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HOUSE BILL 1117

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State of Washington                      62nd Legislature                      2011 Regular Session

By Representatives Taylor, Warnick, Chandler, Kretz, and McCune

Read first time 01/12/11.    Referred to Committee on Agriculture & Natural Resources.

1            AN ACT Relating to the relinquishment of water rights; amending RCW  
2 90.03.380, 90.03.615, 90.14.010, 90.38.040, 90.42.040, 90.42.080,  
3 90.44.510, 90.44.520, 90.92.070, and 90.92.120; reenacting and amending  
4 RCW 43.21B.110 and 43.21B.110; adding a new section to chapter 90.14  
5 RCW; creating a new section; repealing RCW 90.14.130, 90.14.140,  
6 90.14.160, 90.14.170, 90.14.180, 90.14.190, and 90.14.200; providing an  
7 effective date; and providing expiration dates.

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

9            NEW SECTION.    **Sec. 1.** Relinquishment is a statutory provision to  
10 terminate water rights if they are not used continuously within a  
11 prescribed period of time. The legislature recognizes that one of the  
12 unintended consequences of the relinquishment statute is to cause water  
13 right holders to use the full amount of their water right when they may  
14 have been inclined to conserve or not use water in order to keep from  
15 losing the right to the use of their water in the future. The  
16 legislature intends to abolish relinquishment by removing all  
17 references to relinquishment in the Revised Code of Washington. In  
18 abolishing relinquishment, the legislature intends to rely solely on  
19 the common law doctrine of abandonment.

1       **Sec. 2.** RCW 43.21B.110 and 2010 c 210 s 7 and 2010 c 84 s 2 are  
2 each reenacted and amended to read as follows:

3       (1) The hearings board shall only have jurisdiction to hear and  
4 decide appeals from the following decisions of the department, the  
5 director, local conservation districts, the air pollution control  
6 boards or authorities as established pursuant to chapter 70.94 RCW,  
7 local health departments, the department of natural resources, the  
8 department of fish and wildlife, and the parks and recreation  
9 commission:

10       (a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431,  
11 70.105.080, 70.107.050, 76.09.170, 77.55.291, 78.44.250, 88.46.090,  
12 90.03.600, 90.46.270, 90.48.144, 90.56.310, 90.56.330, and 90.64.102.

13       (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,  
14 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,  
15 (~~90.14.130,~~) 90.46.250, 90.48.120, and 90.56.330.

16       (c) A final decision by the department or director made under  
17 chapter 183, Laws of 2009.

18       (d) Except as provided in RCW 90.03.210(2), the issuance,  
19 modification, or termination of any permit, certificate, or license by  
20 the department or any air authority in the exercise of its  
21 jurisdiction, including the issuance or termination of a waste disposal  
22 permit, the denial of an application for a waste disposal permit, the  
23 modification of the conditions or the terms of a waste disposal permit,  
24 or a decision to approve or deny an application for a solid waste  
25 permit exemption under RCW 70.95.300.

26       (e) Decisions of local health departments regarding the grant or  
27 denial of solid waste permits pursuant to chapter 70.95 RCW.

28       (f) Decisions of local health departments regarding the issuance  
29 and enforcement of permits to use or dispose of biosolids under RCW  
30 70.95J.080.

31       (g) Decisions of the department regarding waste-derived fertilizer  
32 or micronutrient fertilizer under RCW 15.54.820, and decisions of the  
33 department regarding waste-derived soil amendments under RCW 70.95.205.

34       (h) Decisions of local conservation districts related to the denial  
35 of approval or denial of certification of a dairy nutrient management  
36 plan; conditions contained in a plan; application of any dairy nutrient  
37 management practices, standards, methods, and technologies to a

1 particular dairy farm; and failure to adhere to the plan review and  
2 approval timelines in RCW 90.64.026.

3 (i) Any other decision by the department or an air authority which  
4 pursuant to law must be decided as an adjudicative proceeding under  
5 chapter 34.05 RCW.

6 (j) Decisions of the department of natural resources, the  
7 department of fish and wildlife, and the department that are reviewable  
8 under chapter 76.09 RCW, and the department of natural resources'  
9 appeals of county, city, or town objections under RCW 76.09.050(7).

10 (k) Forest health hazard orders issued by the commissioner of  
11 public lands under RCW 76.06.180.

12 (l) Decisions of the department of fish and wildlife to issue,  
13 deny, condition, or modify a hydraulic project approval permit under  
14 chapter 77.55 RCW.

