right exceed the extent to which the water
6 right was exercised during any of the five years before the donation.
7 If, upon appeal from a determination by the department, it is found
8 that exercising the trust water right resulting from the donation or
9 exercising a portion of that trust water right impairs existing water
10 rights in violation of RCW 90.38.902, the donation shall be altered to
11 eliminate the impairment.

12 (5) Any water right conveyed to the trust water right system that
13 is expressly conditioned to limit its use to instream purposes shall be
14 managed by the department for public purposes to ensure that it
15 qualifies as a gift that is deductible for federal income taxation
16 purposes for the person or entity conveying the water right.

17 **Sec. 3.** RCW 90.38.040 and 1994 c 264 s 90 are each amended to read
18 as follows:

19 (1) All trust water rights acquired by the department shall be
20 placed in the Yakima river basin trust water rights program to be
21 managed by the department. The department shall issue a water right
22 certificate in the name of the state of Washington for each trust water
23 right it acquires.

24 (2) Trust water rights shall retain the same priority date as the
25 water right from which they originated. Trust water rights may be
26 modified as to purpose or place of use or point of diversion, including
27 modification from a diversionary use to a nondiversionary instream use.

28 (3) Trust water rights may be held by the department for instream
29 flows and/or irrigation use.

30 (4) A schedule of the amount of net water saved as a result of
31 water conservation projects carried out in accordance with this
32 chapter, shall be developed annually to reflect the predicted
33 hydrologic and water supply conditions, as well as anticipated water
34 demands, for the upcoming irrigation season. This schedule shall serve
35 as the basis for the distribution and management of trust water rights
36 each year.

37 (5)(a) No exercise of a trust water right may be authorized unless
38 the department first determines that no existing water rights, junior

1 or senior in priority, will be impaired as to their exercise or injured
2 in any manner whatever by such authorization. Before any trust water
3 right is exercised, the department shall publish notice thereof in a
4 newspaper of general circulation published in the county or counties in
5 which the storage, diversion, and use are to be made, and in such other
6 newspapers as the department determines are necessary, once a week for
7 two consecutive weeks. At the same time the department may also send
8 notice thereof containing pertinent information to the director of fish
9 and wildlife.

10 (b) Subsection (5)(a) of this section does not apply to a trust
11 water right resulting from a donation for instream flows described in
12 RCW 90.38.020(1). However, the department shall provide the notice
13 described in (a) of this subsection the first time the trust water
14 right resulting from the donation is exercised.

15 (6) RCW 90.03.380 and 90.14.140 through 90.14.910 shall have no
16 applicability to trust water rights held by the department under this
17 chapter or exercised under this section.

18 **Sec. 4.** RCW 90.42.040 and 1993 c 98 s 3 are each amended to read
19 as follows:

20 (1) All trust water rights acquired by the state shall be placed in
21 the state trust water rights program to be managed by the department.
22 Trust water rights acquired by the state shall be held or authorized
23 for use by the department for instream flows, irrigation, municipal, or
24 other beneficial uses consistent with applicable regional plans for
25 pilot planning areas, or to resolve critical water supply problems.

26 (2) The department shall issue a water right certificate in the
27 name of the state of Washington for each permanent trust water right
28 conveyed to the state indicating the reach or reaches of the stream,
29 the quantity, and the use or uses to which it may be applied. A
30 superseding certificate shall be issued that specifies the amount of
31 water the water right holder would continue to be entitled to as a
32 result of the water conservation project. The superseding certificate
33 shall retain the same priority date as the original right. For
34 nonpermanent conveyances, the department shall issue certificates or
35 such other instruments as are necessary to reflect the changes in
36 purpose or place of use or point of diversion or withdrawal. Water
37 rights for which such nonpermanent conveyances are arranged shall not
38 be subject to relinquishment for nonuse.

1 (3) A trust water right retains the same priority date as the water
2 right from which it originated, but as between them the trust right
3 shall be deemed to be inferior in priority unless otherwise specified
4 by an agreement between the state and the party holding the original
5 right.

