

SHB 1317 - H AMD 257

By Representative Linville

ADOPTED 03/18/2003

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature finds that the trust water
4 rights program is an important tool in meeting the state's current and
5 future needs for water, both instream and out-of-stream. However, the
6 legislature finds that the existing procedures for establishing trust
7 water rights are unnecessarily complex, and are difficult to explain
8 and administer. Further, the legislature finds that groups currently
9 developing local watershed plans and regional water management programs
10 are seeking an effective means to facilitate multiple, voluntary
11 transfers of existing water rights to address presently unmet needs and
12 future needs.

13 It is the intent of this act to enhance the effectiveness of the
14 trust water rights program by improving existing incentives, removing
15 disincentives, and clarifying and consolidating procedures for
16 establishing trust water rights.

17 **Sec. 2.** RCW 90.42.005 and 1991 c 347 s 1 are each amended to read
18 as follows:

19 (1) It is the policy of the state of Washington to recognize and
20 preserve water rights in accordance with RCW 90.03.010 and the
21 beneficial uses of water described in RCW 90.54.020(1).

22 (2) The legislature finds that:

23 (a) The state of Washington is faced with a shortage of water with
24 which to meet existing and future needs, particularly during the summer
25 and fall months and in dry years when the demand is greatest;

26 (b) Consistent with RCW 90.54.180, conservation and water use
27 efficiency programs, ~~((including))~~ storage, and water right transfers
28 ~~should be the preferred methods ((of addressing water uses because they~~

1 ~~can relieve~~) to address current critical water situations, provide for
2 presently unmet needs, and assist in meeting future water needs.
3 Presently unmet needs or current needs includes the water required to
4 increase the frequency of occurrence of base or minimum flow levels in
5 streams of the state, the water necessary to satisfy existing water
6 rights, or the water necessary to provide full supplies to existing
7 water systems with current supply deficiencies, or as otherwise needed
8 to meet the needs of growing communities for adequate and reliable
9 water supplies, and to provide the water necessary to satisfy existing
10 water rights for other beneficial uses listed in RCW 90.54.020(1);
11 ~~((and))~~

12 (c) The interests of the state will be served by developing
13 programs and regional water resource plans, in cooperation with local
14 governments, federally recognized tribal governments, appropriate
15 federal agencies, private citizens, and the various water users and
16 water interests in the state, that increase the overall ability to
17 manage the state's waters in order to resolve conflicts and to better
18 satisfy both present and future needs for water, both instream and
19 out-of-stream; and

20 (d) A state trust water rights program is an effective means to
21 facilitate the voluntary transfer of water and water rights,
22 established through conservation, purchase, lease, or donation, to
23 secure and preserve water rights and provide water for presently unmet
24 needs and emerging needs.

25 **Sec. 3.** RCW 90.42.010 and 1998 c 245 s 173 are each amended to
26 read as follows:

27 The legislature ~~((finds that))~~ recognizes a need ~~((exists))~~ to
28 ~~((develop and test))~~ provide a means to facilitate the voluntary
29 transfer of water and water rights, including conserved water, to
30 provide water for presently unmet needs and emerging needs.
31 ~~((Further,))~~ The legislature also finds that water conservation
32 activities have the potential of affecting the quantity of return flow
33 waters to which existing water right holders have a right to and upon
34 which they rely ~~((upon))~~. ~~((It is the intent of))~~ The legislature
35 intends that persons holding rights to water, including return flows,
36 not be adversely affected in the implementation of the provisions of
37 this chapter.

1 **Sec. 4.** RCW 90.42.020 and 1991 c 347 s 6 are each amended to read
2 as follows:

3 (~~Unless the context clearly requires otherwise,~~) The definitions
4 in this section apply throughout this chapter unless the context
5 clearly requires otherwise.

6 (1) "Department" means the department of ecology.

7 (2) "Impairment" means detriment or injury to existing rights as
8 that phrase is used in RCW 90.03.380(1).

