

---

SECOND SUBSTITUTE HOUSE BILL 1317

---

State of Washington

58th Legislature

2004 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 02/27/04.

1 AN ACT Relating to the trust water rights program; amending RCW  
2 90.42.005, 90.42.020, 90.03.380, 90.44.100, and 90.42.100; adding new  
3 sections to chapter 90.42 RCW; creating a new section; repealing RCW  
4 90.38.005, 90.38.010, 90.38.020, 90.38.030, 90.38.040, 90.38.050,  
5 90.38.900, 90.38.901, 90.38.902, 90.42.010, 90.42.030, 90.42.040,  
6 90.42.050, 90.42.070, and 90.42.080; and declaring an emergency.

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

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

18 It is the intent of this act to enhance the effectiveness of the

1 trust water rights program by improving existing incentives, removing  
2 disincentives, and clarifying and consolidating procedures for  
3 establishing trust water rights.

4 **Sec. 2.** RCW 90.42.005 and 2003 c 144 s 1 are each amended to read  
5 as follows:

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

9 (2) The legislature finds that:

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

13 (b) Consistent with RCW 90.54.180, issuance of new water rights,  
14 voluntary water transfers, and conservation and water use efficiency  
15 programs, including storage, all are acceptable methods of addressing  
16 water uses because they can relieve current critical water situations,  
17 provide for presently unmet needs, and assist in meeting future water  
18 needs. Presently unmet needs or current needs includes the water  
19 required to increase the frequency of occurrence of base or minimum  
20 flow levels in streams of the state, the water necessary to satisfy  
21 existing water rights, or the water necessary to provide full supplies  
22 to existing water systems with current supply deficiencies, or as  
23 otherwise needed to meet the needs of growing communities for adequate  
24 and reliable water supplies, and to provide the water necessary to  
25 satisfy existing water rights for other beneficial uses listed in RCW  
26 90.54.020(1);

27 (c) The interests of the state and its citizens will be served by  
28 developing programs and regional water resource plans, in cooperation  
29 with local governments, federally recognized tribal governments,  
30 appropriate federal agencies, private citizens, and the various water  
31 users and water interests in the state, that increase the overall  
32 ability to manage the state's waters in order to resolve conflicts and  
33 to better satisfy both present and future needs for water both instream  
34 and out-of-stream; ((and))

35 (d) Water banking as a function of the trust water ~~((rights))~~  
36 rights program and as authorized by this chapter can provide an  
37 effective means to facilitate the voluntary transfer of water rights

1 established through conservation, purchase, lease, or donation, to  
2 preserve water rights and provide water for presently unmet and future  
3 needs; and to achieve a variety of water resource management objectives  
4 throughout the state, including drought response, improving streamflows  
5 on a voluntary basis, providing water mitigation, or reserving water  
6 supply for future uses;

7 (e) A state trust water rights program is an effective means to  
8 facilitate the voluntary transfer of water and water rights,  
9 established through conservation, purchase, lease, or donation, to  
10 secure and preserve water rights and provide water for presently unmet  
11 needs and emerging needs; and

12 (f) The trust water rights program improves the ability of the  
13 state to work with the United States and the various water users in the  
14 ongoing program to satisfy both existing rights and other presently  
15 unmet as well as future needs of the Yakima basin, through improvements  
16 to the existing federal water project in the Yakima river basin,  
17 authorized under P.L. 96-162.

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

20 ~~((Unless the context clearly requires otherwise,))~~ The definitions  
21 in this section apply throughout this chapter unless the context  
22 clearly requires otherwise.

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

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

26 (3) "Net water savings" means the amount of water that is  
27 determined to be conserved and usable within or from a specified  
28 ~~((stream reach or reaches))~~ surface or ground water body for other  
29 purposes without impairment ~~((or detriment))~~ to water rights existing  
30 at the time that a water conservation project is ~~((undertaken, reducing~~  
31 ~~the ability to deliver water, or reducing the supply of water that~~  
32 ~~otherwise would have been available to other existing water uses))~~  
33 funded.

34 ~~((+3))~~ (4) "Trust water right" means any existing water right  
35 ~~((acquired))~~ transferred to or managed by the state under this chapter  
36 ~~((for management in))~~ and the state's trust water rights program.

