
HOUSE BILL 1502

State of Washington

56th Legislature

1999 Regular Session

By Representatives Linville, G. Chandler, Regala, Fisher, Grant, Anderson, Santos and Lantz

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1 AN ACT Relating to water rights for instream uses of water; and
2 amending RCW 90.03.345, 90.14.140, 90.38.020, and 90.42.080.

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

4 **Sec. 1.** RCW 90.03.345 and 1979 ex.s. c 216 s 7 are each amended to
5 read as follows:

6 (1) The establishment of reservations of water for agriculture,
7 hydroelectric energy, municipal, industrial, and other beneficial uses
8 under RCW 90.54.050(1) or minimum flows or levels under RCW 90.22.010
9 or 90.54.040 shall constitute appropriations within the meaning of this
10 chapter with priority dates as of the effective dates of their
11 establishment. Whenever an application for a permit to make beneficial
12 use of public waters embodied in a reservation, established after
13 September 1, 1979, is filed with the department of ecology after the
14 effective date of such reservation, the priority date for a permit
15 issued pursuant to an approval by the department of ecology of the
16 application shall be the effective date of the reservation.

17 (2) A water right for instream use may be held by the state through
18 the establishment of a reservation or minimum flow or level as
19 described in subsection (1) of this section or may be held by the state

1 as a trust water right under chapter 90.38 or 90.42 RCW. A water right
2 for instream use may also be established, changed, transferred, or
3 amended under this chapter or chapter 90.44 RCW in the manner
4 prescribed for a water right for any other use and may be held as an
5 appropriative right by any person or entity whatsoever.

6 **Sec. 2.** RCW 90.14.140 and 1998 c 258 s 1 are each amended to read
7 as follows:

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

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

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

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

16 (d) The operation of legal proceedings;

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

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

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

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

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

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

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

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

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

9 (g) If such right is held for instream use.

10 **Sec. 3.** RCW 90.38.020 and 1989 c 429 s 3 are each amended to read
11 as follows:

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

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

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

25 **Sec. 4.** RCW 90.42.080 and 1993 c 98 s 4 are each amended to read
26 as follows:

27 (1) The state may acquire all or portions of existing water rights,
28 by purchase, gift, or other appropriate means other than by
29 condemnation, from any person or entity or combination of persons or
30 entities. Once acquired, such rights are trust water rights. A water
31 right acquired by the state that is expressly conditioned to limit its
32 use to instream purposes shall be administered as a trust water right
33 in compliance with that condition.

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

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

3 (4) The provisions of RCW 90.03.380 and 90.03.390 apply to
4 transfers of water rights under this section.

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

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