9 (3) "Net water savings" means the amount of water that is
10 determined to be conserved and usable within or from a specified
11 (~~stream reach or reaches~~) surface or ground water body for other
12 purposes without impairment (~~or detriment~~) to water rights existing
13 at the time that a water conservation project is (~~undertaken, reducing~~
14 ~~the ability to deliver water, or reducing the supply of water that~~
15 ~~otherwise would have been available to other existing water uses~~)
16 funded.

17 (~~(3)~~) (4) "Trust water right" means any existing water right
18 (~~acquired~~) transferred to or managed by the state under this chapter
19 (~~for management in~~) and the state's trust water rights program.

20 (~~(4) "Pilot planning areas" means the geographic areas designated~~
21 ~~under RCW 90.54.045(2).~~)

22 (5) "Water conservation project" means any project or program for
23 which the state provides state or federal government assistance that
24 achieves physical or operational improvements that provide for
25 increased water use efficiency in existing systems of diversion,
26 conveyance, application, or use of water under water rights (~~existing~~
27 ~~on July 28, 1991~~)).

28 **Sec. 5.** RCW 90.42.030 and 1993 c 98 s 2 are each amended to read
29 as follows:

30 (1) For the purposes (~~of~~) specified in this chapter, the state
31 may enter into contracts to provide moneys to assist in the financing
32 of water conservation projects. In consideration for the financial
33 assistance provided, the state shall obtain public benefits (~~defined~~
34 ~~in guidelines developed under RCW 90.42.050~~) in the form of temporary
35 or permanent water rights.

36 (2) If the public benefits to be obtained require conveyance or
37 modification of a water right, the recipient of funds shall convey to

1 the state the recipient's interest in that part of the water right (~~or~~
2 ~~claim~~)) constituting all or a portion of the resulting net water
3 savings (~~for deposit in the trust water rights program. The amount to~~
4 ~~be conveyed shall be finitely determined by the parties, in accordance~~
5 ~~with the guidelines developed under RCW 90.42.050, before the~~
6 ~~expenditure of state funds~~)) according to section 8 of this act.
7 Conveyance may consist of complete transfer, lease contracts, or other
8 legally binding agreements. When negotiating for the acquisition of
9 conserved water or net water savings, or a portion thereof, the state
10 may require evidence of a valid water right.

11 (3) (~~As part of the contract,~~) If requested by the water right
12 holder (~~and~~), the state shall specify (~~the process to determine~~) as
13 part of the contract the amount of water the water right holder would
14 continue to be entitled to once the water conservation project is in
15 place.

16 (4) (~~The state shall cooperate fully with the United States in the~~
17 ~~implementation of this chapter. Trust water rights may be acquired~~
18 ~~through expenditure of funds provided by the United States and shall be~~
19 ~~treated in the same manner as trust water rights resulting from the~~
20 ~~expenditure of state funds.~~

21 (5) ~~If water is proposed to be acquired by or conveyed to the state~~
22 ~~as a trust water right by an irrigation district, evidence of the~~
23 ~~district's authority to represent the water right holders shall be~~
24 ~~submitted to and for the satisfaction of the department.~~

25 (6) ~~The state shall not contract with any person to acquire a water~~
26 ~~right served by an irrigation district without the approval of the~~
27 ~~board of directors of the irrigation district. Disapproval by a board~~
28 ~~shall be factually based on probable adverse effects on the ability of~~
29 ~~the district to deliver water to other members or on maintenance of the~~
30 ~~financial integrity of the district.~~) When the department provides
31 funding for a water conservation project as a means of establishing a
32 trust water right, a trust water right must be established for the
33 period of time during which the conservation project will result in
34 establishment of a trust water right. For example, a conservation
35 project with a functional life of fifteen years would result in a trust
36 transfer of fifteen years. Before the expenditure of state funds for
37 a water conservation project, the state and the water right holder

1 shall agree on the terms and duration of the trust water transfer as a
2 result of a conservation project.

3 NEW SECTION. **Sec. 6.** A new section is added to chapter 90.42 RCW
4 to read as follows:

5 (1) All trust water established by the state must be placed in the
6 state trust water rights program to be held in trust by the department.
7 Trust water rights established by the state must be held or authorized
8 for use by the department for any beneficial use described in RCW
9 90.54.020(1). Trust water rights may also be established for the
10 protection of water rights secured for mitigation purposes and for
11 preservation of water rights for future needs.

