
SUBSTITUTE HOUSE BILL 1317

State of Washington

58th Legislature

2003 Regular Session

By House Committee on Agriculture & Natural Resources (originally sponsored by Representatives Linville, Kirby, Grant, Quall, Shabro, Jarrett, Rockefeller, Hunt, Delvin, Morris and Conway; by request of Governor Locke)

READ FIRST TIME 03/05/03.

1 AN ACT Relating to the trust water rights program; amending RCW
2 90.42.005, 90.42.010, 90.42.020, 90.42.030, 90.42.040, 90.42.070,
3 90.42.080, 90.54.045, 90.03.380, and 90.44.100; adding new sections to
4 chapter 90.42 RCW; adding a new section to chapter 90.54 RCW; creating
5 a new section; and repealing RCW 90.42.050.

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

7 **Sec. 1.** RCW 90.42.005 and 1991 c 347 s 1 are each amended to read
8 as follows:

9 (1) It is the policy of the state of Washington to recognize and
10 preserve water rights in accordance with RCW 90.03.010.

11 (2) The legislature finds that:

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

15 (b) Consistent with RCW 90.54.180, conservation and water use
16 efficiency programs, including storage, should be the preferred methods
17 of addressing water uses because they can relieve current critical
18 water situations, provide for presently unmet needs, and assist in
19 meeting future water needs. Presently unmet needs or current needs

1 includes the water required to increase the frequency of occurrence of
2 base or minimum flow levels in streams of the state, the water
3 necessary to satisfy existing water rights, or the water necessary to
4 provide full supplies to existing water systems with current supply
5 deficiencies; (~~and~~)

6 (c) The trust water rights program provides a mechanism to promote
7 conservation and water use efficiency by allowing the establishment of
8 trust water rights on either a temporary or permanent basis, which
9 assists water rights holders in preserving existing water rights and
10 the interests of the public in enhancing instream flows;

11 (d) The trust water rights program should provide flexibility to
12 water rights holders by including mechanisms to allow existing water
13 rights holders to temporarily place their water rights into trust
14 without an extensive examination of the extent and validity of that
15 right while ensuring that the extent and validity of rights placed
16 permanently in the trust water rights program have been examined and
17 determined; and

18 (e) The interests of the state will be served by developing
19 programs and regional water resource plans, in cooperation with local
20 governments, federally recognized tribal governments, appropriate
21 federal agencies, private citizens, and the various water users and
22 water interests in the state, that increase the overall ability to
23 manage the state's waters in order to resolve conflicts and to better
24 satisfy both present and future instream and out-of-stream needs for
25 water.

26 **Sec. 2.** RCW 90.42.010 and 1998 c 245 s 173 are each amended to
27 read as follows:

28 (1) The legislature finds that the trust water rights program is an
29 important tool to meet the state's current and future instream and out-
30 of-stream needs for water. The legislature also finds that existing
31 procedures for establishing trust water rights are unnecessarily
32 complex and that the program is difficult to explain and administer.
33 The legislature therefore intends to enhance the effectiveness of the
34 trust water rights program by improving existing incentives, removing
35 disincentives, and clarifying and consolidating procedures for
36 establishing trust water rights.

1 ~~(2) The legislature ((finds that))~~ recognizes a need ~~((exists))~~ to
2 ~~((develop and test))~~ provide a means to facilitate the voluntary
3 transfer of water and water rights, including conserved water, to
4 provide water for presently unmet needs and emerging needs.
5 ~~((Further,))~~ The legislature also finds that water conservation
6 activities have the potential of affecting the quantity of return flow
7 waters to which existing water right holders have a right to and upon
8 which they rely ~~((upon))~~. ~~((It is the intent of))~~ The legislature
9 intends that persons holding rights to water, including return flows,
10 not be adversely affected in the implementation of the provisions of
11 this chapter.

12 **Sec. 3.** RCW 90.42.020 and 1991 c 347 s 6 are each amended to read
13 as follows:

14 ~~((Unless the context clearly requires otherwise,))~~ The definitions
15 in this section apply throughout this chapter unless the context
16 clearly requires otherwise.

