
SUBSTITUTE HOUSE BILL 1098

State of Washington

59th Legislature

2005 Regular Session

By House Committee on Economic Development, Agriculture & Trade
(originally sponsored by Representatives Linville, Kristiansen and Grant)

READ FIRST TIME 03/04/05.

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, 90.42.050,
3 90.42.060, 90.42.070, 90.42.080, 90.42.110, 90.42.120, 90.42.130,
4 90.42.135, and 90.42.138; adding new sections to chapter 90.42 RCW; and
5 repealing RCW 90.38.005, 90.38.010, 90.38.020, 90.38.030, 90.38.040,
6 90.38.050, 90.38.900, 90.38.901, and 90.38.902.

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

8 **Sec. 1.** RCW 90.42.005 and 2003 c 144 s 1 are each amended to read
9 as follows:

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

12 (2) The legislature finds that:

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

16 (b) Consistent with RCW 90.54.180, issuance of new water rights,
17 voluntary water transfers, and conservation and water use efficiency
18 programs, including storage, all are acceptable methods of addressing
19 water uses because they can relieve current critical water situations,

1 provide for presently unmet needs, and assist in meeting future water
2 needs. Presently unmet needs or current needs includes the water
3 required to increase the frequency of occurrence of base or minimum
4 flow levels in streams of the state, the water necessary to satisfy
5 existing water rights, or the water necessary to provide full supplies
6 to existing water systems with current supply deficiencies;

7 (c) The interests of the state and its citizens will be served by
8 developing programs and regional water resource plans, in cooperation
9 with local governments, federally recognized tribal governments,
10 appropriate federal agencies, private citizens, and the various water
11 users and water interests in the state, that increase the overall
12 ability to manage the state's waters in order to resolve conflicts and
13 to better satisfy both present and future needs for water; and

14 (d) Water banking as a function of the trust water (~~(rights)~~)
15 rights program and as authorized by this chapter can provide an
16 effective means to facilitate the voluntary transfer of water rights
17 established through conservation, purchase, lease, or donation, to
18 preserve water rights and provide water for presently unmet and future
19 needs; and to achieve a variety of water resource management objectives
20 throughout the state, including drought response, improving streamflows
21 on a voluntary basis, providing water mitigation, or reserving water
22 supply for future uses.

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

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

34 (2) The legislature finds that:

35 (a) Under present physical conditions in the Yakima river basin
36 there is an insufficient supply of water to satisfy the needs of the
37 basin;

1 (b) Pursuant to P.L. 96-162, which was urged for enactment by this
2 state, the United States is now conducting a study of ways to provide
3 needed waters through improvements of the federal water project
4 presently existing in the Yakima river basin;

5 (c) The interests of the state will be served by developing
6 programs, in cooperation with the United States and the various water
7 users in the basin, that increase the overall ability to manage basin
8 waters in order to better satisfy both present and future needs for
9 water in the Yakima river basin.

10 (3) It is the purpose of this chapter, consistent with the findings
11 in subsection (2) of this section, to improve the ability of the state
12 to work with the United States and various water users of the Yakima
13 river basin in a program designed to satisfy both existing rights, and
14 other presently unmet as well as future needs of the basin.

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

17 Unless the context clearly requires otherwise, the definitions in
18 this section apply throughout this chapter.

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

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

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

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

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

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

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

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

20 (b) For trust water rights created from the waters of the Yakima
21 river basin, no contract shall be entered into by the department with
22 a water user under this chapter unless it appears to the department
23 that, upon the completion of a water conservation project financed with
24 moneys as provided in this section, a valid water right exists for
25 conveyance to the department.

26 (3) As part of the contract, the water right holder and the state
27 shall specify the process to determine the amount of water the water
28 right holder would continue to be entitled to once the water
29 conservation project is in place.

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

35 (5) If water is proposed to be acquired by or conveyed to the
36 ((state)) department as a trust water right by an irrigation district,
37 evidence of the district's authority to represent the water right

1 holders shall be submitted to and for the satisfaction of the
2 department.

3 (6)(a) Except as provided in (b) of this subsection, the ((state))
4 department shall not contract with any person to acquire a water right
5 served by an irrigation district without the approval of the board of
6 directors of the irrigation district. Disapproval by a board shall be
7 factually based on probable adverse effects on the ability of the
8 district to deliver water to other members or on maintenance of the
9 financial integrity of the district.