12 (2) Trust water rights may only be established from existing water
13 rights, including rights to divert or withdraw water under existing
14 certificates, claims, and permits, and rights to storage and use of
15 stored water from existing reservoir and secondary use rights, or other
16 appropriate means other than by condemnation.

17 (3) Trust water rights must be administered by the department.
18 Each trust water right must be administered in strict accordance with
19 the terms under which the trust water right was established, including
20 any agreement between the parties executed at the time the trust water
21 right was established, or as subsequently modified by mutual agreement
22 of the parties. For example, a trust water right established by the
23 state expressly conditioned to limit its use to instream flows must be
24 managed as a trust water right in compliance with that condition.

25 (4) To the extent practicable and subject to legislative
26 appropriation, trust water rights established in a watershed with an
27 approved watershed plan developed under chapter 90.82 RCW must be used
28 in a manner consistent with that plan.

29 (5) The department may make arrangements, including entry into
30 contracts with other persons or entities as appropriate, to ensure that
31 trust water rights established in accordance with this chapter can be
32 exercised to the fullest possible extent consistent with applicable
33 state laws.

34 (6) The department shall cooperate fully with the United States in
35 the implementation of this chapter. Trust water rights may be
36 established through expenditure of funds provided by the United States

1 and must be treated in the same manner as trust water rights
2 established as a result of the expenditure of state funds.

3 (7) All trust water rights must be managed to ensure that
4 attributes of each water right, such as its priority date, status as a
5 certificate, permit, or claim, names or numbers used to identify the
6 water right, and previously authorized uses remain distinct for each
7 water right established as a trust water right.

8 NEW SECTION. **Sec. 7.** A new section is added to chapter 90.42 RCW
9 to read as follows:

10 (1) A trust water right may be established on a temporary or
11 permanent basis. To establish a permanent trust water right, the water
12 right must be conveyed to the state of Washington. A water right
13 transferred to the trust water program on a temporary basis may not be
14 conveyed to the state of Washington and remains the property of the
15 water right holder while managed by the department in the trust water
16 program consistent with the terms of any agreement between the water
17 right holder and the department.

18 (2) All or a portion of a water right perfected through actual
19 beneficial use or an unperfected water right in good standing can be
20 established as a trust water right. Once established by the state,
21 such a right is a trust water right.

22 (3) The department shall develop forms for use in the establishment
23 of trust water rights to gather information pertaining to the water
24 right including, but not limited to, the existing purpose, place of
25 use, and point of diversion or withdrawal of the right, extent of water
26 use under the right, and the use or uses proposed for the right as a
27 trust water right.

28 (4) Except as provided in RCW 90.03.380(4) and 90.44.100(5), the
29 provisions of RCW 90.03.380 and 90.44.100 apply to trust water right
30 transfers under this chapter.

31 (5) Acceptance of an existing right as a temporary trust water
32 right under this chapter does not constitute a determination of the
33 validity and extent of an existing water right.

34 (6) If the holder of a right to water from a body of water chooses
35 to donate all or a portion of the person's water right to the trust
36 water program to assist in providing instream flows on a temporary or
37 permanent basis, the department shall accept the donation on such terms

1 as the person may prescribe as long as the donation satisfies the
2 applicable requirements of this chapter, and the terms prescribed are
3 relevant and material to protecting any interest in the water right
4 retained by the donor. Once accepted, such rights are trust water
5 rights within the conditions prescribed by the donor.

6 (7)(a) The quantity of water that may be approved for transfer to
7 the trust water program represents the extent to which water use under
8 the original right is reduced or foregone under the trust transfer,
9 resulting in a net benefit to the water body as a result of
10 establishing the trust water right, and resulting from:

11 (i) Reduced diversion or withdrawal of water under the original
12 right as a result of a water conservation project;

13 (ii) A reduction in the number of acres irrigated under the right,
14 or a long-term change in the type of crop grown that will require less
15 water;

16 (iii) A reduction in the period of use of the right, on a seasonal
17 basis, during periods of low stream flows, or according to conditions
18 prescribed for the trust water right;

19 (iv) The elimination of water use under the original right;

20 (v) A downstream change in point of diversion of a water right that
21 results in increased flows in the reach of the stream affected by the
22 change;

23 (vi) The temporary or permanent use of different source of supply
24 to meet all or a portion of the water needs under the original right;
25 or

26 (vii) Other appropriate changes in activities under the original
27 right, as agreed to between the water right holder and the department.