15 (m) Decisions of the department of natural resources that are  
16 reviewable under RCW 78.44.270.

17 (n) Decisions of a state agency that is an authorized public entity  
18 under RCW 79.100.010 to take temporary possession or custody of a  
19 vessel or to contest the amount of reimbursement owed that are  
20 reviewable under RCW 79.100.120.

21 (2) The following hearings shall not be conducted by the hearings  
22 board:

23 (a) Hearings required by law to be conducted by the shorelines  
24 hearings board pursuant to chapter 90.58 RCW.

25 (b) Hearings conducted by the department pursuant to RCW 70.94.332,  
26 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

27 (c) Appeals of decisions by the department under RCW 90.03.110 and  
28 90.44.220.

29 (d) Hearings conducted by the department to adopt, modify, or  
30 repeal rules.

31 ~~((e) Appeals of decisions by the department as provided in chapter  
32 43.21B RCW.))~~

33 (3) Review of rules and regulations adopted by the hearings board  
34 shall be subject to review in accordance with the provisions of the  
35 administrative procedure act, chapter 34.05 RCW.

36 **Sec. 3.** RCW 43.21B.110 and 2010 c 210 s 8 and 2010 c 84 s 3 are  
37 each reenacted and amended to read as follows:

1 (1) The hearings board shall only have jurisdiction to hear and  
2 decide appeals from the following decisions of the department, the  
3 director, local conservation districts, the air pollution control  
4 boards or authorities as established pursuant to chapter 70.94 RCW,  
5 local health departments, the department of natural resources, the  
6 department of fish and wildlife, and the parks and recreation  
7 commission:

8 (a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431,  
9 70.105.080, 70.107.050, 76.09.170, 77.55.291, 78.44.250, 88.46.090,  
10 90.03.600, 90.46.270, 90.48.144, 90.56.310, 90.56.330, and 90.64.102.

11 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,  
12 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,  
13 (~~90.14.130,~~) 90.46.250, 90.48.120, and 90.56.330.

14 (c) Except as provided in RCW 90.03.210(2), the issuance,  
15 modification, or termination of any permit, certificate, or license by  
16 the department or any air authority in the exercise of its  
17 jurisdiction, including the issuance or termination of a waste disposal  
18 permit, the denial of an application for a waste disposal permit, the  
19 modification of the conditions or the terms of a waste disposal permit,  
20 or a decision to approve or deny an application for a solid waste  
21 permit exemption under RCW 70.95.300.

22 (d) Decisions of local health departments regarding the grant or  
23 denial of solid waste permits pursuant to chapter 70.95 RCW.

24 (e) Decisions of local health departments regarding the issuance  
25 and enforcement of permits to use or dispose of biosolids under RCW  
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28 or micronutrient fertilizer under RCW 15.54.820, and decisions of the  
29 department regarding waste-derived soil amendments under RCW 70.95.205.

30 (g) Decisions of local conservation districts related to the denial  
31 of approval or denial of certification of a dairy nutrient management  
32 plan; conditions contained in a plan; application of any dairy nutrient  
33 management practices, standards, methods, and technologies to a  
34 particular dairy farm; and failure to adhere to the plan review and  
35 approval timelines in RCW 90.64.026.

36 (h) Any other decision by the department or an air authority which  
37 pursuant to law must be decided as an adjudicative proceeding under  
38 chapter 34.05 RCW.

1 (i) Decisions of the department of natural resources, the  
2 department of fish and wildlife, and the department that are reviewable  
3 under chapter 76.09 RCW, and the department of natural resources'  
4 appeals of county, city, or town objections under RCW 76.09.050(7).

5 (j) Forest health hazard orders issued by the commissioner of  
6 public lands under RCW 76.06.180.

7 (k) Decisions of the department of fish and wildlife to issue,  
8 deny, condition, or modify a hydraulic project approval permit under  
9 chapter 77.55 RCW.

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11 reviewable under RCW 78.44.270.

12 (m) Decisions of a state agency that is an authorized public entity  
13 under RCW 79.100.010 to take temporary possession or custody of a  
14 vessel or to contest the amount of reimbursement owed that are  
15 reviewable under RCW 79.100.120.

16 (2) The following hearings shall not be conducted by the hearings  
17 board:

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20 (b) Hearings conducted by the department pursuant to RCW 70.94.332,  
21 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

22 (c) Appeals of decisions by the department under RCW 90.03.110 and  
23 90.44.220.

