

---

SENATE BILL 5209

---

State of Washington

62nd Legislature

2011 Regular Session

By Senators Delvin, Hatfield, Schoesler, Hewitt, Honeyford, Holmquist  
Newbry, Haugen, Hobbs, Morton, and King

Read first time 01/18/11. Referred to Committee on Environment, Water  
& Energy.

1 AN ACT Relating to extending the time period permitted to put water  
2 to beneficial use; amending RCW 90.03.380, 90.03.380, 90.14.031,  
3 90.14.043, 90.14.130, 90.14.140, 90.14.160, 90.14.170, 90.14.180, and  
4 90.92.070; reenacting and amending RCW 90.14.140; adding a new section  
5 to chapter 90.14 RCW; providing an effective date; and providing  
6 expiration dates.

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

8 **Sec. 1.** RCW 90.03.380 and 2009 c 183 s 15 are each amended to read  
9 as follows:

10 (1) The right to the use of water which has been applied to a  
11 beneficial use in the state shall be and remain appurtenant to the land  
12 or place upon which the same is used: PROVIDED, HOWEVER, That the  
13 right may be transferred to another or to others and become appurtenant  
14 to any other land or place of use without loss of priority of right  
15 theretofore established if such change can be made without detriment or  
16 injury to existing rights. The point of diversion of water for  
17 beneficial use or the purpose of use may be changed, if such change can  
18 be made without detriment or injury to existing rights. A change in  
19 the place of use, point of diversion, and/or purpose of use of a water

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

37 (2) If an application for change proposes to transfer water rights  
38 from one irrigation district to another, the department shall, before

1 publication of notice, receive concurrence from each of the irrigation  
2 districts that such transfer or change will not adversely affect the  
3 ability to deliver water to other landowners or impair the financial  
4 integrity of either of the districts.

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

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

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

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

25 (c) Notwithstanding any other existing authority to process  
26 applications, including but not limited to the authority to process  
27 applications under WAC 173-152-050 as it existed on January 1, 2001, an  
28 application relating to an existing surface or ground water right may  
29 be processed ahead of a previously filed application relating to an  
30 existing right when sufficient information for a decision on the  
31 previously filed application is not available and the applicant for the  
32 previously filed application is sent written notice that explains what  
33 information is not available and informs the applicant that processing  
34 of the next application will begin. The previously filed application  
35 does not lose its priority date and if the information is provided by  
36 the applicant within sixty days, the previously filed application shall  
37 be processed at that time. This subsection (5)(c) does not affect any  
38 other existing authority to process applications.

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

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

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

13 (8) 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 a change or  
17 transfer of any existing water right to enable the holder of the right  
18 to store water governed by the right.

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

23 (10) This section expires June 30, 2019.

24 **Sec. 2.** RCW 90.03.380 and 2003 c 329 s 2 are each amended to read  
25 as follows:

26 (1) The right to the use of water which has been applied to a  
27 beneficial use in the state shall be and remain appurtenant to the land  
28 or place upon which the same is used: PROVIDED, HOWEVER, That the  
29 right may be transferred to another or to others and become appurtenant  
30 to any other land or place of use without loss of priority of right  
31 theretofore established if such change can be made without detriment or  
32 injury to existing rights. The point of diversion of water for  
33 beneficial use or the purpose of use may be changed, if such change can  
34 be made without detriment or injury to existing rights. A change in  
35 the place of use, point of diversion, and/or purpose of use of a water  
36 right to enable irrigation of additional acreage or the addition of new  
37 uses may be permitted if such change results in no increase in the