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

18 (2) "Net water savings" means the amount of water that is
19 determined to be conserved and usable within or from a specified
20 ~~((stream reach or reaches))~~ water body in a water conservation project
21 for ~~((other))~~ the purposes specified in this chapter without impairment
22 ~~((or detriment))~~ to water rights existing at the time that a water
23 conservation project is ~~((undertaken, reducing the ability to deliver~~
24 ~~water, or reducing the supply of water that otherwise would have been~~
25 ~~available to other existing water uses))~~ funded.

26 (3) "Trust water right" means any water right acquired by the state
27 under this chapter for management in the state's trust water rights
28 program.

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

31 ~~(5))~~ "Water conservation project" means ~~((any))~~ a project ~~((or~~
32 ~~program))~~:

33 (a) That achieves physical or operational improvements that provide
34 for increased water use efficiency in existing systems of diversion,
35 conveyance, application, or use of water under water rights ~~((existing~~
36 ~~on July 28, 1991))~~; and

37 (b) For which the state provides state or federal assistance.

1 **Sec. 4.** RCW 90.42.030 and 1993 c 98 s 2 are each amended to read
2 as follows:

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

9 (2) If the public benefits to be obtained require conveyance or
10 modification of a water right, the recipient of funds shall convey to
11 the state the recipient's interest in that part of the water right ~~((or~~
12 ~~claim))~~ constituting all or a portion of the resulting net water
13 savings ~~((for deposit in the trust water rights program. The amount to~~
14 ~~be conveyed shall be finitely determined by the parties, in accordance~~
15 ~~with the guidelines developed under RCW 90.42.050, before the~~
16 ~~expenditure of state funds))~~ according to section 8 of this act.
17 Conveyance may consist of complete transfer, lease contracts, or other
18 legally binding agreements. When negotiating for the acquisition of
19 conserved water or net water savings, or a portion thereof, the state
20 may require evidence of a valid water right.

21 (3) ~~((As part of the contract,))~~ If requested by the water right
22 holder ~~((and))~~, the state shall specify ~~((the process to determine))~~ as
23 part of the contract the amount of water the water right holder would
24 continue to be entitled to once the water conservation project is in
25 place.

26 (4) The state shall cooperate fully with the United States in the
27 implementation of this chapter. Trust water rights may be acquired
28 through expenditure of funds provided by the United States and shall be
29 treated in the same manner as trust water rights resulting from the
30 expenditure of state funds.

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

35 (6) The state shall not contract with any person to acquire a water
36 right served by an irrigation district without the approval of the
37 board of directors of the irrigation district. Disapproval by a board

1 shall be factually based on probable adverse effects on the ability of
2 the district to deliver water to other members or on maintenance of the
3 financial integrity of the district.

4 **Sec. 5.** RCW 90.42.040 and 2002 c 329 s 8 are each amended to read
5 as follows:

6 (1) The state may acquire for the trust water rights program all or
7 portions of existing surface or ground water rights, including those
8 represented by water rights certificates or water rights claims filed
9 in the water rights claim registry created under RCW 90.14.111 and
10 rights to storage and use of stored water from existing reservoir and
11 secondary use rights. The state may acquire these rights by purchase,
12 lease, gift, donation, financial participation in water conservation
13 projects, or other appropriate means other than by condemnation. These
14 rights may be acquired from any person or entity or from any
15 combination of persons or entities. These rights may be acquired by
16 the state on a temporary or permanent basis. Once acquired by the
17 state, these rights are established as trust water rights.

18 (2) The department may enter into leases, contracts, or other
19 arrangements with other persons or entities as appropriate to ensure
20 that trust water rights acquired and established according to this
21 chapter may be exercised to the fullest extent possible.