24 (d) Hearings conducted by the department to adopt, modify, or  
25 repeal rules.

26 ~~((e) Appeals of decisions by the department as provided in chapter  
27 43.211 RCW.))~~

28 (3) Review of rules and regulations adopted by the hearings board  
29 shall be subject to review in accordance with the provisions of the  
30 administrative procedure act, chapter 34.05 RCW.

31 **Sec. 4.** RCW 90.03.380 and 2009 c 183 s 15 are each amended to read  
32 as follows:

33 (1) The right to the use of water which has been applied to a  
34 beneficial use in the state shall be and remain appurtenant to the land  
35 or place upon which the same is used: PROVIDED, HOWEVER, That the  
36 right may be transferred to another or to others and become appurtenant  
37 to any other land or place of use without loss of priority of right

1 theretofore established if such change can be made without detriment or  
2 injury to existing rights. The point of diversion of water for  
3 beneficial use or the purpose of use may be changed, if such change can  
4 be made without detriment or injury to existing rights. A change in  
5 the place of use, point of diversion, and/or purpose of use of a water  
6 right to enable irrigation of additional acreage or the addition of new  
7 uses may be permitted if such change results in no increase in the  
8 annual consumptive quantity of water used under the water right. For  
9 purposes of this section, "annual consumptive quantity" means the  
10 estimated or actual annual amount of water diverted pursuant to the  
11 water right, reduced by the estimated annual amount of return flows,  
12 averaged over the two years of greatest use within the most recent  
13 five-year period of continuous beneficial use of the water right.  
14 Before any transfer of such right to use water or change of the point  
15 of diversion of water or change of purpose of use can be made, any  
16 person having an interest in the transfer or change, shall file a  
17 written application therefor with the department, and the application  
18 shall not be granted until notice of the application is published as  
19 provided in RCW 90.03.280. If it shall appear that such transfer or  
20 such change may be made without injury or detriment to existing rights,  
21 the department shall issue to the applicant a certificate in duplicate  
22 granting the right for such transfer or for such change of point of  
23 diversion or of use. The certificate so issued shall be filed and be  
24 made a record with the department and the duplicate certificate issued  
25 to the applicant may be filed with the county auditor in like manner  
26 and with the same effect as provided in the original certificate or  
27 permit to divert water. The time period that the water right was  
28 banked under RCW 90.92.070, in an approved local water plan created  
29 under RCW 90.92.090, or the water right was subject to an agreement to  
30 not divert under RCW 90.92.050 will not be included in the most recent  
31 five-year period of continuous beneficial use for the purpose of  
32 determining the annual consumptive quantity under this section. (~~If  
33 the water right has not been used during the previous five years but  
34 the nonuse of which qualifies for one or more of the statutory good  
35 causes or exceptions to relinquishment in RCW 90.14.140 and 90.44.520,  
36 the period of nonuse is not included in the most recent five year  
37 period of continuous beneficial use for purposes of determining the  
38 annual consumptive quantity of water under this section.~~)

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

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

16 (4) This section shall not apply to trust water rights acquired by  
17 the state through the funding of water conservation projects under  
18 chapter 90.38 RCW or RCW 90.42.010 through 90.42.070.

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

22 (b) Applications relating to existing surface or ground water  
23 rights may be processed and decisions on them rendered independently of  
24 processing and rendering decisions on pending applications for new  
25 water rights within the same source of supply without regard to the  
26 date of filing of the pending applications for new water rights.

27 (c) Notwithstanding any other existing authority to process  
28 applications, including but not limited to the authority to process  
29 applications under WAC 173-152-050 as it existed on January 1, 2001, an  
30 application relating to an existing surface or ground water right may  
31 be processed ahead of a previously filed application relating to an  
32 existing right when sufficient information for a decision on the  
33 previously filed application is not available and the applicant for the  
34 previously filed application is sent written notice that explains what  
35 information is not available and informs the applicant that processing  
36 of the next application will begin. The previously filed application  
37 does not lose its priority date and if the information is provided by

1 the applicant within sixty days, the previously filed application shall  
2 be processed at that time. This subsection (5)(c) does not affect any  
3 other existing authority to process applications.

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

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

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

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

22 (9) This section does not apply to a water right involved in an  
23 approved local water plan created under RCW 90.92.090, a water right  
24 that is subject to an agreement not to divert under RCW 90.92.050, or  
25 a banked water right under RCW 90.92.070.