6 (4) Exercise of a trust water right may be authorized only if the
7 department first determines that neither water rights existing at the
8 time the trust water right is established, nor the public interest will
9 be impaired. If impairment becomes apparent during the time a trust
10 water right is being exercised, the department shall cease or modify
11 the use of the trust water right to eliminate the impairment.

12 (5) Before any trust water right is created or modified, the
13 department shall, at a minimum, require that a notice be published in
14 a newspaper of general circulation published in the county or counties
15 in which the storage, diversion, and use are to be made, and in other
16 newspapers as the department determines is necessary, once a week for
17 two consecutive weeks. At the same time the department shall send a
18 notice containing pertinent information to all appropriate state
19 agencies, potentially affected local governments and federally
20 recognized tribal governments, and other interested parties.

21 (6) RCW 90.14.140 through 90.14.230 have no applicability to trust
22 water rights held by the department under this chapter or exercised
23 under this section.

24 (7) RCW 90.03.380 has no applicability to trust water rights
25 acquired by the state through the funding of water conservation
26 projects.

27 (8) Subsections (4) and (5) of this section do not apply to a trust
28 water right resulting from a donation for instream flows described in
29 RCW 90.42.080(1)(b). However, the department shall provide the notice
30 described in subsection (5) of this section the first time the trust
31 water right resulting from the donation is exercised.

32 **Sec. 5.** RCW 90.42.080 and 1993 c 98 s 4 are each amended to read
33 as follows:

34 (1)(a) The state may acquire all or portions of existing water
35 rights, by purchase, gift, or other appropriate means other than by
36 condemnation, from any person or entity or combination of persons or
37 entities. Once acquired, such rights are trust water rights. A water
38 right acquired by the state that is expressly conditioned to limit its

1 use to instream purposes shall be administered as a trust water right
2 in compliance with that condition.

3 (b) If an aquatic species is listed as threatened or endangered
4 under the federal endangered species act (16 U.S.C. Sec. 1531 et seq.)
5 for a body of water, certain instream flows are needed for the species,
6 and the holder of a right to water from the body of water chooses to
7 donate all or a portion of the person's water right to the trust water
8 system to assist in providing those instream flows on a temporary or
9 permanent basis, the department shall accept the donation on such terms
10 as the person may prescribe as long as the donation satisfies the
11 requirements of subsection (4) of this section. Once accepted, such
12 rights are trust water rights within the conditions prescribed by the
13 donor.

14 (2) The department may enter into leases, contracts, or such other
15 arrangements with other persons or entities as appropriate, to ensure
16 that trust water rights acquired in accordance with this chapter may be
17 exercised to the fullest possible extent.

18 (3) Trust water rights may be acquired by the state on a temporary
19 or permanent basis.

20 (4) A water right donated under subsection (1)(b) of this section
21 shall not exceed the extent to which the water right was exercised
22 during any of the five years before the donation nor may the total of
23 any portion of the water right remaining with the donor plus the
24 donated portion of the water right exceed the extent to which the water
25 right was exercised during any of the five years before the donation.
26 If, upon appeal from a determination by the department, it is found
27 that exercising the trust water right resulting from the donation or
28 exercising a portion of that trust water right impairs existing water
29 rights in violation of RCW 90.42.070, the donation shall be altered to
30 eliminate the impairment.

31 (5) The provisions of RCW 90.03.380 and 90.03.390 do not apply to
32 donations for instream flows described in subsection (1)(b) of this
33 section, but do apply to other transfers of water rights under this
34 section.

35 ~~((+5+))~~ (6) No funds may be expended for the purchase of water
36 rights by the state pursuant to this section unless specifically
37 appropriated for this purpose by the legislature.

38 (7) Any water right conveyed to the trust water right system that
39 is expressly conditioned to limit its use to instream purposes shall be

1 managed by the department for public purposes to ensure that it
2 qualifies as a gift that is deductible for federal income taxation
3 purposes for the person or entity conveying the water right."

4 Correct the title.

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