22 (3) All trust water rights ((acquired)) established by the state
23 shall be placed in the state trust water rights program to be managed
24 by the department. Trust water rights ((acquired)) established by the
25 state shall be held or authorized for ((use by the department for
26 instream flows, irrigation, municipal, or other beneficial uses
27 consistent with applicable regional plans for pilot planning areas, or
28 to resolve critical water supply problems)) the uses specified in
29 section 6 of this act. To the extent practicable and subject to
30 legislative appropriation, trust water rights ((acquired in an area
31 with an approved)) must be consistent with a watershed plan ((developed
32 under)) adopted under chapter 90.82 RCW ((shall be consistent with that
33 plan)) or a similar process if the plan calls for such acquisition.

34 ((2) The department shall issue a water right certificate in the
35 name of the state of Washington for each permanent trust water right
36 conveyed to the state indicating the reach or reaches of the stream,
37 the quantity, and the use or uses to which it may be applied. A

1 ~~superseding certificate shall be issued that specifies the amount of~~
2 ~~water the water right holder would continue to be entitled to as a~~
3 ~~result of the water conservation project. The superseding certificate~~
4 ~~shall retain the same priority date as the original right. For~~
5 ~~nonpermanent conveyances, the department shall issue certificates or~~
6 ~~such other instruments as are necessary to reflect the changes in~~
7 ~~purpose or place of use or point of diversion or withdrawal.~~

8 ~~(3) A trust water right retains the same priority date as the water~~
9 ~~right from which it originated, but as between them the trust right~~
10 ~~shall be deemed to be inferior in priority unless otherwise specified~~
11 ~~by an agreement between the state and the party holding the original~~
12 ~~right.~~

13 ~~(4) Exercise of a trust water right may be authorized only if the~~
14 ~~department first determines that neither water rights existing at the~~
15 ~~time the trust water right is established, nor the public interest will~~
16 ~~be impaired. If impairment becomes apparent during the time a trust~~
17 ~~water right is being exercised, the department shall cease or modify~~
18 ~~the use of the trust water right to eliminate the impairment.~~

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

28 ~~(6) RCW 90.14.140 through 90.14.230 have no applicability to trust~~
29 ~~water rights held by the department under this chapter or exercised~~
30 ~~under this section.~~

31 ~~(7)) (4) RCW 90.03.380 ((has no applicability)) does not apply to~~
32 ~~trust water rights acquired by the state through the funding of water~~
33 ~~conservation projects.~~

34 ~~((8) Subsections (4) and (5) of this section do not apply to a~~
35 ~~trust water right resulting from a donation for instream flows~~
36 ~~described in RCW 90.42.080(1)(b) or to a trust water right leased under~~
37 ~~RCW 90.42.080(8) if the period of the lease does not exceed five years.~~

1 ~~However, the department shall provide the notice described in~~
2 ~~subsection (5) of this section the first time the trust water right~~
3 ~~resulting from the donation is exercised.~~

4 ~~(9) Where a portion of an existing water right that is acquired or~~
5 ~~donated to the trust water rights program will assist in achieving~~
6 ~~established instream flows, the department shall process the change or~~
7 ~~amendment of the existing right without conducting a review of the~~
8 ~~extent and validity of the portion of the water right that will remain~~
9 ~~with the water right holder.)~~

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

12 (1) Trust water rights established in the trust water rights
13 program according to this chapter must be held or authorized for use by
14 the department. Subject to subsection (3) of this section, trust water
15 rights may be used for any beneficial use specified in RCW 90.54.020(1)
16 and may be established to:

- 17 (a) Protect water rights secured for mitigation purposes;
- 18 (b) Resolve critical water supply problems;
- 19 (c) Maintain existing water rights in situations and during periods
20 in which the extent to which the right is exercised may fluctuate; and
- 21 (d) Preserve water rights for future needs.

22 (2) The use of trust water rights shall be consistent with a
23 watershed plan adopted according to chapter 90.82 RCW or a similar
24 process.

25 (3) Any trust water rights established according to this chapter
26 that are intended to be used for any purpose other than assisting to
27 achieve established instream flows or enhancing instream flows shall be
28 transferred to a water bank created under chapter . . . (House Bill No.
29 1640), Laws of 2003, as enacted or as may be amended, as soon as a
30 water bank is available for the area in which the trust water right is
31 to be exercised.