26 **Sec. 5.** RCW 90.03.615 and 2009 c 283 s 7 are each amended to read  
27 as follows:

28 For purposes of calculating annual consumptive quantity as defined  
29 under RCW 90.03.380(1), if, within the most recent five-year period,  
30 the water right has been in the trust water rights program under  
31 chapter 90.38 or 90.42 RCW, (~~or the nonuse of the water right has been~~  
32 ~~excused from relinquishment under RCW 90.14.140,~~) the department shall  
33 look to the most recent five-year period of continuous beneficial use  
34 preceding the date where the excuse for nonuse (~~under RCW 90.14.140~~)  
35 was established and remained in effect.





1 (b) Before any trust water right is exercised, the department shall  
2 publish notice thereof in a newspaper of general circulation published  
3 in the county or counties in which the storage, diversion, and use are  
4 to be made, and in such other newspapers as the department determines  
5 are necessary, once a week for two consecutive weeks. At the same time  
6 the department may also send notice thereof containing pertinent  
7 information to the director of fish and wildlife.

8 (c) Subsections (4) and (5)(b) of this section do not apply to a  
9 trust water right resulting from a donation for instream flows  
10 described in RCW 90.38.020(1)(b) or from the lease of a water right  
11 under RCW 90.38.020(6) if the period of the lease does not exceed five  
12 years. However, the department shall provide the notice described in  
13 (b) of this subsection the first time the trust water right resulting  
14 from the donation is exercised.

15 (6) RCW 90.03.380 (~~and 90.14.140 through 90.14.910 shall have~~)  
16 has no applicability to trust water rights held by the department under  
17 this chapter or exercised under this section.

18 **Sec. 8.** RCW 90.42.040 and 2009 c 283 s 4 are each amended to read  
19 as follows:

20 (1) A trust water right acquired by the state shall be placed in  
21 the state trust water rights program to be managed by the department.  
22 The department shall exercise its authorities under the law in a manner  
23 that protects trust water rights. Trust water rights acquired by the  
24 state shall be held in trust and authorized for use by the department  
25 for instream flows, irrigation, municipal, or other beneficial uses  
26 consistent with applicable regional plans for pilot planning areas, or  
27 to resolve critical water supply problems. The state may acquire a  
28 groundwater right to be placed in the state trust water rights program.  
29 To the extent practicable and subject to legislative appropriation,  
30 trust water rights acquired in an area with an approved watershed plan  
31 developed under chapter 90.82 RCW shall be consistent with that plan if  
32 the plan calls for such acquisition.

33 (2) 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 indicating the quantity of water transferred to  
36 trust, the reach or reaches of the stream or the body of public  
37 groundwater that constitutes the place of use of the trust water right,

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

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

14 (4)(a) Exercise of a trust water right may be authorized only if  
15 the department first determines that neither water rights existing at  
16 the time the trust water right is established, nor the public interest  
17 will be impaired.

18 (b) If impairment becomes apparent during the time a trust water  
19 right is being exercised, the department shall cease or modify the use  
20 of the trust water right to eliminate the impairment.

21 (c) A trust water right acquired by the state and held or  
22 authorized for beneficial use by the department is considered to be  
23 exercised as long as it is in the trust water rights program.

24 (d) For the purposes of RCW 90.03.380(1) and 90.42.080(9), the  
25 consumptive quantity of a trust water right acquired by the state and  
26 held or authorized for use by the department is equal to the  
27 consumptive quantity of the right prior to transfer into the trust  
28 water rights program.

29 (5)(a) Before any trust water right is created or modified, the  
30 department shall, at a minimum, require that a notice be published in  
31 a newspaper of general circulation published in the county or counties  
32 in which the storage, diversion, and use are to be made, and in other  
33 newspapers as the department determines is necessary, once a week for  
34 two consecutive weeks.

35 (b) At the same time the department shall send a notice containing  
36 pertinent information to all appropriate state agencies, potentially  
37 affected local governments and federally recognized tribal governments,  
38 and other interested parties.

1 (c) For a trust water right donation described in RCW  
2 90.42.080(1)(b), or for a trust water right lease described in RCW  
3 90.42.080(8) that does not exceed five years, the department may post  
4 equivalent information on its web site to meet the notice requirements  
5 in (a) of this subsection and may send pertinent information by e-mail  
6 to meet the notice requirements in (b) of this subsection.

