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ENGROSSED SUBSTITUTE HOUSE BILL 2994

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State of Washington

56th Legislature

2000 Regular Session

By House Committee on Agriculture & Ecology (originally sponsored by Representatives Parlette, G. Chandler, B. Chandler and Linville)

Read first time 02/04/2000. Referred to Committee on .

1 AN ACT Relating to trust water rights; and amending RCW 90.14.140,  
2 90.38.020, 90.38.040, 90.42.040, and 90.42.080.

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

4 **Sec. 1.** RCW 90.14.140 and 1998 c 258 s 1 are each amended to read  
5 as follows:

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

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

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

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

14 (d) The operation of legal proceedings;

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

18 (f) Federal laws imposing land or water use restrictions either  
19 directly or through the voluntary enrollment of a landowner in a

1 federal program implementing those laws, or acreage limitations, or  
2 production quotas.

3 (2) Notwithstanding any other provisions of RCW 90.14.130 through  
4 90.14.180, there shall be no relinquishment of any water right:

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

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

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

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

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

19 (f) If such right or portion of the right is leased to another  
20 person for use on land other than the land to which the right is  
21 appurtenant as long as the lessee makes beneficial use of the right in  
22 accordance with this chapter and a transfer or change of the right has  
23 been approved by the department in accordance with RCW 90.03.380,  
24 90.03.383, 90.03.390, or 90.44.100; or

25 (g) If such right is a trust water right under chapter 90.38 or  
26 90.42 RCW.

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

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

36 (b) If an aquatic species is listed as threatened or endangered  
37 under the federal endangered species act (16 U.S.C. Sec. 1531 et seq.)  
38 for a body of water, certain instream flows are needed for the species,

1 and the holder of a right to water from the body of water chooses to  
2 donate all or a portion of the person's water right to the trust water  
3 system to assist in providing those instream flows on a temporary or  
4 permanent basis, the department shall accept the donation on such terms  
5 as the person may prescribe as long as the donation satisfies the  
6 requirements of subsection (4) of this section. Once accepted, such  
7 rights are trust water rights within the conditions prescribed by the  
8 donor.

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

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

15 (4) A water right donated under subsection (1)(b) of this section  
16 shall not exceed the extent to which the water right was exercised  
17 during any of the five years before the donation nor may the total of  
18 any portion of the water right remaining with the donor plus the  
19 donated portion of the water right exceed the extent to which the water  
20 right was exercised during any of the five years before the donation.  
21 If, upon appeal from a determination by the department, it is found  
22 that exercising the trust water right resulting from the donation or  
23 exercising a portion of that trust water right impairs existing water  
24 rights in violation of RCW 90.38.902, the donation shall be altered to  
25 eliminate the impairment.

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

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

33 (1) All trust water rights acquired by the department shall be  
34 placed in the Yakima river basin trust water rights program to be  
35 managed by the department. The department shall issue a water right  
36 certificate in the name of the state of Washington for each trust water  
37 right it acquires.

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

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

7 (4) A schedule of the amount of net water saved as a result of  
8 water conservation projects carried out in accordance with this  
9 chapter, shall be developed annually to reflect the predicted  
10 hydrologic and water supply conditions, as well as anticipated water  
11 demands, for the upcoming irrigation season. This schedule shall serve  
12 as the basis for the distribution and management of trust water rights  
13 each year.

14 (5)(a) No exercise of a trust water right may be authorized unless  
15 the department first determines that no existing water rights, junior  
16 or senior in priority, will be impaired as to their exercise or injured  
17 in any manner whatever by such authorization. Before any trust water  
18 right is exercised, the department shall publish notice thereof in a  
19 newspaper of general circulation published in the county or counties in  
20 which the storage, diversion, and use are to be made, and in such other  
21 newspapers as the department determines are necessary, once a week for  
22 two consecutive weeks. At the same time the department may also send  
23 notice thereof containing pertinent information to the director of fish  
24 and wildlife.

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

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

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

35 (1) All trust water rights acquired by the state shall be placed in  
36 the state trust water rights program to be managed by the department.  
37 Trust water rights acquired by the state shall be held or authorized  
38 for use by the department for instream flows, irrigation, municipal, or

1 other beneficial uses consistent with applicable regional plans for  
2 pilot planning areas, or to resolve critical water supply problems.

3 (2) The department shall issue a water right certificate in the  
4 name of the state of Washington for each permanent trust water right  
5 conveyed to the state indicating the reach or reaches of the stream,  
6 the quantity, and the use or uses to which it may be applied. A  
7 superseding certificate shall be issued that specifies the amount of  
8 water the water right holder would continue to be entitled to as a  
9 result of the water conservation project. The superseding certificate  
10 shall retain the same priority date as the original right. For  
11 nonpermanent conveyances, the department shall issue certificates or  
12 such other instruments as are necessary to reflect the changes in  
13 purpose or place of use or point of diversion or withdrawal. Water  
14 rights for which such nonpermanent conveyances are arranged shall not  
15 be subject to relinquishment for nonuse.

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

21 (4) Exercise of a trust water right may be authorized only if the  
22 department first determines that neither water rights existing at the  
23 time the trust water right is established, nor the public interest will  
24 be impaired. If impairment becomes apparent during the time a trust  
25 water right is being exercised, the department shall cease or modify  
26 the use of the trust water right to eliminate the impairment.

27 (5) Before any trust water right is created or modified, the  
28 department shall, at a minimum, require that a notice be published in  
29 a newspaper of general circulation published in the county or counties  
30 in which the storage, diversion, and use are to be made, and in other  
31 newspapers as the department determines is necessary, once a week for  
32 two consecutive weeks. At the same time the department shall send a  
33 notice containing pertinent information to all appropriate state  
34 agencies, potentially affected local governments and federally  
35 recognized tribal governments, and other interested parties.

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

1 (7) RCW 90.03.380 has no applicability to trust water rights  
2 acquired by the state through the funding of water conservation  
3 projects.

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

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

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

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

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

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

35 (4) A water right donated under subsection (1)(b) of this section  
36 shall not exceed the extent to which the water right was exercised  
37 during any of the five years before the donation nor may the total of  
38 any portion of the water right remaining with the donor plus the

1 donated portion of the water right exceed the extent to which the water  
2 right was exercised during any of the five years before the donation.  
3 If, upon appeal from a determination by the department, it is found  
4 that exercising the trust water right resulting from the donation or  
5 exercising a portion of that trust water right impairs existing water  
6 rights in violation of RCW 90.42.070, the donation shall be altered to  
7 eliminate the impairment.

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

12 ~~((+5+))~~ (6) No funds may be expended for the purchase of water  
13 rights by the state pursuant to this section unless specifically  
14 appropriated for this purpose by the legislature.

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

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