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

34 (1) A trust water right retains the same priority date as the water
35 right from which it originated. The trust right shall be deemed to be

1 inferior in priority to the water right from which it originated unless
2 otherwise specified by an agreement between the state and the party
3 holding the original right.

4 (2) The priority date of an unperfected water right established as
5 a trust water right according to section 8(6) of this act is the date
6 of its establishment as a trust water right. If an unperfected water
7 right is established as a temporary trust water right, it reverts to
8 the original owner as an unperfected right with the priority date of
9 the original right.

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

12 (1) Except as provided in subsection (6) of this section, trust
13 water rights may be established only to the extent the water right has
14 been perfected through actual beneficial use. The quantity of water
15 established as a trust water right and transferred to the trust water
16 rights program according to this chapter shall be determined through
17 the application of water system engineering or other appropriate,
18 quantitative methods. The quantity of water shall not exceed the
19 extent to which:

20 (a) The water right has been perfected through actual beneficial
21 use; and

22 (b) Water use under the original right is reduced or foregone,
23 resulting in a net benefit to the water body as a result of
24 establishing the trust water right.

25 (2) A reduction in water use may result from one or more of the
26 following:

27 (a) Reduced diversion or withdrawal of water under the original
28 right as a result of a water conservation project;

29 (b) A reduction in the number of acres irrigated under the right or
30 a long-term change in the type of crop grown that will require less
31 water;

32 (c) A reduction in the period of use of the right, on a seasonal
33 basis, during periods of low stream flows or according to conditions
34 prescribed for the trust water right;

35 (d) The elimination of water use under the original right;

36 (e) A downstream change in point of diversion of a water right that

1 results in increased flows in the reach of the stream affected by the
2 change;

3 (f) The temporary or permanent use of a different source of supply
4 to meet all or a portion of the water needs under the original right;
5 or

6 (g) Other appropriate changes in activities under the original
7 right as agreed between the water right holder and the department.

8 (3) When a trust water right is established from a portion of an
9 existing water right, the department shall quantify only the portion of
10 the right to be acquired and established as a trust water right.

11 (4) When the state provides funding for a water conservation
12 project according to RCW 90.42.030, the recipient of funds conveys to
13 the state the portion of the water right constituting all or a portion
14 of the net water savings resulting from the project. This amount must
15 be acquired and established as a trust water right. Before the
16 expenditure of funds, the state and the water right holder shall agree
17 on the procedures for determining net water savings to be acquired and
18 established as a trust water right according to RCW 90.42.030 and this
19 section.

20 (5) For a water right to be acquired or established in the trust
21 water rights program on a temporary basis, the department shall specify
22 that the quantity for purposes of the trust water rights program is the
23 full quantity of water diverted or withdrawn to exercise the right
24 before such acquisition and establishment. The full quantity shall
25 revert to the person or entity from whom it was obtained when the trust
26 period expires.

27 (6) All or a portion of an unperfected water right in good standing
28 may be acquired and established as a trust water right. The
29 requirements of subsection (1) of this section do not apply to an
30 unperfected right acquired or established according to this subsection.

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

33 (1) The department shall issue a water right certificate in the
34 name of the state of Washington for each permanent trust water right
35 conveyed to the state. The certificate shall indicate the water body
36 that is the source of the water, the quantity of water involved, and
37 the use or uses to which it may be applied. If the use of the right or

1 a portion of the right is for instream use, the stream reach or reaches
2 of that instream use also must be indicated. The certificate must
3 specify the amount of water conveyed to the state.

4 (2) The certificate retains the same priority date as the original
5 right as provided in section 7 of this act.

6 (3) For nonpermanent and partial conveyances, the department shall
7 issue certificates or such other instruments as are necessary to
8 reflect the changes in purpose or place of use or point of diversion or
9 withdrawal.

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

12 (1) Before any trust water right donated or leased under RCW
13 90.42.080 is first exercised, the department shall publish a notice in
14 a newspaper of general circulation published in the county or counties
15 in which the water right from which the donation or lease was derived
16 is located and in other newspapers as the department determines is
17 necessary. The notice must be published once a week for two
18 consecutive weeks.