7 ~~((RCW 90.14.140 through 90.14.230 have no applicability to  
8 trust water rights held by the department under this chapter or  
9 exercised under this section.~~

10 ~~(+7))~~ RCW 90.03.380 has no applicability to trust water rights  
11 acquired by the state through the funding of water conservation  
12 projects.

13 ~~((+8))~~ (7) Subsection (4)(a) of this section does not apply to a  
14 trust water right resulting from a donation for instream flows  
15 described in RCW 90.42.080(1)(b) or to a trust water right leased under  
16 RCW 90.42.080(8) if the period of the lease does not exceed five years.

17 ~~((+9))~~ (8) Where a portion of an existing water right that is  
18 acquired or donated to the trust water rights program will assist in  
19 achieving established instream flows, the department shall process the  
20 change or amendment of the existing right without conducting a review  
21 of the extent and validity of the portion of the water right that will  
22 remain with the water right holder.

23 **Sec. 9.** RCW 90.42.080 and 2009 c 283 s 5 are each amended to read  
24 as follows:

25 (1)(a) The state may acquire all or portions of existing surface  
26 water or groundwater rights, by purchase, gift, or other appropriate  
27 means other than by condemnation, from any person or entity or  
28 combination of persons or entities. Once acquired, such rights are  
29 trust water rights. A water right acquired by the state that is  
30 expressly conditioned to limit its use to instream purposes shall be  
31 administered as a trust water right in compliance with that condition.

32 (b) If the holder of a right to surface water or groundwater  
33 chooses to donate all or a portion of the person's water right to the  
34 trust water system to assist in providing instream flows or to preserve  
35 surface water or groundwater resources on a temporary or permanent  
36 basis, the department shall accept the donation on such terms as the  
37 person may prescribe as long as the donation satisfies the requirements

1 of subsection (4) of this section and the other applicable requirements  
2 of this chapter and the terms prescribed are relevant and material to  
3 protecting any interest in the water right retained by the donor. Once  
4 accepted, such rights are trust water rights within the conditions  
5 prescribed by the donor.

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

10 (3) Trust water rights may be acquired by the state on a temporary  
11 or permanent basis.

12 (~~4) ((Except as provided in subsections (10) and (11) of this~~  
13 ~~section,))~~ A water right donated under subsection (1)(b) of this  
14 section shall not exceed the extent to which the water right was  
15 exercised during the five years before the donation nor may the total  
16 of any portion of the water right remaining with the donor plus the  
17 donated portion of the water right exceed the extent to which the water  
18 right was exercised during the five years before the donation. A water  
19 right holder who believes his or her water right has been impaired by  
20 a trust water right donated under subsection (1)(b) of this section may  
21 request that the department review the impairment claim. If the  
22 department determines that a trust water right resulting from a  
23 donation under subsection (1)(b) of this section is impairing existing  
24 water rights in violation of RCW 90.42.070, the trust water right shall  
25 be altered by the department to eliminate the impairment. Any decision  
26 of the department to alter or not to alter a trust water right donated  
27 under subsection (1)(b) of this section is appealable to the pollution  
28 control hearings board under RCW 43.21B.230. A donated water right's  
29 status as a trust water right under this subsection is not evidence of  
30 the validity or quantity of the water right.

31 (5) The provisions of RCW 90.03.380 and 90.03.390 do not apply to  
32 donations for instream flows described in subsection (1)(b) of this  
33 section, but do apply to other transfers of water rights under this  
34 section except that the consumptive quantity of a trust water right  
35 acquired by the state and held or authorized for use by the department  
36 is equal to the consumptive quantity of the right prior to transfer  
37 into the trust water rights program.

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

4 (7) Any water right conveyed to the trust water right system as a  
5 gift that is expressly conditioned to limit its use to instream  
6 purposes shall be managed by the department for public purposes to  
7 ensure that it qualifies as a gift that is deductible for federal  
8 income taxation purposes for the person or entity conveying the water  
9 right.

10 (8) (~~Except as provided in subsections (10) and (11) of this~~  
11 ~~section,~~) If the department acquires a trust water right by lease, the  
12 amount of the trust water right shall not exceed the extent to which  
13 the water right was exercised during the five years before the  
14 acquisition was made nor may the total of any portion of the water  
15 right remaining with the original water right holder plus the portion  
16 of the water right leased by the department exceed the extent to which  
17 the water right was exercised during the five years before the  
18 acquisition. A water right holder who believes his or her water right  
19 has been impaired by a trust water right leased under this subsection  
20 may request that the department review the impairment claim. If the  
21 department determines that a trust water right resulting from the  
22 leasing of that trust water right leased under this subsection is  
23 impairing existing water rights in violation of RCW 90.42.070, the  
24 trust water right shall be altered by the department to eliminate the  
25 impairment. Any decision of the department to alter or not to alter a  
26 trust water right leased under this subsection is appealable to the  
27 pollution control hearings board under RCW 43.21B.230. The  
28 department's leasing of a trust water right under this subsection is  
29 not evidence of the validity or quantity of the water right.