10 (b) For trust water rights created from waters of the Yakima river
11 basin, the department shall not acquire an individual's water right
12 under this chapter that is appurtenant to land lying within an
13 irrigation district without the approval of the board of directors of
14 the irrigation district.

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

17 (1) All trust water rights acquired by the ((state)) department
18 shall be placed in the state trust water rights program to be managed
19 by the department. Trust water rights acquired by the ((state))
20 department shall be held or authorized for use by the department for
21 instream flows, irrigation, municipal, or other beneficial uses
22 consistent with applicable regional plans for pilot planning areas, or
23 to resolve critical water supply problems. To the extent practicable
24 and subject to legislative appropriation, trust water rights acquired
25 in an area with an approved watershed plan developed under chapter
26 90.82 RCW shall be consistent with that plan if the plan calls for such
27 acquisition.

28 (2)(a) Trust water rights may be modified as to purpose or place of
29 use or point of diversion, including modification from a diversionary
30 use to a nondiversionary instream use.

31 (b) The department shall issue a water right certificate in the
32 name of the state of Washington for each permanent trust water right
33 conveyed to the state indicating the reach or reaches of the stream,
34 the quantity, and the use or uses to which it may be applied. A
35 superseding certificate shall be issued that specifies the amount of
36 water the water right holder would continue to be entitled to as a
37 result of the water conservation project. The superseding certificate

1 shall retain the same priority date as the original right. For
2 nonpermanent conveyances, the department shall issue certificates or
3 such other instruments as are necessary to reflect the changes in
4 purpose or place of use or point of diversion or withdrawal.

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

10 (4)(a) Except as provided in (b) of this subsection, exercise of a
11 trust water right may be authorized only if the department first
12 determines that neither water rights existing at the time the trust
13 water right is established, nor the public interest will be impaired.
14 If impairment becomes apparent during the time a trust water right is
15 being exercised, the department shall cease or modify the use of the
16 trust water right to eliminate the impairment.

17 (b) For trust water rights created from waters of the Yakima river
18 basin, no exercise of a trust water right may be authorized unless the
19 department first determines that no existing water rights, junior or
20 senior in priority, will be impaired as to their exercise or injured in
21 any manner whatever by such authorization.

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

32 (b) For trust water rights created from waters of the Yakima river
33 basin, before any trust water right is exercised, the department shall
34 publish notice thereof in a newspaper of general circulation published
35 in the county or counties in which the storage, diversion, and use are
36 to be made, and in such other newspapers as the department determines
37 are necessary, once a week for two consecutive weeks. At the same time

1 the department may also send notice thereof containing pertinent
2 information to the director of fish and wildlife.

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

6 ~~(7) RCW 90.03.380 has no applicability to trust water rights~~
7 ~~acquired by the state through the funding of water conservation~~
8 ~~projects.~~

9 ~~(8))~~ (a) Except as provided in (b) of this subsection, subsections
10 (4) and (5)(a) of this section do not apply to a trust water right
11 resulting from a donation for instream flows described in RCW
12 90.42.080(1)(b) or to a trust water right leased under RCW
13 90.42.080(~~(8))~~ (7) if the period of the lease does not exceed five
14 years. However, the department shall provide the notice described in
15 subsection (5)(a) of this section the first time the trust water right
16 resulting from the donation is exercised.

17 ~~((9))~~ (b) For trust water rights created from waters of the
18 Yakima river basin, section 16 of this act and subsections (4) and
19 (5)(b) of this section do not apply to a trust water right resulting
20 from a donation for instream flows described in RCW 90.42.080(1)(b) or
21 from the lease of a water right under RCW 90.42.080(7) if the period of
22 the lease does not exceed five years. However, the department shall
23 provide the notice described in subsection (5)(b) of this section the
24 first time the trust water right resulting from the donation is
25 exercised.

26 (7) Where a portion of an existing water right that is acquired or
27 donated to the trust water rights program will assist in achieving
28 established instream flows, the department shall process the change or
29 amendment of the existing right without conducting a review of the
30 extent and validity of the portion of the water right that will remain
31 with the water right holder.