19 (2) Before acquiring, establishing, or modifying any trust water
20 right acquired by any method other than donation or lease, the
21 department shall publish a notice in a newspaper of general circulation
22 published in the county or counties in which the storage, diversion,
23 and use are to be made and in other newspapers as the department
24 determines is necessary. The notice must be published once a week for
25 two consecutive weeks.

26 (3) At the same time the department publishes notice according to
27 subsection (1) or (2) of this section, the department shall send a
28 notice containing pertinent information to all appropriate state
29 agencies, potentially affected local governments, and federally
30 recognized tribal governments, and other interested parties.

31 (4) This section does not apply to a trust water right resulting
32 from a donation for instream flows under RCW 90.42.080 or from a lease
33 under RCW 90.42.080 if the period of the lease does not exceed five
34 years. However, the department shall provide the notice described in
35 this section the first time the trust water right resulting from the
36 donation for instream flows is exercised.

1 (5) This section does not apply to a trust water right established
2 during a formally declared drought.

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

5 The water relinquishment provisions of RCW 90.14.140 through
6 90.14.230 do not apply to trust water rights established or exercised
7 by the department as of the date the trust water right is established.

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

10 (1) After notice according to section 10 of this act and
11 consideration of comments received, the department shall issue a final
12 decision regarding the establishment of a trust water right. The
13 department shall provide copies of its final decision to the affected
14 parties and to persons or entities specified in section 10(3) of this
15 act.

16 (2) The department's final decision regarding the establishment of
17 a trust water right may be appealed to the pollution control hearings
18 board according to chapter 43.21B RCW.

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

21 The provisions of RCW 90.03.380 regarding an annual consumptive
22 quantity of water do not apply to any portion of a trust water right
23 acquired to assist in achieving established instream flows.

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

26 (1) Requirements for transfers, changes, or amendments for water
27 rights according to RCW 90.03.380, 90.03.390, and 90.44.100 do not
28 apply to:

29 (a) Trust water rights acquired by the state through water
30 conservation projects authorized by RCW 90.42.030;

31 (b) Donations made under RCW 90.42.080; or

32 (c) Leases of water rights for not more than five years according
33 to RCW 90.42.080.

1 (2) In processing a transfer, change, or amendment for any other
2 water right established in the trust water rights program, if a portion
3 of an existing water right that is acquired for and established in the
4 trust water rights program will assist in achieving established
5 instream flows, the department shall process the transfer, change, or
6 amendment of the existing right without conducting a review of the
7 extent and validity of the portion of the water right that will remain
8 with the water right holder.

9 NEW SECTION. Sec. 15. A new section is added to chapter 90.54 RCW
10 to read as follows:

11 The department shall cooperate fully with the United States in
12 implementing this chapter. Trust water rights may be established
13 through expenditure of funds provided by the United States and must be
14 treated in the same manner as trust water rights established as a
15 result of the expenditure of state funds.

16 **Sec. 16.** RCW 90.42.070 and 1991 c 347 s 11 are each amended to
17 read as follows:

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

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

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

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

1 **Sec. 17.** RCW 90.42.080 and 2002 c 329 s 9 are each amended to read
2 as follows:

3 ~~(1)((a) The state may acquire all or portions of existing water~~
4 ~~rights, by purchase, gift, or other appropriate means other than by~~
5 ~~condemnation, from any person or entity or combination of persons or~~
6 ~~entities. Once acquired, such rights are trust water rights. A water~~
7 ~~right acquired by the state that is expressly conditioned to limit its~~
8 ~~use to instream purposes shall be administered as a trust water right~~
9 ~~in compliance with that condition.~~

10 ~~(b))~~ If the holder of a right to water from a body of water
11 chooses to donate all or a portion of the person's water right to the
12 trust water system to assist in providing instream flows on a temporary
13 or permanent basis, the department shall accept the donation on such
14 terms as the person may prescribe as long as the donation satisfies the
15 requirements of subsection ~~((4))~~ (2) of this section and the other
16 applicable requirements of this chapter and the terms prescribed are
17 relevant and material to protecting any interest in the water right
18 retained by the donor. Once accepted, such rights are trust water
19 rights within the conditions prescribed by the donor.