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

3       ~~(5) "Water conservation project" means any project or program that~~  
4 ~~achieves physical or operational improvements that provide for~~  
5 ~~increased water use efficiency in existing systems of diversion,~~  
6 ~~conveyance, application, or use of water under water rights existing on~~  
7 ~~July 28, 1991.)~~

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

10       (1) All trust water established by the state must be placed in the  
11 state trust water rights program to be held in trust by the department.  
12 Trust water rights established by the state must be held or authorized  
13 for use by the department for any beneficial use described in RCW  
14 90.54.020(1). Trust water rights may also be established for the  
15 protection of water rights secured for mitigation purposes and for  
16 preservation of water rights for future needs.

17       (2) Trust water rights may only be established from existing water  
18 rights, including rights to divert or withdraw water under existing  
19 certificates, claims, and permits, and rights to storage and use of  
20 stored water from existing reservoir and secondary use rights, or other  
21 appropriate means other than by condemnation.

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

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

34       (5) The department may make arrangements, including entry into  
35 contracts with other persons or entities as appropriate, to ensure that  
36 trust water rights established in accordance with this chapter can be

1 exercised to the fullest possible extent consistent with applicable  
2 state laws.

3 (6) The department shall cooperate fully with the United States in  
4 the implementation of this chapter. Trust water rights may be  
5 established through expenditure of funds provided by the United States  
6 and must be treated in the same manner as trust water rights  
7 established as a result of the expenditure of state funds.

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

13 NEW SECTION. **Sec. 5.** A new section is added to chapter 90.42 RCW  
14 to read as follows:

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

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

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

33 (4) Except as provided in RCW 90.03.380(4) and 90.44.100(6), the  
34 provisions of RCW 90.03.380 and 90.44.100 apply to trust water right  
35 transfers under this chapter.

36 (5) Acceptance of an existing right as a temporary trust water

1 right under this chapter does not constitute a determination of the  
2 validity and extent of an existing water right.

3 (6) If the holder of a right to water from a body of water chooses  
4 to donate all or a portion of the person's water right to the trust  
5 water program to assist in providing instream flows on a temporary or  
6 permanent basis, the department shall accept the donation on such terms  
7 as the person may prescribe as long as the donation satisfies the  
8 applicable requirements of this chapter, and the terms prescribed are  
9 relevant and material to protecting any interest in the water right  
10 retained by the donor. Once accepted, such rights are trust water  
11 rights within the conditions prescribed by the donor.

12 (7) The department shall establish expedited notice provisions to  
13 provide notice and opportunity for comment on proposals to establish  
14 trust water rights during a formally declared drought.

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

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

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

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

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

29 (v) A downstream change in point of diversion of a water right that  
30 results in increased flows in the reach of the stream affected by the  
31 change;

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

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

37 (b) Where the state establishes a trust water right from a portion  
38 of an existing water right, only the portion of the right to be placed

1 in the trust water rights program is subject to the provisions of this  
2 chapter. In the case of a trust transfer, the quantity of the trust  
3 water right and the water right remaining with the water right holder  
4 is reflected in the superseding document issued to the water right  
5 holder by the department, and the superseding document issued by the  
6 department must be conditioned to ensure that the reduced water use is  
7 achieved.

8 (9) Where the department provides funding for a water conservation  
9 project as a means of establishing a trust water right, a trust water  
10 right must be established for the period of time during which the  
11 conservation project is in effect. For example, a conservation project  
12 with a functional life of fifteen years would result in a trust  
13 transfer of fifteen years. Before the expenditure of state funds for  
14 a water conservation project, the state and the water right holder  
15 shall agree on the terms and duration of the trust water transfer as a  
16 result of a conservation project.

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

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

22 (a) The water right holder provides written notice to the  
23 department of their intention to establish a temporary trust water  
24 right;

25 (b) The water right holder publishes a legal notice prescribed by  
26 the department describing the temporary trust transfer and other  
27 details deemed necessary by the department. The legal notice must  
28 state that a water right holder wishing to assert a claim of impairment  
29 of their water right may do so by filing the claim with the department,  
30 and shall specify the deadline for doing so. The legal notice must be  
31 published once a week for two consecutive weeks in a newspaper of  
32 general circulation in the area in which the temporary trust water  
33 right would be established; and

34 (c) Within thirty days of the last date of publication of the legal  
35 notice, no claims of impairment are filed with the department relating  
36 to the proposed temporary trust water right. If any claims of  
37 impairment are filed with the department, the department shall make a

1 determination regarding the impairment claim or claims and shall issue  
2 its determination in writing, stating either that it finds that there  
3 will be impairment (a "finding of impairment") or that it finds there  
4 will not be impairment (a "finding of no impairment"). The  
5 department's written determination may be appealed to the pollution  
6 control hearings board as provided in chapter 43.21B RCW or other  
7 applicable law.