32 **Sec. 6.** RCW 90.42.050 and 1991 c 347 s 9 are each amended to read
33 as follows:

34 The department, in cooperation with federally recognized Indian
35 tribes, local governments, state agencies, and other interested
36 parties, shall establish guidelines (~~(by July 1, 1992,)~~) governing the

1 acquisition, administration, and management of trust water rights. The
2 guidelines shall address at a minimum the following:

3 (1) Methods for determining the net water savings resulting from
4 water conservation projects or programs carried out in accordance with
5 this chapter, and other factors to be considered in determining the
6 quantity or value of water available for potential designation as a
7 trust water right;

8 (2) Criteria for determining the portion of net water savings to be
9 conveyed to the state under this chapter;

10 (3) Criteria for prioritizing water conservation projects;

11 (4) A description of potential public benefits that will affect
12 consideration for state financial assistance in RCW 90.42.030;

13 (5) Procedures for providing notification to potentially interested
14 parties;

15 (6) Criteria for the assignment of uses of trust water rights
16 acquired in areas of the state not addressed in a regional water
17 resource plan or critical area agreement; and

18 (7) Contracting procedures and other procedures not specifically
19 addressed in this section.

20 ~~((These guidelines shall be submitted to the joint select committee
21 on water resource policy before adoption.))~~

22 **Sec. 7.** RCW 90.42.060 and 1991 c 347 s 10 are each amended to read
23 as follows:

24 The policies and purposes of this chapter shall not be construed
25 ~~((as replacing or amending))~~ to replace or amend the policies or the
26 purposes for which funds available under chapter 43.83B or 43.99E RCW
27 may be used.

28 **Sec. 8.** RCW 90.42.070 and 1991 c 347 s 11 are each amended to read
29 as follows:

30 Nothing in this chapter authorizes the ~~((involuntary))~~ impairment
31 of or operates to impair any existing water rights.

32 **Sec. 9.** RCW 90.42.080 and 2002 c 329 s 9 are each amended to read
33 as follows:

34 (1)(a) The ~~((state))~~ department may acquire all or portions of
35 existing water rights, including storage rights, by purchase, lease,

1 gift, or other appropriate means other than by condemnation, from any
2 person or entity or combination of persons or entities. Once acquired,
3 such rights are trust water rights. A water right acquired by the
4 state that is expressly conditioned to limit its use to instream
5 purposes shall be administered as a trust water right in compliance
6 with that condition.

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

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

21 (3) Trust water rights may be acquired by the ((state)) department
22 on a temporary or permanent basis.

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

1 control hearings board under RCW 43.21B.230. A donated water right's
2 status as a trust water right under this subsection is not evidence of
3 the validity or quantity of the water right.

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

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

11 ~~((7))~~ (6) Any water right conveyed to the trust water right
12 system as a gift that is expressly conditioned to limit its use to
13 instream purposes shall be managed by the department for public
14 purposes to ensure that it qualifies as a gift that is deductible for
15 federal income taxation purposes for the person or entity conveying the
16 water right.

17 ~~((8))~~ (7) If the department acquires a trust water right by
18 lease, the amount of the trust water right shall not exceed the extent
19 to which the water right was exercised during the five years before the
20 acquisition was made nor may the total of any portion of the water
21 right remaining with the original water right holder plus the portion
22 of the water right leased by the department exceed the extent to which
23 the water right was exercised during the five years before the
24 acquisition. A water right holder who believes his or her water right
25 has been impaired by a trust water right leased under this subsection
26 may request that the department review the impairment claim. If the
27 department determines that exercising the trust water right resulting
28 from the leasing or exercising of a portion of that trust water right
29 leased under this subsection is impairing existing water rights in
30 violation of RCW 90.42.070, the trust water right shall be altered by
31 the department to eliminate the impairment. Any decision of the
32 department to alter or not to alter a trust water right leased under
33 this subsection is appealable to the pollution control hearings board
34 under RCW 43.21B.230. The department's leasing of a trust water right
35 under this subsection is not evidence of the validity or quantity of
36 the water right.

37 ~~((9))~~ (8) For a water right donated to or acquired by the trust
38 water rights program on a temporary basis, the full quantity of water

1 diverted or withdrawn to exercise the right before the donation or
2 acquisition shall be placed in the trust water rights program and shall
3 revert to the donor or person from whom it was acquired when the trust
4 period ends.

5 **Sec. 10.** RCW 90.42.110 and 2003 c 144 s 3 are each amended to read
6 as follows:

7 (1) The department, with the consent of the water right holder, may
8 identify trust water rights for administration for water banking
9 purposes, including trust water rights established before May 7, 2003.