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

24 ~~(3) Trust water rights may be acquired by the state on a temporary~~
25 ~~or permanent basis.~~

26 ~~(4))~~ A water right donated under subsection (1)~~((b))~~ of this
27 section shall not exceed the extent to which the water right was
28 exercised during the five years before the donation nor may the total
29 of any portion of the water right remaining with the donor plus the
30 donated portion of the water right exceed the extent to which the water
31 right was exercised during the five years before the donation. ~~((A~~
32 ~~water right holder who believes his or her water right has been~~
33 ~~impaired by a trust water right donated under subsection (1)(b) of this~~
34 ~~section may request that the department review the impairment claim.~~
35 ~~If the department determines that exercising the trust water right~~
36 ~~resulting from the donation or exercising a portion of that trust water~~
37 ~~right donated under subsection (1)(b) of this section is impairing~~
38 ~~existing water rights in violation of RCW 90.42.070, the trust water~~

1 ~~right shall be altered by the department to eliminate the impairment.~~
2 ~~Any decision of the department to alter or not to alter a trust water~~
3 ~~right donated under subsection (1)(b) of this section is appealable to~~
4 ~~the pollution control hearings board under RCW 43.21B.230.)~~)

5 (3) A donated water right's status as a trust water right under
6 this ~~((subsection is not))~~ section does not provide independent
7 evidence of the validity or quantity of the water right.

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

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

21 ~~(8))~~ (4) If the department acquires a trust water right by lease,
22 the amount of the trust water right shall not exceed the extent to
23 which the water right was exercised during the five years before the
24 acquisition was made nor may the total of any portion of the water
25 right remaining with the original water right holder plus the portion
26 of the water right leased by the department exceed the extent to which
27 the water right was exercised during the five years before the
28 acquisition. ~~((A water right holder who believes his or her water~~
29 ~~right has been impaired by a trust water right leased under this~~
30 ~~subsection may request that the department review the impairment claim.~~
31 ~~If the department determines that exercising the trust water right~~
32 ~~resulting from the leasing or exercising of a portion of that trust~~
33 ~~water right leased under this subsection is impairing existing water~~
34 ~~rights in violation of RCW 90.42.070, the trust water right shall be~~
35 ~~altered by the department to eliminate the impairment. Any decision of~~
36 ~~the department to alter or not to alter a trust water right leased~~
37 ~~under this subsection is appealable to the pollution control hearings~~
38 ~~board under RCW 43.21B.230.)~~)

1 (5) The department's leasing of a trust water right under this
2 subsection is not evidence of the validity or quantity of the water
3 right.

4 (~~(9)~~) (6) For a water right (~~donated to or~~) acquired by the
5 trust water rights program on a temporary basis, the full quantity of
6 water diverted or withdrawn to exercise the right before the (~~donation~~
7 ~~or~~) acquisition shall be placed in the trust water rights program and
8 shall revert to the donor or person from whom it was acquired when the
9 trust period ends.

10 NEW SECTION. **Sec. 18.** A new section is added to chapter 90.42 RCW
11 to read as follows:

12 Any water right conveyed to the trust water right program as a gift
13 that is expressly conditioned to limit its use to instream purposes
14 must be managed by the department for public purposes to ensure that it
15 qualifies as a gift that is deductible for federal income taxation
16 purposes for the person or entity conveying the water right.

17 **Sec. 19.** RCW 90.54.045 and 1991 c 347 s 4 are each amended to read
18 as follows:

19 (1) In the development and implementation of the comprehensive
20 state water resources program required in RCW 90.54.040(1), the process
21 described therein shall involve participation of appropriate state
22 agencies, Indian tribes, local governments, and interested parties(~~(~~
23 ~~and shall be applied on a regional basis pursuant to subsection (2) of~~
24 ~~this section)~~).