30 (9) For a water right donated to or acquired by the trust water  
31 rights program on a temporary basis, the full quantity of water  
32 diverted or withdrawn to exercise the right before the donation or  
33 acquisition shall be placed in the trust water rights program and shall  
34 revert to the donor or person from whom it was acquired when the trust  
35 period ends. For a trust water right acquired by the state and held or  
36 authorized for use by the department, the consumptive quantity of the  
37 right when it reverts to the donor or person from whom it was acquired

1 is equal to the consumptive quantity of the right prior to transfer  
2 into the trust water rights program.

3 ~~((10) For water rights donated or leased under subsection (4) or  
4 (8) of this section where nonuse of the water right is excused under  
5 RCW 90.14.140(1):~~

6 ~~(a) The department shall calculate the amount of water eligible to  
7 be acquired by looking at the extent to which the right was exercised  
8 during the most recent five-year period preceding the date where nonuse  
9 of the water right was excused under RCW 90.14.140(1); and~~

10 ~~(b) The total of the donated or leased portion of the water right  
11 and the portion of the water right remaining with the water right  
12 holder shall not exceed the extent to which the water right was  
13 exercised during the most recent five-year period preceding the date  
14 nonuse of the water right was excused under RCW 90.14.140(1).~~

15 ~~((11) For water rights donated or leased under subsection (4) or (8)  
16 of this section where nonuse of the water right is exempt under RCW  
17 90.14.140(2) (a) or (d):~~

18 ~~(a) The amount of water eligible to be acquired shall be based on  
19 historical beneficial use; and~~

20 ~~(b) The total of the donated or leased portion of the water right  
21 and the portion of the water right the water right holder continues to  
22 use shall not exceed the historical beneficial use of that right during  
23 the duration of the trust.))~~

24 **Sec. 10.** RCW 90.44.510 and 2004 c 195 s 3 are each amended to read  
25 as follows:

26 The department shall issue a superseding water right permit or  
27 certificate for a groundwater right where the source of water is an  
28 aquifer for which the department adopts rules establishing a  
29 groundwater management subarea and water from the federal Columbia  
30 basin project is delivered for use by a person who holds such a  
31 groundwater right. The superseding water right permit or certificate  
32 shall designate that portion of the groundwater right that is replaced  
33 by water from the federal Columbia basin project as a standby or  
34 reserve right that may be used when water delivered by the federal  
35 project is curtailed or otherwise not available. ~~((The period of  
36 curtailment or unavailability shall be deemed a low flow period under  
37 RCW 90.14.140(2)(b).))~~ The total number of acres irrigated by the

1 person under the groundwater right and through the use of water  
2 delivered from the federal project must not exceed the quantity of  
3 water used and number of acres irrigated under the person's water right  
4 permit or certificate for the use of water from the aquifer.

5 **Sec. 11.** RCW 90.44.520 and 2006 c 168 s 2 are each amended to read  
6 as follows:

7 (1) In order to encourage more efficient use of water, where the  
8 source of water is an aquifer within the Odessa groundwater subarea as  
9 defined in chapter 173-128A WAC( (+

10 ~~(a) Any period of nonuse of a right to withdraw groundwater from~~  
11 ~~the aquifer is deemed to be involuntary due to a drought or low flow~~  
12 ~~period under RCW 90.14.140(2)(b); and~~

13 ~~(b) Such~~))<sub>1</sub> unused water is deemed a standby or reserve water  
14 supply that may again be used after the period of nonuse, as long as:  
15 ((+i)) (a) Reductions in water use are a result of conservation  
16 practices, irrigation or water use efficiencies, long or short-term  
17 changes in the types or rotations of crops grown, economic hardship,  
18 pumping or system infrastructure costs, unavailability or unsuitability  
19 of water, or willing and documented participation in cooperative  
20 efforts to reduce aquifer depletion and optimize available water  
21 resources; ((+ii)) (b) withdrawal or diversion facilities are  
22 maintained in good operating condition; and ((+iii)) (c) the  
23 department has not issued a superseding water right permit or  
24 certificate to designate a portion of the groundwater right replaced by  
25 federal Columbia basin project water as a standby or reserve right  
26 under RCW 90.44.510.