10 (2) An application to transfer a water right to the trust water
11 (~~(rights)~~) rights program shall be reviewed under RCW 90.03.380 at
12 the time the water right is transferred to the trust water (~~(rights)~~)
13 rights program for administration for water banking purposes, and
14 notice of the application shall be published by the applicant as
15 provided under RCW 90.03.280. The application must indicate the reach
16 or reaches of the stream where the trust water right will be
17 established before the transfer of the water right or portion thereof
18 from the trust water (~~(rights)~~) rights program, and identify
19 reasonably foreseeable future temporary or permanent beneficial uses
20 for which the water right or portion thereof may be used by a third
21 party upon transfer from the trust water (~~(rights)~~) rights program.
22 In the event the future place of use, period of use, or other elements
23 of the water right are not specifically identified at the time of the
24 transfer into the trust water (~~(rights)~~) rights program, another
25 review under RCW 90.03.380 will be necessary at the time of a proposed
26 transfer from the trust water (~~(rights)~~) rights program.

27 **Sec. 11.** RCW 90.42.120 and 2003 c 144 s 4 are each amended to read
28 as follows:

29 (1) The department shall transfer a water right or portion thereof
30 being administered for water banking purposes from the trust water
31 (~~(rights)~~) rights program to a third party upon occurrence of all of
32 the following:

33 (a) The department receives a request for transfer of a water right
34 or portion thereof currently administered by the department for water
35 banking purposes;

1 (b) The request is consistent with any previous review under RCW
2 90.03.380 of the water right and future temporary or permanent
3 beneficial uses;

4 (c) The request is consistent with any condition, limitation, or
5 agreement affecting the water right, including but not limited to any
6 trust water right transfer agreement executed at the time the water
7 right was transferred to the trust water rights program; and

8 (d) The request is accompanied by and is consistent with an
9 assignment of interest or portion thereof from a person or entity
10 retaining an interest in the trust water right or portion thereof to
11 the party requesting transfer of the water right or portion thereof.

12 (2) The priority date of the water right or portion thereof
13 transferred by the department from the trust water (~~((rights))~~) rights
14 program for water banking purposes shall be the priority date of the
15 underlying water right.

16 (3) The department shall issue documentation for that water right
17 or portion thereof to the new water right holder based on the
18 requirements applicable to the transfer of other water rights from the
19 trust water rights program. Such documentation shall include a
20 description of the property to which the water right will be
21 appurtenant after the water right or portion thereof is transferred
22 from the trust water (~~((rights))~~) rights program to a third party.

23 (4) The department's decision on the transfer of a water right or
24 portion thereof from the trust water (~~((rights))~~) rights program for
25 water banking purposes may be appealed to the pollution control
26 hearings board under RCW 43.21B.230, or to a superior court conducting
27 a general adjudication under RCW 90.03.210.

28 **Sec. 12.** RCW 90.42.130 and 2003 c 144 s 5 are each amended to read
29 as follows:

30 (1) The department shall seek input from agricultural
31 organizations, federal agencies, tribal governments, local governments,
32 watershed groups, conservation groups, and developers on water banking,
33 including water banking procedures and identification of areas in
34 Washington state where water banking could assist in providing water
35 supplies for instream and out-of-stream uses. The department shall
36 summarize any comments received on water banking and submit a report,

1 including any recommendations, to the appropriate committees of the
2 legislature for their consideration in the subsequent legislative
3 session.

4 (2) By December 31st of every even-numbered year, the department
5 shall submit a report to the appropriate committees of the legislature
6 on water banking activities authorized under RCW 90.42.100. The report
7 shall:

8 (a) Evaluate the effectiveness of water banking in meeting the
9 policies and objectives of this chapter;

10 (b) Describe any statutory, regulatory, or other impediments to
11 water banking in other areas of the state; and

12 (c) Identify other basins or regions that may benefit from
13 authorization for the department to use the trust water (~~(rights)~~)
14 rights program for water banking purposes.