25 (2) (~~Prior to July 1, 1991, the department, with advice from~~
26 ~~appropriate state agencies, Indian tribes, local government, and~~
27 ~~interested parties, shall identify regions and establish regional~~
28 ~~boundaries for water resource planning and shall designate two regions~~
29 ~~in which the process shall be initiated on a pilot basis. One region~~
30 ~~shall encompass an area within the Puget Sound basin in which critical~~
31 ~~water resource issues exist. A concurrent pilot process may encompass~~
32 ~~a region east of the Cascade mountains.~~

33 (3) ~~The department shall report to the chairs of the appropriate~~
34 ~~legislative committees prior to July 1st each year summarizing the~~
35 ~~progress of the pilot process in the two regions. The pilot process in~~

1 ~~each region shall be completed and shall produce a regional water plan~~
2 ~~by December 31, 1993.~~

3 (4)) Appropriate state agencies, Indian tribes, local governments,
4 and interested parties (~~in regions not selected for the pilot~~
5 ~~program~~) are strongly encouraged to commence water resource planning
6 within their regions.

7 **Sec. 20.** RCW 90.03.380 and 2001 c 237 s 5 are each amended to read
8 as follows:

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

1 made a record with the department and the duplicate certificate issued
2 to the applicant may be filed with the county auditor in like manner
3 and with the same effect as provided in the original certificate or
4 permit to divert water.

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

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

20 (4) The requirements of this section (~~shall~~) do not apply to
21 trust water rights (~~acquired by the state through the funding of water~~
22 ~~conservation projects under chapter 90.38 RCW or RCW 90.42.010 through~~
23 ~~90.42.070~~) described in section 14 of this act.

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

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

32 (c) Notwithstanding any other existing authority to process
33 applications, including but not limited to the authority to process
34 applications under WAC 173-152-050 as it existed on January 1, 2001, an
35 application relating to an existing surface or ground water right may
36 be processed ahead of a previously filed application relating to an
37 existing right when sufficient information for a decision on the
38 previously filed application is not available and the applicant for the

1 previously filed application is sent written notice that explains what
2 information is not available and informs the applicant that processing
3 of the next application will begin. The previously filed application
4 does not lose its priority date and if the information is provided by
5 the applicant within sixty days, the previously filed application shall
6 be processed at that time. This subsection (5)(c) does not affect any
7 other existing authority to process applications.

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

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

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

20 **Sec. 21.** RCW 90.44.100 and 1997 c 316 s 2 are each amended to read
21 as follows:

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

29 (2) An amendment to construct replacement or a new additional well
30 or wells at a location outside of the location of the original well or
31 wells or to change the manner or place of use of the water shall be
32 issued only after publication of notice of the application and findings
33 as prescribed in the case of an original application. Such amendment
34 shall be issued by the department only on the conditions that: (a) The
35 additional or replacement well or wells shall tap the same body of
36 public ground water as the original well or wells; (b) where a
37 replacement well or wells is approved, the use of the original well or

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

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

31 (4) As used in this section, the "location of the original well or
32 wells" is the area described as the point of withdrawal in the original
33 public notice published for the application for the water right for the
34 well.

35 (5) The requirements of this section do not apply to trust water
36 rights described in section 14 of this act.

1 NEW SECTION. **Sec. 22.** A new section is added to chapter 90.42 RCW
2 to read as follows:

3 No state funds may be expended to establish trust water rights
4 unless specifically appropriated for this purpose by the legislature.
5 Prior to expending state or federal funds for a trust water right, the
6 department shall exercise appropriate due diligence, as practiced by
7 other water right purchasers, to ensure the validity of the water right
8 or the portion of the water right for which the funds will be expended.

9 NEW SECTION. **Sec. 23.** Nothing in this act is intended to affect
10 the acquisition, establishment, or validity of any trust water rights
11 acquired on or before the effective date of this section.

12 NEW SECTION. **Sec. 24.** RCW 90.42.050 (Guidelines governing trust
13 water rights--Submission of guidelines to joint select committee) and
14 1991 c 347 s 9 are each repealed.

15 NEW SECTION. **Sec. 25.** If any provision of this act or its
16 application to any person or circumstance is held invalid, the
17 remainder of the act or the application of the provision to other
18 persons or circumstances is not affected.

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