1 annual consumptive quantity of water used under the water right. For  
2 purposes of this section, "annual consumptive quantity" means the  
3 estimated or actual (~~annual~~) amount of water diverted pursuant to the  
4 water right during the peak year of water use within the most recent  
5 fifteen-year period, reduced by the estimated annual amount of return  
6 flows(~~(, averaged over the two years of greatest use within the most~~  
7 ~~recent five-year period of continuous beneficial use of the water~~  
8 ~~right)~~). Before any transfer of such right to use water or change of  
9 the point of diversion of water or change of purpose of use can be  
10 made, any person having an interest in the transfer or change, shall  
11 file a written application therefor with the department, and the  
12 application shall not be granted until notice of the application is  
13 published as provided in RCW 90.03.280. If it shall appear that such  
14 transfer or such change may be made without injury or detriment to  
15 existing rights, the department shall issue to the applicant a  
16 certificate in duplicate granting the right for such transfer or for  
17 such change of point of diversion or of use. The certificate so issued  
18 shall be filed and be made a record with the department and the  
19 duplicate certificate issued to the applicant may be filed with the  
20 county auditor in like manner and with the same effect as provided in  
21 the original certificate or permit to divert water.

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

28 (3) A change in place of use by an individual water user or users  
29 of water provided by an irrigation district need only receive approval  
30 for the change from the board of directors of the district if the use  
31 of water continues within the irrigation district, and when water is  
32 provided by an irrigation entity that is a member of a board of joint  
33 control created under chapter 87.80 RCW, approval need only be received  
34 from the board of joint control if the use of water continues within  
35 the area of jurisdiction of the joint board and the change can be made  
36 without detriment or injury to existing rights.

37 (4) This section shall not apply to trust water rights acquired by

1 the state through the funding of water conservation projects under  
2 chapter 90.38 RCW or RCW 90.42.010 through 90.42.070.

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

6 (b) Applications relating to existing surface or ground water  
7 rights may be processed and decisions on them rendered independently of  
8 processing and rendering decisions on pending applications for new  
9 water rights within the same source of supply without regard to the  
10 date of filing of the pending applications for new water rights.

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

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

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

31 (7) In revising the provisions of this section and adding  
32 provisions to this section by chapter 237, Laws of 2001, the  
33 legislature does not intend to imply legislative approval or  
34 disapproval of any existing administrative policy regarding, or any  
35 existing administrative or judicial interpretation of, the provisions  
36 of this section not expressly added or revised.

37 (8) The development and use of a small irrigation impoundment, as  
38 defined in RCW 90.03.370(8), does not constitute a change or amendment

1 for the purposes of this section. The exemption expressly provided by  
2 this subsection shall not be construed as requiring a change or  
3 transfer of any existing water right to enable the holder of the right  
4 to store water governed by the right.

5 **Sec. 3.** RCW 90.14.031 and 1969 ex.s. c 284 s 12 are each amended  
6 to read as follows:

7 Unless a different meaning is plainly required by the context, the  
8 following words and phrases as used in RCW 90.14.031 through 90.14.121  
9 shall have the following meanings:

10 (1) "Person" shall mean an individual, partnership, association,  
11 public or private corporation, city or other municipality, county, or  
12 a state agency, and the United States of America when claiming water  
13 rights established under the laws of the state of Washington.

14 (2) "Beneficial use" shall include, but not be limited to, use for  
15 domestic water, irrigation, fish, shellfish, game and other aquatic  
16 life, municipal, recreation, industrial water, generation of electric  
17 power, and navigation. For the purposes of this chapter, beneficial  
18 use means or refers to the peak year of water use during the most  
19 recent fifteen-year period.

20 **Sec. 4.** RCW 90.14.043 and 1985 c 435 s 1 are each amended to read  
21 as follows:

22 (1) Notwithstanding any time restrictions imposed by the provisions  
23 of chapter 90.14 RCW, a person may file a claim pursuant to RCW  
24 90.14.041 if such person obtains a certification from the pollution  
25 control hearings board as provided in this section.

