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HOUSE BILL 2212

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State of Washington

62nd Legislature

2012 Regular Session

By Representatives Blake and Chandler; by request of Department of Ecology  
Prefiled 12/20/11. Read first time 01/09/12. Referred to Committee on  
Agriculture & Natural Resources.

1 AN ACT Relating to extending the expiration date of RCW 90.90.030;  
2 amending RCW 90.90.030; and providing an expiration date.

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

4 **Sec. 1.** RCW 90.90.030 and 2006 c 6 s 4 are each amended to read as  
5 follows:

6 (1) The department of ecology may enter into voluntary regional  
7 agreements for the purpose of providing new water for out-of-stream  
8 use, streamlining the application process, and protecting instream  
9 flow.

10 (2) Such agreements shall ensure that:

11 (a) For water rights issued from the Columbia river mainstem, there  
12 is no negative impact on Columbia river mainstem instream flows in the  
13 months of July and August as a result of the new appropriations issued  
14 under the agreement;

15 (b) For water rights issued from the lower Snake river mainstem,  
16 there is no negative impact on Snake river mainstem instream flows from  
17 April through August as a result of the new appropriations issued under  
18 the agreement; and

1 (c) Efforts are made to harmonize such agreements with watershed  
2 plans adopted under the authority of chapter 90.82 RCW that are  
3 applicable to the area covered by the agreement.

4 (3) The protection of instream flow as set forth in subsection (2)  
5 of this section is adequate for purposes of mitigating instream flow  
6 impacts resulting from any appropriations for out-of-stream use made  
7 under a voluntary regional agreement, and the only applicable  
8 consultation provisions under state law regarding instream flow impacts  
9 shall be those set forth in subsection (4) of this section.

10 (4) Before executing a voluntary agreement under this section, the  
11 department of ecology shall:

12 (a) Provide a sixty-day period for consultation with county  
13 legislative authorities and watershed planning groups with jurisdiction  
14 over the area where the water rights included in the agreement are  
15 located, the department of fish and wildlife, and affected tribal  
16 governments, and federal agencies. The department of fish and wildlife  
17 shall provide written comments within that time period. The  
18 consultation process for voluntary regional agreements developed under  
19 the provisions of this section is deemed adequate for the issuance of  
20 new water rights provided for in this section and satisfies all  
21 consultation requirements under state law related to the issuance of  
22 new water rights; and

23 (b) Provide a thirty-day public review and comment period for a  
24 draft agreement, and publish a summary of any public comments received.  
25 The thirty-day review period shall not begin until after the department  
26 of ecology has concluded its consultation under (a) of this subsection  
27 and the comments that have been received by the department are made  
28 available to the public.

29 (5) The provisions of subsection (4) of this section satisfy all  
30 applicable consultation requirements under state law.

31 (6) The provisions of this section and any voluntary regional  
32 agreements developed under such provisions may not be relied upon by  
33 the department of ecology as a precedent, standard, or model that must  
34 be followed in any other voluntary regional agreements.

35 (7) Nothing in this section may be interpreted or administered in  
36 a manner that precludes the processing of water right applications  
37 under chapter 90.03 or 90.44 RCW that are not included in a voluntary  
38 regional agreement.

1 (8) Nothing in this section may be interpreted or administered in  
2 a manner that impairs or diminishes a valid water right or a habitat  
3 conservation plan approved for purposes of compliance with the federal  
4 endangered species act.

5 (9) The department of ecology shall monitor and evaluate the water  
6 allocated to instream and out-of-stream uses under this section,  
7 evaluate the program, and provide an interim report to the appropriate  
8 committees of the legislature by June 30, 2008. A final report shall  
9 be provided to the appropriate committees of the legislature by June  
10 30, 2011.

11 (10) If the department of ecology executes a voluntary agreement  
12 under this section that includes water rights appropriated from the  
13 lower Snake river mainstem, the department shall develop aggregate data  
14 in accordance with the provisions of RCW 90.90.050 for the lower Snake  
15 river mainstem.

16 (11) Any agreement entered into under this section shall remain in  
17 full force and effect through the term of the agreement regardless of  
18 the expiration of this section.

19 (12) The definitions in this subsection apply to this section and  
20 RCW 90.90.050, and may only be used for purposes of implementing these  
21 sections.

22 (a) "Columbia river mainstem" means all water in the Columbia river  
23 within the ordinary high water mark of the main channel of the Columbia  
24 river between the border of the United States and Canada and the  
25 Bonneville dam, and all groundwater within one mile of the high water  
26 mark.

27 (b) "Lower Snake river mainstem" means all water in the lower Snake  
28 river within the ordinary high water mark of the main channel of the  
29 lower Snake river from the head of Ice Harbor pool to the confluence of  
30 the Snake and Columbia rivers, and all groundwater within one mile of  
31 the high water mark.

32 (13) This section expires June 30, (~~2012~~) 2018.

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