8 (2) Notwithstanding the provisions of subsection (1) of this  
9 section, a temporary trust water right may be established by a superior  
10 court conducting a water rights adjudication under chapter 90.03 RCW.

11 (3) Upon the expiration of the period of time for which a temporary  
12 trust water right is established, the full perfected and unperfected  
13 quantities of water established as a temporary trust water right revert  
14 to the water right holder, with the priority date of the original water  
15 right.

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

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

21 (b) The department shall provide copies of its final decision to  
22 the applicant and to any person or entity who provided comments on the  
23 proposed permanent trust water right transfer. The department's final  
24 decision on establishment of a permanent trust water right is  
25 appealable to the pollution control hearings board under RCW 43.21B.230  
26 or other applicable law.

27 (2) The department shall issue a certificate of change or transfer  
28 as required under RCW 90.03.380(1) for any water right established as  
29 a permanent trust water right and order approving a trust water right  
30 transfer. Certificates of change or transfer issued under RCW  
31 90.03.380 must be filed and made a record with the department of  
32 ecology, and a duplicate certificate must be issued to the applicant,  
33 which may be filed with the appropriate county auditor in like manner  
34 and with the same effect as provided in the original authorization to  
35 divert water.

36 (3) The department may, upon the request of a water right holder,  
37 require a final investigation prior to issuing a superseding



1 certificate for water rights for which the department has issued a  
2 certificate of change or transfer under this section and under RCW  
3 90.03.380(1), and shall issue a superseding certificate for such water  
4 right only when and to the extent water has been applied to actual  
5 beneficial use as described in the certificate of change or transfer  
6 issued under RCW 90.03.380(1).

7 (4) Where only a portion of an existing right is established as a  
8 permanent trust water right, the department shall issue a superseding  
9 certificate or permit to the original water right holder or, with  
10 respect to water claims, issue a superseding certificate or permit only  
11 for the perfected portion of a claim as demonstrated through actual  
12 beneficial use of water. The superseding document must indicate the  
13 quantity of water remaining with the original right holder.

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

16 No state funds may be expended to establish trust water rights by  
17 the state under this chapter unless specifically appropriated for this  
18 purpose by the legislature. Prior to expending state or federal funds  
19 for a trust water right, the department shall exercise appropriate due  
20 diligence, as practiced by other water right purchasers, to ensure the  
21 validity of the water right or portion thereof for which the funds will  
22 be expended.

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

25 A water right conveyed to the trust water right program as a  
26 donation that is expressly conditioned to limit its use to instream  
27 purposes must be managed by the department for public purposes to  
28 ensure that it qualifies as a donation that is deductible for federal  
29 income taxation purposes for the person or entity conveying the water  
30 right.

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

33 The water right relinquishment provisions of RCW 90.14.130 through  
34 90.14.230 do not apply to trust water rights as of the date the trust  
35 water right is established.

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

3        Nothing in this chapter authorizes the impairment of, or operates  
4 to impair, any existing water rights.

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

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

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

15        **Sec. 13.**    RCW 90.03.380 and 2003 c 329 s 2 are each amended to read  
16 as follows:

17       (1) The right to the use of water which has been applied to a  
18 beneficial use in the state shall be and remain appurtenant to the land  
19 or place upon which the same is used:    PROVIDED, HOWEVER, That the  
20 right may be transferred to another or to others and become appurtenant  
21 to any other land or place of use without loss of priority of right  
22 theretofore established if such change can be made without detriment or  
23 injury to existing rights.    The point of diversion of water for  
24 beneficial use or the purpose of use may be changed, if such change can  
25 be made without detriment or injury to existing rights.    A change in  
26 the place of use, point of diversion, and/or purpose of use of a water  
27 right to enable irrigation of additional acreage or the addition of new  
28 uses may be permitted if such change results in no increase in the  
29 annual consumptive quantity of water used under the water right.    For  
30 purposes of this section, "annual consumptive quantity" means the  
31 estimated or actual annual amount of water diverted pursuant to the  
32 water right, reduced by the estimated annual amount of return flows,  
33 averaged over the two years of greatest use within the most recent  
34 five-year period of continuous beneficial use of the water right.  
35 Before any transfer of such right to use water or change of the point  
36 of diversion of water or change of purpose of use can be made, any

1 person having an interest in the transfer or change, shall file a  
2 written application therefor with the department, and the application  
3 shall not be granted until notice of the application is published as  
4 provided in RCW 90.03.280. If it shall appear that such transfer or  
5 such change may be made without injury or detriment to existing rights,  
6 the department shall issue to the applicant a certificate in duplicate  
7 granting the right for such transfer or for such change of point of  
8 diversion or of use. The certificate so issued shall be filed and be  
9 made a record with the department and the duplicate certificate issued  
10 to the applicant may be filed with the county auditor in like manner  
11 and with the same effect as provided in the original certificate or  
12 permit to divert water.