28 (b) Where the state establishes a trust water right from a portion
29 of an existing water right, only the portion of the right to be placed
30 in the trust water rights program is subject to the provisions of this
31 chapter. In the case of a trust transfer, the quantity of the trust
32 water right and the water right remaining with the water right holder
33 is reflected in the superseding document issued to the water right
34 holder by the department, and the superseding document issued by the
35 department must be conditioned to ensure that the reduced water use is
36 achieved.

1 NEW SECTION. **Sec. 8.** A new section is added to chapter 90.42 RCW
2 to read as follows:

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

8 (2) The priority date of an unperfected water right established as
9 a trust water right is the date of its establishment as a trust water
10 right. If an unperfected water right is established as a temporary
11 trust water right, it reverts to the original owner as an unperfected
12 right with the priority date of the original right.

13 NEW SECTION. **Sec. 9.** A new section is added to chapter 90.42 RCW
14 to read as follows:

15 (1) Before acquiring, establishing, or modifying any trust water
16 right, the department shall publish a notice in a newspaper of general
17 circulation published in the county or counties in which the storage,
18 diversion, and use are to be made and in other newspapers as the
19 department determines is necessary. The notice must be published once
20 a week for two consecutive weeks. At the same time the department
21 publishes notice, the department shall send a notice containing
22 pertinent information to all appropriate state agencies, potentially
23 affected local governments, potentially affected federally recognized
24 tribal governments, and other interested parties.

25 (2) This section does not apply to a trust water right resulting
26 from a donation for instream flows under RCW 90.42.080 or from a lease
27 under RCW 90.42.080 if the period of the lease does not exceed five
28 years.

29 (3) The department shall establish expedited notice provisions to
30 provide notice and opportunity for comment on proposals to establish
31 trust water rights during a formally declared drought.

32 NEW SECTION. **Sec. 10.** A new section is added to chapter 90.42 RCW
33 to read as follows:

34 (1) Except as provided in subsection (2) of this section, a
35 temporary trust water right is established after the following actions
36 occur:

1 (a) The water right holder provides written notice to the
2 department of their intention to establish a temporary trust water
3 right;

4 (b) The water right holder publishes a legal notice according to
5 section 9 of this act describing the temporary trust transfer and other
6 details deemed necessary by the department. The legal notice must
7 state that a water right holder wishing to assert a claim of impairment
8 of their water right may do so by filing the claim with the department,
9 and shall specify the deadline for doing so. The legal notice must be
10 published once a week for two consecutive weeks in a newspaper of
11 general circulation in the area in which the temporary trust water
12 right would be established; and

13 (c) Within thirty days of the last date of publication of the legal
14 notice, no claims of impairment are filed with the department relating
15 to the proposed temporary trust water right. If any claims of
16 impairment are filed with the department, the department shall make a
17 determination regarding the impairment claim or claims and shall issue
18 its determination in writing, stating either that it finds that there
19 will be impairment (a "finding of impairment") or that it finds there
20 will not be impairment (a "finding of no impairment"). The
21 department's written determination may be appealed to the pollution
22 control hearings board as provided in chapter 43.21B RCW or other
23 applicable law.

24 (2) A temporary trust water right may be established by a superior
25 court conducting a water rights adjudication under chapter 90.03 RCW.

26 (3) Upon the expiration of the period of time for which a temporary
27 trust water right is established, the full perfected and unperfected
28 quantities of water established as a temporary trust water right revert
29 to the water right holder, with the priority date of the original water
30 right.

31 NEW SECTION. **Sec. 11.** A new section is added to chapter 90.42 RCW
32 to read as follows:

33 (1)(a) After notice and consideration of comments received, the
34 department shall issue a final decision regarding the establishment of
35 a permanent trust water right.