26 (2) A certification shall be issued by the pollution control  
27 hearings board if, upon petition to the board, it is shown to the  
28 satisfaction of the board that:

29 (a) Waters of the state have been applied to beneficial use  
30 continuously (with no period of nonuse exceeding (~~five~~) fifteen  
31 consecutive years) in the case of surface water beginning not later  
32 than June 7, 1917, and in the case of groundwater beginning not later  
33 than June 7, 1945, or

34 (b) Waters of the state have been applied to beneficial use  
35 continuously (with no period of nonuse exceeding (~~five~~) fifteen  
36 consecutive years) from the date of entry of a court decree confirming

1 a water right and any failure to register a claim resulted from a  
2 reasonable misinterpretation of the requirements as they related to  
3 such court decreed rights.

4 (3) The board shall have jurisdiction to accept petitions for  
5 certification from any person through September 1, 1985, and not  
6 thereafter.

7 (4) A petition for certification shall include complete information  
8 on the claim pursuant to RCW 90.14.051 (1) through (8), and any such  
9 information as the board may require.

10 (5) The department of ecology is directed to accept for filing any  
11 claim certified by the board as provided in subsection (2) of this  
12 section. The department of ecology, upon request of the board, may  
13 provide assistance to the board pertinent to any certification  
14 petition.

15 (6) A certification by the pollution control hearings board or a  
16 filing with the department of ecology of a claim under this section  
17 shall not constitute a determination or confirmation that a water right  
18 exists.

19 (7) The provisions of RCW 90.14.071 shall have no applicability to  
20 certified claims filed pursuant to this section.

21 (8) This section shall have no applicability to groundwaters  
22 resulting from the operations of reclamation projects.

23 **Sec. 5.** RCW 90.14.130 and 1987 c 109 s 13 are each amended to read  
24 as follows:

25 When it appears to the department of ecology that a person entitled  
26 to the use of water has not beneficially used his or her water right as  
27 defined in RCW 90.14.031 or some portion thereof, and it appears that  
28 said right has or may have reverted to the state because of such  
29 nonuse, as provided by RCW 90.14.160, 90.14.170, or 90.14.180, the  
30 department of ecology shall notify such person by order: PROVIDED,  
31 That where a company, association, district, or the United States has  
32 filed a blanket claim under the provisions of RCW 90.14.060 for the  
33 total benefits of those served by it, the notice shall be served on  
34 such company, association, district or the United States and not upon  
35 any of its individual water users who may not have used the water or  
36 some portion thereof which they were entitled to use. The order shall  
37 contain: (1) A description of the water right, including the



1 approximate location of the point of diversion, the general description  
2 of the lands or places where such waters were used, the water source,  
3 the amount involved, the purpose of use, and the apparent authority  
4 upon which the right is based; (2) a statement that unless sufficient  
5 cause be shown on appeal the water right will be declared relinquished;  
6 and (3) a statement that such order may be appealed to the pollution  
7 control hearings board. Any person aggrieved by such an order may  
8 appeal it to the pollution control hearings board pursuant to RCW  
9 43.21B.310. The order shall be served by registered or certified mail  
10 to the last known address of the person and be posted at the point of  
11 division or withdrawal. The order by itself shall not alter the  
12 recipient's right to use water, if any.

13 **Sec. 6.** RCW 90.14.140 and 2009 c 183 s 14 are each amended to read  
14 as follows:

15 (1) For the purposes of RCW 90.14.130 through 90.14.180,  
16 "sufficient cause" shall be defined as the nonuse of all or a portion  
17 of the water by the owner of a water right for a period of (~~five~~)  
18 fifteen or more consecutive years where such nonuse occurs as a result  
19 of:

20 (a) Drought, or other unavailability of water;

21 (b) Active service in the armed forces of the United States during  
22 military crisis;

23 (c) Nonvoluntary service in the armed forces of the United States;

24 (d) The operation of legal proceedings;

25 (e) Federal or state agency leases of or options to purchase lands  
26 or water rights which preclude or reduce the use of the right by the  
27 owner of the water right;