27 (2)(a) A water right holder choosing to not exercise a water right  
28 in accordance with the provisions of this section must provide notice  
29 to the department in writing within one hundred eighty days of such  
30 choice. The notice shall include the name of the water right holder  
31 and the number of the permit, certificate, or claim.

32 (b) When a water right holder chooses to discontinue nonuse under  
33 the provisions of this section, notice of such action must be provided  
34 to the department in writing. Notice is not required under this  
35 subsection (2)(b) for seasonal fluctuations in use if the right is not  
36 fully exercised as reflected in the notice provided under (a) of this  
37 subsection.



1 (3) The provisions of this section relating to the nonuse of all or  
2 a portion of a water right are in addition to any other provisions  
3 relating to such nonuse under existing law.

4 (4) If water from the federal Columbia basin project has been  
5 delivered to a place of use authorized under a right to withdraw  
6 groundwater from the aquifer, the provisions of RCW 90.44.510 apply and  
7 supersede the provisions of this section.

8 (5) Portions of rights protected under this section may not be  
9 transferred outside Odessa subarea boundaries as defined in WAC 173-  
10 128A-040. Transfers within Odessa subarea boundaries remain subject to  
11 the provisions of RCW 90.03.380, 90.03.390, 90.44.100, and WAC 173-  
12 130A-200.

13 (6) The department shall submit a report to the legislature as to  
14 the status of the aquifer, participation in the nonuse program set  
15 forth in this section, and the outcome of the United States bureau of  
16 reclamation's study on feasible alternatives to Odessa groundwater use.  
17 This report must be submitted six months after completion of the United  
18 States bureau of reclamation's study, which is expected to be completed  
19 in February 2011. The department's report must also suggest viable  
20 solutions and the actions needed by the state to move forward with such  
21 solutions.

22 (7) This section expires July 1, 2021.

23 **Sec. 12.** RCW 90.92.070 and 2009 c 183 s 7 are each amended to read  
24 as follows:

25 (1) The board may establish a mechanism to bank water for the  
26 holders of water rights within the planning area to voluntarily deposit  
27 them on a temporary or permanent basis.

28 (2) The board has the following authority regarding banked water in  
29 the planning area:

30 (a) The board may accept a surface water right or a groundwater  
31 right on a permanent or temporary basis under terms and conditions  
32 agreed upon by the water rights holder and the board.

33 (b) On a temporary or permanent basis, the board may accept a water  
34 right, or portion thereof, that will be made available under local  
35 water plans for stream flow enhancement under the terms of the local  
36 water plan, as provided in this chapter.

1 (c) Except as provided in (d) of this subsection, the board must  
2 accept a water right temporarily banked for instream flow without  
3 conducting a review of the extent and validity of the water right.  
4 Such a water right may not thereafter be authorized for any other  
5 purposes. A banked water right that has not been tentatively  
6 determined as to its extent and validity is not entitled to be  
7 protected from impairment by another water right.

8 (d) The board may manage a water right that has been banked as  
9 mitigation for impairment to instream flows and other existing water  
10 rights. However, the water right may only be available for mitigation  
11 to the extent the department determines the water right is valid and  
12 use of the water right for mitigation will not cause detriment or  
13 injury to existing water rights.

14 (3)(a) A water right banked on a temporary basis remains in the  
15 ownership of the water rights holder and not the state of Washington or  
16 the board.

17 (b) A water right banked on a permanent basis must be transferred  
18 to the state of Washington as a trust water right consistent with RCW  
19 90.42.080.

20 ~~(4) ((A water right or portion of a water right banked under this  
21 chapter is not subject to loss by forfeiture under RCW 90.14.130  
22 through 90.14.200. When a temporary water right is withdrawn from  
23 banking, the time period that the water right was banked may not be  
24 calculated as time water was not used for purposes of RCW 90.14.160,  
25 90.14.170, and 90.14.180.~~

26 ~~(5))~~ When a temporarily deposited water right is withdrawn from  
27 banking, the time period that the water right was banked may not be  
28 included in the five years of prior water use for purposes of  
29 applications to add acreage or purposes of water use under RCW  
30 90.03.380(1).