36 (b) The department shall provide copies of its final decision to
37 the applicant and to any person or entity who provided comments on the

1 proposed permanent trust water right transfer. The department's final
2 decision on establishment of a permanent trust water right is
3 appealable to the pollution control hearings board under RCW 43.21B.230
4 or other applicable law.

5 (2) The department shall issue a certificate of change or transfer
6 as required under RCW 90.03.380(1) for any water right established as
7 a permanent trust water right and order approving a trust water right
8 transfer. Certificates of change or transfer issued under RCW
9 90.03.380 must be filed and made a record with the department of
10 ecology, and a duplicate certificate must be issued to the applicant,
11 which may be filed with the appropriate county auditor in like manner
12 and with the same effect as provided in the original authorization to
13 divert water.

14 (3) The department may require a final investigation prior to
15 issuing a superseding certificate for water rights for which the
16 department has issued a certificate of change or transfer under this
17 section and under RCW 90.03.380(1), and shall issue a superseding
18 certificate for such water right only when and to the extent water has
19 been applied to actual beneficial use as described in the certificate
20 of change or transfer issued under RCW 90.03.380(1).

21 (4) Where only a portion of an existing right is established as a
22 permanent trust water right, the department shall issue a superseding
23 certificate or permit to the original water right holder or, with
24 respect to water claims, issue a superseding certificate or permit only
25 for the perfected portion of a claim as demonstrated through actual
26 beneficial use of water. The superseding document must indicate the
27 quantity of water remaining with the original right holder.

28 NEW SECTION. **Sec. 12.** A new section is added to chapter 90.42 RCW
29 to read as follows:

30 No state funds may be expended to establish trust water rights by
31 the state under this chapter unless specifically appropriated for this
32 purpose by the legislature. Prior to expending state or federal funds
33 for a trust water right, the department shall exercise appropriate due
34 diligence, as practiced by other water right purchasers, to ensure the
35 validity of the water right or portion thereof for which the funds will
36 be expended.

1 NEW SECTION. **Sec. 13.** A new section is added to chapter 90.42 RCW
2 to read as follows:

3 A water right conveyed to the trust water right program as a
4 donation that is expressly conditioned to limit its use to instream
5 purposes must be managed by the department for public purposes to
6 ensure that it qualifies as a donation that is deductible for federal
7 income taxation purposes for the person or entity conveying the water
8 right.

9 NEW SECTION. **Sec. 14.** A new section is added to chapter 90.42 RCW
10 to read as follows:

11 The water right relinquishment provisions of RCW 90.14.130 through
12 90.14.230 do not apply to trust water rights as of the date the trust
13 water right is established.

14 NEW SECTION. **Sec. 15.** A new section is added to chapter 90.42 RCW
15 to read as follows:

16 (1) Nothing in this chapter authorizes the impairment of, or
17 operates to impair, any existing water rights.

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

24 (3) A water right holder who believes his or her water right has
25 been impaired by a trust water right donated or leased under RCW
26 90.42.080 may request that the department review his or her impairment
27 claim. If the department determines that exercising the trust water
28 right resulting from the donation or lease or exercising a portion of
29 that trust water right is impairing existing water rights in violation
30 of this section, the trust water right must be altered by the
31 department to eliminate the impairment.

32 (4) Any decision of the department made according to subsection (2)
33 or (3) of this section may be appealed to the pollution control
34 hearings board according to chapter 43.21B RCW.

1 NEW SECTION. **Sec. 16.** A new section is added to chapter 90.42 RCW
2 to read as follows:

3 (1) When water is proposed to be provided to the department as a
4 trust water right by an irrigation district, evidence of the district's
5 authority to represent the water right holders must be submitted to,
6 and for the satisfaction of, the department.

7 (2) The department may not establish a trust water right from an
8 individual's water right under this chapter that is appurtenant to land
9 lying within an irrigation district without the approval of the board
10 of directors of the irrigation district.