15 **Sec. 13.** RCW 90.42.135 and 2003 c 144 s 6 are each amended to read
16 as follows:

17 Nothing in (~~chapter 144, Laws of 2003~~) RCW 90.42.100 through
18 90.42.130 shall:

19 (1) Cause detriment or injury to existing rights or to the
20 operation of the federal Yakima project to provide water for irrigation
21 purposes, existing water supply contracts, or existing water rights;

22 (2) Diminish in any way existing rights or the total water supply
23 available for irrigation and other purposes in the Yakima basin;

24 (3) Affect or modify the authority of a court conducting a general
25 adjudication pursuant to RCW 90.03.210; or

26 (4) Affect or modify the rights of any person or entity under a
27 water rights adjudication or under any order of the court conducting a
28 water rights adjudication.

29 **Sec. 14.** RCW 90.42.138 and 2003 c 144 s 7 are each amended to read
30 as follows:

31 Nothing in (~~chapter 144, Laws of 2003~~) RCW 90.42.100 through
32 90.42.130 may be construed to:

33 (1) Affect or modify any treaty or other federal rights of an
34 Indian tribe, or the rights of any federal agency or other person or
35 entity arising under state or federal law;

1 (2) Affect or modify the rights or jurisdictions of the United
2 States, the state of Washington, the Yakama Nation, or other person or
3 entity over waters of any river or stream or over any ground water
4 resource;

5 (3) Alter, amend, repeal, interpret, modify, or be in conflict with
6 any interstate compact made by the states;

7 (4) Alter, establish, or impair the respective rights of states,
8 the United States, the Yakama Nation, or any other person or entity
9 with respect to any water or water-related right;

10 (5) Alter, diminish, or abridge the rights and obligations of any
11 federal, state, or local agency, the Yakama Nation, or other person or
12 entity;

13 (6) Affect or modify the rights of the Yakama Indian Nation or its
14 successors in interest to, and management and regulation of, those
15 water resources arising or used, within the external boundaries of the
16 Yakama Indian Reservation;

17 (7) Affect or modify the settlement agreement between the United
18 States and the state of Washington filed in Yakima county superior
19 court with regard to federal reserved water rights other than those
20 rights reserved by the United States for the benefit of the Yakama
21 Indian Nation and its members; or

22 (8) Affect or modify the rights of any federal, state, or local
23 agency, the Yakama Nation, or any other person or entity, public or
24 private, with respect to any unresolved and unsettled claims in any
25 water right adjudications, or court decisions, including *State v.*
26 *Acquavella*, or constitute evidence in any such proceeding in which any
27 water or water-related right is adjudicated.

28 NEW SECTION. **Sec. 15.** The department may adopt rules as
29 appropriate to ensure full implementation of this chapter.

30 NEW SECTION. **Sec. 16.** For trust water rights created from the
31 waters of the Yakima river basin, a schedule of the amount of net water
32 saved as a result of water conservation projects carried out in
33 accordance with this chapter shall be developed annually to reflect the
34 predicted hydrologic and water supply conditions, as well as
35 anticipated water demands, for the upcoming irrigation season. This

1 schedule shall serve as the basis for the distribution and management
2 of trust water rights each year.

3 NEW SECTION. **Sec. 17.** (1) Except as provided in subsection (2) of
4 this section:

5 (a) RCW 90.14.140 through 90.14.230 have no applicability to trust
6 water rights held by the department under this chapter or exercised
7 under this section;

8 (b) RCW 90.03.380 has no applicability to trust water rights
9 acquired by the state through the funding of water conservation
10 projects; and

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

14 (2) For trust water rights created from waters of the Yakima river
15 basin, RCW 90.03.380 and 90.14.140 through 90.14.910 shall have no
16 applicability to trust water rights held by the department under this
17 chapter or exercised under this section.

18 NEW SECTION. **Sec. 18.** It is not the intent of this chapter to
19 facilitate the transfer of water rights from one irrigation district to
20 another.

21 NEW SECTION. **Sec. 19.** Sections 15 through 18 of this act are each
22 added to chapter 90.42 RCW.

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

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

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

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

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

31 (5) RCW 90.38.040 (Trust water rights program) and 2001 c 237 s 29,
32 1994 c 264 s 90, & 1989 c 429 s 5;

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

1 (7) RCW 90.38.900 (Existing policies not replaced) and 1989 c 429
2 s 7;

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

5 (9) RCW 90.38.902 (Existing rights not impaired) and 1989 c 429 s
6 9.

7 NEW SECTION. **Sec. 21.** If any provision of this act or its
8 application to any person or circumstance is held invalid, the
9 remainder of the act or the application of the provision to other
10 persons or circumstances is not affected.

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