31 ~~((6))~~ (5) Nothing in this chapter forecloses or diminishes the  
32 rights of any person to apply to the department to transfer a water  
33 right to the state trust water rights program under the authority of  
34 chapter 90.42 RCW or to apply for a change of a water right to the  
35 department or to a water conservancy board authorized under chapter  
36 90.80 RCW.

37 (6) This section expires June 30, 2019.

1           **Sec. 13.** RCW 90.92.120 and 2009 c 183 s 12 are each amended to  
2 read as follows:

3           (1) The water rights in the local water plan as authorized for the  
4 uses described in RCW 90.92.080(4) are:

5           (a) Not subject to either the approval of the department under RCW  
6 90.03.380 through 90.03.390, 90.44.100, and 90.44.105, or a tentative  
7 determination of the validity and extent of the water rights; and

8           (b) (~~Not subject to loss by forfeiture under RCW 90.14.130 through~~  
9 ~~90.14.200 during the period of time from when the local water plan is~~  
10 ~~approved to the expiration or nullification of the local water plan as~~  
11 ~~provided in RCW 90.92.110; and~~

12           ~~(c))~~ (e)) Not to be exercised in a manner that would result in injury  
13 or detriment to other existing water rights unless express written  
14 approval is obtained from the holder of the impaired water right. To  
15 allow impacts to existing instream flow rights, the board and the  
16 department must agree that the flow benefits provided by a local water  
17 plan outweigh the impacts on existing instream flow rights.

18           (2) The years during the period of time when the local water plan  
19 is operational may not be considered or calculated as a period of time  
20 that the water was not applied to use (~~for purposes of RCW 90.14.130~~  
21 ~~through 90.14.200. Further, the years during this period of time may~~  
22 ~~not be considered or calculated as a period of time that the water was~~  
23 ~~not applied to use)) and for purposes of future applications to change  
24 the water right for additional purposes or acreage under RCW 90.03.380.~~

25           (3) This section expires June 30, 2019.

26           NEW SECTION. **Sec. 14.** A new section is added to chapter 90.14 RCW  
27 to read as follows:

28           All matters relating to the implementation and enforcement of this  
29 chapter by the department of ecology shall be carried out in accordance  
30 with chapter 34.05 RCW, the administrative procedure act, except where  
31 the provisions of this chapter expressly conflict with chapter 34.05  
32 RCW.

33           NEW SECTION. **Sec. 15.** Sections 2 and 4 of this act expire June  
34 30, 2019.

1        NEW SECTION.    **Sec. 16.**    Section 3 of this act takes effect June 30,  
2    2019.

3        NEW SECTION.    **Sec. 17.**    The following acts or parts of acts are  
4    each repealed:

5        (1) RCW 90.14.130 (Reversion of rights to state due to nonuse--  
6    Notice by order--Relinquishment determinations--Appeal) and 1987 c 109  
7    s 13 & 1967 c 233 s 13;

8        (2) RCW 90.14.140 ("Sufficient cause" for nonuse defined--Rights  
9    exempted) and 2009 c 183 s 14, 2001 c 240 s 1, 2001 c 237 s 27, 2001 c  
10   s 69 s 5, 1998 c 258 s 1, 1987 c 125 s 1, & 1967 c 233 s 14;

11       (3) RCW 90.14.160 (Relinquishment of right for abandonment or  
12   failure to beneficially use without sufficient cause--Prior rights  
13   acquired through appropriation, custom or general adjudication) and  
14   1981 c 291 s 1, 1979 ex.s. c 216 s 5, & 1967 c 233 s 16;

15       (4) RCW 90.14.170 (Relinquishment of right for abandonment or  
16   failure to beneficially use without sufficient cause--Rights acquired  
17   due to ownership of land abutting stream, lake, or watercourse) and  
18   1967 c 233 s 17;

19       (5) RCW 90.14.180 (Relinquishment of right for abandonment or  
20   failure to beneficially use without sufficient cause--Future rights  
21   acquired through appropriation) and 1987 c 109 s 101 & 1967 c 233 s 18;

22       (6) RCW 90.14.190 (Water resources decisions--Appeals--Attorneys'  
23   fees) and 1987 c 109 s 14 & 1967 c 233 s 19; and

24       (7) RCW 90.14.200 (Implementation and enforcement of chapter--  
25   Proceedings under RCW 90.14.130 deemed adjudicative--Application of RCW  
26   sections to specific proceedings) and 1989 c 175 s 180, 1979 ex.s. c  
27   216 s 6, & 1967 c 233 s 20.

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