28 (f) Federal laws imposing land or water use restrictions either  
29 directly or through the voluntary enrollment of a landowner in a  
30 federal program implementing those laws, or acreage limitations, or  
31 production quotas;

32 (g) Temporarily reduced water need for irrigation use where such  
33 reduction is due to varying weather conditions, including but not  
34 limited to precipitation and temperature, that warranted the reduction  
35 in water use, so long as the water user's diversion and delivery  
36 facilities are maintained in good operating condition consistent with  
37 beneficial use of the full amount of the water right;

1 (h) Temporarily reduced diversions or withdrawals of irrigation  
2 water directly resulting from the provisions of a contract or similar  
3 agreement in which a supplier of electricity buys back electricity from  
4 the water right holder and the electricity is needed for the diversion  
5 or withdrawal or for the use of the water diverted or withdrawn for  
6 irrigation purposes;

7 (i) Water conservation measures implemented under the Yakima river  
8 basin water enhancement project, so long as the conserved water is  
9 reallocated in accordance with the provisions of P.L. 103-434;

10 (j) Reliance by an irrigation water user on the transitory presence  
11 of return flows in lieu of diversion or withdrawal of water from the  
12 primary source of supply, if such return flows are measured or reliably  
13 estimated using a scientific methodology generally accepted as reliable  
14 within the scientific community; or

15 (k) The reduced use of irrigation water resulting from crop  
16 rotation. For purposes of this subsection, crop rotation means the  
17 temporary change in the type of crops grown resulting from the exercise  
18 of generally recognized sound farming practices. Unused water  
19 resulting from crop rotation will not be relinquished if the remaining  
20 portion of the water continues to be beneficially used.

21 (2) Notwithstanding any other provisions of RCW 90.14.130 through  
22 90.14.180, there shall be no relinquishment of any water right:

23 (a) If such right is claimed for power development purposes under  
24 chapter 90.16 RCW and annual license fees are paid in accordance with  
25 chapter 90.16 RCW;

26 (b) If such right is used for a standby or reserve water supply to  
27 be used in time of drought or other low flow period so long as  
28 withdrawal or diversion facilities are maintained in good operating  
29 condition for the use of such reserve or standby water supply;

30 (c) If such right is claimed for a determined future development to  
31 take place either within fifteen years of July 1, 1967, or the most  
32 recent beneficial use of the water right, whichever date is later;

33 (d) If such right is claimed for municipal water supply purposes  
34 under chapter 90.03 RCW;

35 (e) If such waters are not subject to appropriation under the  
36 applicable provisions of RCW 90.40.030;

37 (f) If such right or portion of the right is leased to another  
38 person for use on land other than the land to which the right is

1 appurtenant as long as the lessee makes beneficial use of the right in  
2 accordance with this chapter and a transfer or change of the right has  
3 been approved by the department in accordance with RCW 90.03.380,  
4 90.03.383, 90.03.390, or 90.44.100;

5 (g) If such a right or portion of the right is authorized for a  
6 purpose that is satisfied by the use of agricultural industrial process  
7 water as authorized under RCW 90.46.150;

8 (h) If such right is a trust water right under chapter 90.38 or  
9 90.42 RCW;

10 (i) If such a right is involved in an approved local water plan  
11 created under RCW 90.92.090, provided the right is subject to an  
12 agreement not to divert under RCW 90.92.050, or provided the right is  
13 banked under RCW 90.92.070.

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

19 (4) This section expires June 30, 2019.