11 **Sec. 17.** RCW 90.03.380 and 2001 c 237 s 5 are each amended to read
12 as follows:

13 (1) The right to the use of water which has been applied to a
14 beneficial use in the state shall be and remain appurtenant to the land
15 or place upon which the same is used: PROVIDED, HOWEVER, That the
16 right may be transferred to another or to others and become appurtenant
17 to any other land or place of use without loss of priority of right
18 theretofore established if such change can be made without detriment or
19 injury to existing rights. The point of diversion of water for
20 beneficial use or the purpose of use may be changed, if such change can
21 be made without detriment or injury to existing rights. A change in
22 the place of use, point of diversion, and/or purpose of use of a water
23 right to enable irrigation of additional acreage or the addition of new
24 uses may be permitted if such change results in no increase in the
25 annual consumptive quantity of water used under the water right. For
26 purposes of this section, "annual consumptive quantity" means the
27 estimated or actual annual amount of water diverted pursuant to the
28 water right, reduced by the estimated annual amount of return flows,
29 averaged over the two years of greatest use within the most recent
30 five-year period of continuous beneficial use of the water right.
31 Before any transfer of such right to use water or change of the point
32 of diversion of water or change of purpose of use can be made, any
33 person having an interest in the transfer or change, shall file a
34 written application therefor with the department, and the application
35 shall not be granted until notice of the application is published as
36 provided in RCW 90.03.280. If it shall appear that such transfer or
37 such change may be made without injury or detriment to existing rights,

1 the department shall issue to the applicant a certificate in duplicate
2 granting the right for such transfer or for such change of point of
3 diversion or of use. The certificate so issued shall be filed and be
4 made a record with the department and the duplicate certificate issued
5 to the applicant may be filed with the county auditor in like manner
6 and with the same effect as provided in the original certificate or
7 permit to divert water.

8 (2) If an application for change proposes to transfer water rights
9 from one irrigation district to another, the department shall, before
10 publication of notice, receive concurrence from each of the irrigation
11 districts that such transfer or change will not adversely affect the
12 ability to deliver water to other landowners or impair the financial
13 integrity of either of the districts.

14 (3) A change in place of use by an individual water user or users
15 of water provided by an irrigation district need only receive approval
16 for the change from the board of directors of the district if the use
17 of water continues within the irrigation district, and when water is
18 provided by an irrigation entity that is a member of a board of joint
19 control created under chapter 87.80 RCW, approval need only be received
20 from the board of joint control if the use of water continues within
21 the area of jurisdiction of the joint board and the change can be made
22 without detriment or injury to existing rights.

23 (4) The requirements of this section ((shall)) do not apply to
24 trust water rights ((acquired by the state through the funding of water
25 conservation projects under chapter 90.38 RCW or RCW 90.42.010 through
26 90.42.070)) established on a temporary basis under chapter 90.42 RCW
27 unless such rights are transferred to another person.

28 (5)(a) Pending applications for new water rights are not entitled
29 to protection from impairment, injury, or detriment when an application
30 relating to an existing surface or ground water right is considered.

31 (b) Applications relating to existing surface or ground water
32 rights may be processed and decisions on them rendered independently of
33 processing and rendering decisions on pending applications for new
34 water rights within the same source of supply without regard to the
35 date of filing of the pending applications for new water rights.

36 (c) Notwithstanding any other existing authority to process
37 applications, including but not limited to the authority to process
38 applications under WAC 173-152-050 as it existed on January 1, 2001, an

1 application relating to an existing surface or ground water right may
2 be processed ahead of a previously filed application relating to an
3 existing right when sufficient information for a decision on the
4 previously filed application is not available and the applicant for the
5 previously filed application is sent written notice that explains what
6 information is not available and informs the applicant that processing
7 of the next application will begin. The previously filed application
8 does not lose its priority date and if the information is provided by
9 the applicant within sixty days, the previously filed application shall
10 be processed at that time. This subsection (5)(c) does not affect any
11 other existing authority to process applications.

12 (d) Nothing in this subsection (5) is intended to stop the
13 processing of applications for new water rights.

14 (6) No applicant for a change, transfer, or amendment of a water
15 right may be required to give up any part of the applicant's valid
16 water right or claim to a state agency, the trust water rights program,
17 or to other persons as a condition of processing the application.

