
SENATE BILL 5361

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By Senators Parlette, Honeyford, Hewitt, Hale, Morton, Swecker, Hochstatter, Long, Oke, McCaslin, Sheahan and Fraser

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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; (~~(e)~~)

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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