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

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

28 (4) The requirements of this section ((shall)) do not apply to  
29 trust water rights ((acquired by the state through the funding of water  
30 conservation projects under chapter 90.38 RCW or RCW 90.42.010 through  
31 90.42.070)) established on a temporary basis under chapter 90.42 RCW  
32 unless such rights are transferred to another person.

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

36 (b) Applications relating to existing surface or ground water  
37 rights may be processed and decisions on them rendered independently of

1 processing and rendering decisions on pending applications for new  
2 water rights within the same source of supply without regard to the  
3 date of filing of the pending applications for new water rights.

4 (c) Notwithstanding any other existing authority to process  
5 applications, including but not limited to the authority to process  
6 applications under WAC 173-152-050 as it existed on January 1, 2001, an  
7 application relating to an existing surface or ground water right may  
8 be processed ahead of a previously filed application relating to an  
9 existing right when sufficient information for a decision on the  
10 previously filed application is not available and the applicant for the  
11 previously filed application is sent written notice that explains what  
12 information is not available and informs the applicant that processing  
13 of the next application will begin. The previously filed application  
14 does not lose its priority date and if the information is provided by  
15 the applicant within sixty days, the previously filed application shall  
16 be processed at that time. This subsection (5)(c) does not affect any  
17 other existing authority to process applications.

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

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

24 (7) In revising the provisions of this section and adding  
25 provisions to this section by chapter 237, Laws of 2001, the  
26 legislature does not intend to imply legislative approval or  
27 disapproval of any existing administrative policy regarding, or any  
28 existing administrative or judicial interpretation of, the provisions  
29 of this section not expressly added or revised.

30 (8) The development and use of a small irrigation impoundment, as  
31 defined in RCW 90.03.370(8), does not constitute a change or amendment  
32 for the purposes of this section. The exemption expressly provided by  
33 this subsection shall not be construed as requiring a change or  
34 transfer of any existing water right to enable the holder of the right  
35 to store water governed by the right.

36 **Sec. 14.** RCW 90.44.100 and 2003 c 329 s 3 are each amended to read  
37 as follows:

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

8 (2) An amendment to construct replacement or a new additional well  
9 or wells at a location outside of the location of the original well or  
10 wells or to change the manner or place of use of the water shall be  
11 issued only after publication of notice of the application and findings  
12 as prescribed in the case of an original application. Such amendment  
13 shall be issued by the department only on the conditions that: (a) The  
14 additional or replacement well or wells shall tap the same body of  
15 public ground water as the original well or wells; (b) where a  
16 replacement well or wells is approved, the use of the original well or  
17 wells shall be discontinued and the original well or wells shall be  
18 properly decommissioned as required under chapter 18.104 RCW; (c) where  
19 an additional well or wells is constructed, the original well or wells  
20 may continue to be used, but the combined total withdrawal from the  
21 original and additional well or wells shall not enlarge the right  
22 conveyed by the original permit or certificate; and (d) other existing  
23 rights shall not be impaired. The department may specify an approved  
24 manner of construction and shall require a showing of compliance with  
25 the terms of the amendment, as provided in RCW 90.44.080 in the case of  
26 an original permit.

27 (3) The construction of a replacement or new additional well or  
28 wells at the location of the original well or wells shall be allowed  
29 without application to the department for an amendment. However, the  
30 following apply to such a replacement or new additional well: (a) The  
31 well shall tap the same body of public ground water as the original  
32 well or wells; (b) if a replacement well is constructed, the use of the  
33 original well or wells shall be discontinued and the original well or  
34 wells shall be properly decommissioned as required under chapter 18.104  
35 RCW; (c) if a new additional well is constructed, the original well or  
36 wells may continue to be used, but the combined total withdrawal from  
37 the original and additional well or wells shall not enlarge the right  
38 conveyed by the original water use permit or certificate; (d) the

1 construction and use of the well shall not interfere with or impair  
2 water rights with an earlier date of priority than the water right or  
3 rights for the original well or wells; (e) the replacement or  
4 additional well shall be located no closer than the original well to a  
5 well it might interfere with; (f) the department may specify an  
6 approved manner of construction of the well; and (g) the department  
7 shall require a showing of compliance with the conditions of this  
8 subsection (3).