18 (7) In revising the provisions of this section and adding
19 provisions to this section by chapter 237, Laws of 2001, the
20 legislature does not intend to imply legislative approval or
21 disapproval of any existing administrative policy regarding, or any
22 existing administrative or judicial interpretation of, the provisions
23 of this section not expressly added or revised.

24 **Sec. 18.** RCW 90.44.100 and 1997 c 316 s 2 are each amended to read
25 as follows:

26 (1) After an application to, and upon the issuance by the
27 department of an amendment to the appropriate permit or certificate of
28 ground water right, the holder of a valid right to withdraw public
29 ground waters may, without losing the holder's priority of right,
30 construct wells or other means of withdrawal at a new location in
31 substitution for or in addition to those at the original location, or
32 the holder may change the manner or the place of use of the water.

33 (2) An amendment to construct replacement or a new additional well
34 or wells at a location outside of the location of the original well or
35 wells or to change the manner or place of use of the water shall be
36 issued only after publication of notice of the application and findings
37 as prescribed in the case of an original application. Such amendment

1 shall be issued by the department only on the conditions that: (a) The
2 additional or replacement well or wells shall tap the same body of
3 public ground water as the original well or wells; (b) where a
4 replacement well or wells is approved, the use of the original well or
5 wells shall be discontinued and the original well or wells shall be
6 properly decommissioned as required under chapter 18.104 RCW; (c) where
7 an additional well or wells is constructed, the original well or wells
8 may continue to be used, but the combined total withdrawal from the
9 original and additional well or wells shall not enlarge the right
10 conveyed by the original permit or certificate; and (d) other existing
11 rights shall not be impaired. The department may specify an approved
12 manner of construction and shall require a showing of compliance with
13 the terms of the amendment, as provided in RCW 90.44.080 in the case of
14 an original permit.

15 (3) The construction of a replacement or new additional well or
16 wells at the location of the original well or wells shall be allowed
17 without application to the department for an amendment. However, the
18 following apply to such a replacement or new additional well: (a) The
19 well shall tap the same body of public ground water as the original
20 well or wells; (b) if a replacement well is constructed, the use of the
21 original well or wells shall be discontinued and the original well or
22 wells shall be properly decommissioned as required under chapter 18.104
23 RCW; (c) if a new additional well is constructed, the original well or
24 wells may continue to be used, but the combined total withdrawal from
25 the original and additional well or wells shall not enlarge the right
26 conveyed by the original water use permit or certificate; (d) the
27 construction and use of the well shall not interfere with or impair
28 water rights with an earlier date of priority than the water right or
29 rights for the original well or wells; (e) the replacement or
30 additional well shall be located no closer than the original well to a
31 well it might interfere with; (f) the department may specify an
32 approved manner of construction of the well; and (g) the department
33 shall require a showing of compliance with the conditions of this
34 subsection (3).

35 (4) As used in this section, the "location of the original well or
36 wells" is the area described as the point of withdrawal in the original
37 public notice published for the application for the water right for the
38 well.

1 (5) The requirements of this section do not apply to trust water
2 rights established on a temporary basis under chapter 90.42 RCW unless
3 such rights are transferred to another person.

4 NEW SECTION. Sec. 19. The following acts or parts of acts are
5 each repealed:

6 (1) RCW 90.42.050 (Guidelines governing trust water rights--
7 Submission of guidelines to joint select committee) and 1991 c 347 s 9;

8 (2) RCW 90.42.070 (Involuntary impairment of existing water rights
9 not authorized) and 1991 c 347 s 11; and

10 (3) RCW 90.42.080 (Trust water rights--Acquisition, donation,
11 exercise, and transfer--Appropriation required for expenditure of
12 funds) and 2002 c 329 s 9, 2001 c 237 s 31, 1993 c 98 s 4, & 1991 c 347
13 s 12.

14 NEW SECTION. Sec. 20. If any provision of this act or its
15 application to any person or circumstance is held invalid, the
16 remainder of the act or the application of the provision to other
17 persons or circumstances is not affected.

18 NEW SECTION. Sec. 21. This act is necessary for the immediate
19 preservation of the public peace, health, or safety, or support of the
20 state government and its existing public institutions, and takes effect
21 immediately."

22 Correct the title.

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