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HOUSE BILL 2187

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State of Washington

56th Legislature

1999 Regular Session

By Representatives Linville, G. Chandler and Grant

Read first time 02/17/1999. Referred to Committee on Agriculture & Ecology.

1 AN ACT Relating to water rights for instream uses; and amending RCW  
2 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 through the approval of a  
3 change, transfer, or amendment of an existing water right under this  
4 chapter or chapter 90.44 RCW in the manner prescribed for a water right  
5 for any other use. A water right for an instream use established  
6 through such a change, transfer, or amendment may be held as an  
7 appropriative right by any person or entity.

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

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

- 14       (a) Drought, or other unavailability of water;
- 15       (b) Active service in the armed forces of the United States during  
16 military crisis;
- 17       (c) Nonvoluntary service in the armed forces of the United States;
- 18       (d) The operation of legal proceedings;
- 19       (e) Federal or state agency leases of or options to purchase lands  
20 or water rights which preclude or reduce the use of the right by the  
21 owner of the water right;
- 22       (f) Federal laws imposing land or water use restrictions either  
23 directly or through the voluntary enrollment of a landowner in a  
24 federal program implementing those laws, or acreage limitations, or  
25 production quotas.

26       (2) Notwithstanding any other provisions of RCW 90.14.130 through  
27 90.14.180, there shall be no relinquishment of any water right:

- 28       (a) If such right is claimed for power development purposes under  
29 chapter 90.16 RCW and annual license fees are paid in accordance with  
30 chapter 90.16 RCW;
- 31       (b) If such right is used for a standby or reserve water supply to  
32 be used in time of drought or other low flow period so long as  
33 withdrawal or diversion facilities are maintained in good operating  
34 condition for the use of such reserve or standby water supply;
- 35       (c) If such right is claimed for a determined future development to  
36 take place either within fifteen years of July 1, 1967, or the most  
37 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; (~~or~~)

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 held for instream use.

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

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

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

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

27 (4) Any water right conveyed to the trust water right system as a  
28 gift shall be managed by the department for public purposes to ensure  
29 that the gift qualifies as a deduction from federal income taxation for  
30 the person or entity conveying the gift.

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

33 (1) The state may acquire all or portions of existing water rights,  
34 by purchase, gift, or other appropriate means other than by  
35 condemnation, from any person or entity or combination of persons or  
36 entities. Once acquired, such rights are trust water rights. A water  
37 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 (2) The department may enter into leases, contracts, or such other  
4 arrangements with other persons or entities as appropriate, to ensure  
5 that trust water rights acquired in accordance with this chapter may be  
6 exercised to the fullest possible extent.

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

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

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

14 (6) Any water right conveyed to the trust water right system as a  
15 gift shall be managed by the department for public purposes to ensure  
16 that the gift qualifies as a deduction from federal income taxation for  
17 the person or entity conveying the gift.

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