9 (4) As used in this section, the "location of the original well or  
10 wells" is the area described as the point of withdrawal in the original  
11 public notice published for the application for the water right for the  
12 well.

13 (5) The development and use of a small irrigation impoundment, as  
14 defined in RCW 90.03.370(8), does not constitute a change or amendment  
15 for the purposes of this section. The exemption expressly provided by  
16 this subsection shall not be construed as requiring an amendment of any  
17 existing water right to enable the holder of the right to store water  
18 governed by the right.

19 (6) The requirements of this section do not apply to trust water  
20 rights established on a temporary basis under chapter 90.42 RCW unless  
21 such rights are transferred to another person.

22 **Sec. 15.** RCW 90.42.100 and 2003 c 144 s 2 are each amended to read  
23 as follows:

24 (1) The department is hereby authorized to use the trust water  
25 rights program in the Yakima river basin for water banking purposes.  
26 The department is also authorized to use previously unappropriated  
27 water released from withdrawal by the United States for such purposes.

28 (2) Water banking may be used for one or more of the following  
29 purposes:

30 (a) To authorize the use of trust water rights to mitigate for  
31 water resource impacts, future water supply needs, or any beneficial  
32 use under chapter 90.03, 90.44, or 90.54 RCW, consistent with any terms  
33 and conditions established by the transferor, except that return flows  
34 from water rights authorized in whole or in part for any purpose shall  
35 remain available as part of the Yakima basin's total water supply  
36 available and to satisfy existing rights for other downstream uses and  
37 users;

1 (b) To document transfers of water rights to and from the trust  
2 water rights program; and

3 (c) To provide a source of water rights the department can make  
4 available to third parties on a temporary or permanent basis for any  
5 beneficial use under chapter 90.03, 90.44, or 90.54 RCW.

6 (3) The department shall not use water banking to:

7 (a) Cause detriment or injury to existing rights;

8 (b) Issue temporary water rights or portions thereof for new  
9 potable uses requiring an adequate and reliable water supply under RCW  
10 19.27.097;

11 (c) Administer federal project water rights, including federal  
12 storage rights; or

13 (d) Allow carryover of stored water from one water year to another  
14 water year.

15 (4) For purposes of this section and RCW 90.42.135, "total water  
16 supply available" shall be defined as provided in the 1945 consent  
17 decree between the United States and water users in the Yakima river  
18 basin, and consistent with later interpretation by state and federal  
19 courts.

20 NEW SECTION. **Sec. 16.** The following acts or parts of acts are  
21 each repealed:

22 (1) RCW 90.38.005 (Findings--Purpose) and 1989 c 429 s 1;

23 (2) RCW 90.38.010 (Definitions) and 1989 c 429 s 2;

24 (3) RCW 90.38.020 (Acquisition or donation of trust water rights)  
25 and 2002 c 329 s 7, 2001 c 237 s 28, & 1989 c 429 s 3;

26 (4) RCW 90.38.030 (Water conservation projects--Contracts for  
27 financial assistance) and 1989 c 429 s 4;

28 (5) RCW 90.38.040 (Trust water rights program) and 2001 c 237 s 29,  
29 1994 c 264 s 90, & 1989 c 429 s 5;

30 (6) RCW 90.38.050 (Rules) and 1989 c 429 s 6;

31 (7) RCW 90.38.900 (Existing policies not replaced) and 1989 c 429  
32 s 7;

33 (8) RCW 90.38.901 (Transfer of rights between irrigation districts  
34 not intended) and 1989 c 429 s 8;

35 (9) RCW 90.38.902 (Existing rights not impaired) and 1989 c 429 s  
36 9;

37 (10) RCW 90.42.010 (Findings--Intent) and 1998 c 245 s 173;

1 (11) RCW 90.42.030 (Contracts to finance water conservation  
2 projects--Public benefits--Trust water rights) and 1993 c 98 s 2 & 1991  
3 c 347 s 7;

4 (12) RCW 90.42.040 (Trust water rights program--Water right  
5 certificate--Notice of creation or modification) and 2002 c 329 s 8,  
6 2001 c 237 s 30, 1993 c 98 s 3, & 1991 c 347 s 8;

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

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

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

15 NEW SECTION. **Sec. 17.** 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.

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

--- END ---