20 **Sec. 7.** RCW 90.14.140 and 2001 c 240 s 1, 2001 c 237 s 27, and  
21 2001 c 69 s 5 are each reenacted and amended to read as follows:

22 (1) For the purposes of RCW 90.14.130 through 90.14.180,  
23 "sufficient cause" shall be defined as the nonuse of all or a portion  
24 of the water by the owner of a water right for a period of ((five))  
25 fifteen or more consecutive years where such nonuse occurs as a result  
26 of:

27 (a) Drought, or other unavailability of water;

28 (b) Active service in the armed forces of the United States during  
29 military crisis;

30 (c) Nonvoluntary service in the armed forces of the United States;

31 (d) The operation of legal proceedings;

32 (e) Federal or state agency leases of or options to purchase lands  
33 or water rights which preclude or reduce the use of the right by the  
34 owner of the water right;

35 (f) Federal laws imposing land or water use restrictions either  
36 directly or through the voluntary enrollment of a landowner in a

1 federal program implementing those laws, or acreage limitations, or  
2 production quotas;

3 (g) Temporarily reduced water need for irrigation use where such  
4 reduction is due to varying weather conditions, including but not  
5 limited to precipitation and temperature, that warranted the reduction  
6 in water use, so long as the water user's diversion and delivery  
7 facilities are maintained in good operating condition consistent with  
8 beneficial use of the full amount of the water right;

9 (h) Temporarily reduced diversions or withdrawals of irrigation  
10 water directly resulting from the provisions of a contract or similar  
11 agreement in which a supplier of electricity buys back electricity from  
12 the water right holder and the electricity is needed for the diversion  
13 or withdrawal or for the use of the water diverted or withdrawn for  
14 irrigation purposes;

15 (i) Water conservation measures implemented under the Yakima river  
16 basin water enhancement project, so long as the conserved water is  
17 reallocated in accordance with the provisions of P.L. 103-434;

18 (j) Reliance by an irrigation water user on the transitory presence  
19 of return flows in lieu of diversion or withdrawal of water from the  
20 primary source of supply, if such return flows are measured or reliably  
21 estimated using a scientific methodology generally accepted as reliable  
22 within the scientific community; or

23 (k) The reduced use of irrigation water resulting from crop  
24 rotation. For purposes of this subsection, crop rotation means the  
25 temporary change in the type of crops grown resulting from the exercise  
26 of generally recognized sound farming practices. Unused water  
27 resulting from crop rotation will not be relinquished if the remaining  
28 portion of the water continues to be beneficially used.

29 (2) Notwithstanding any other provisions of RCW 90.14.130 through  
30 90.14.180, there shall be no relinquishment of any water right:

31 (a) If such right is claimed for power development purposes under  
32 chapter 90.16 RCW and annual license fees are paid in accordance with  
33 chapter 90.16 RCW;

34 (b) If such right is used for a standby or reserve water supply to  
35 be used in time of drought or other low flow period so long as  
36 withdrawal or diversion facilities are maintained in good operating  
37 condition for the use of such reserve or standby water supply;

1 (c) If such right is claimed for a determined future development to  
2 take place either within fifteen years of July 1, 1967, or the most  
3 recent beneficial use of the water right, whichever date is later;

4 (d) If such right is claimed for municipal water supply purposes  
5 under chapter 90.03 RCW;

6 (e) If such waters are not subject to appropriation under the  
7 applicable provisions of RCW 90.40.030;

8 (f) If such right or portion of the right is leased to another  
9 person for use on land other than the land to which the right is  
10 appurtenant as long as the lessee makes beneficial use of the right in  
11 accordance with this chapter and a transfer or change of the right has  
12 been approved by the department in accordance with RCW 90.03.380,  
13 90.03.383, 90.03.390, or 90.44.100;

14 (g) If such a right or portion of the right is authorized for a  
15 purpose that is satisfied by the use of agricultural industrial process  
16 water as authorized under RCW 90.46.150; or

17 (h) If such right is a trust water right under chapter 90.38 or  
18 90.42 RCW.

19 (3) In adding provisions to this section by chapter 237, Laws of  
20 2001, the legislature does not intend to imply legislative approval or  
21 disapproval of any existing administrative policy regarding, or any  
22 existing administrative or judicial interpretation of, the provisions  
23 of this section not expressly added or revised.

24 **Sec. 8.** RCW 90.14.160 and 1981 c 291 s 1 are each amended to read  
25 as follows:

26 Any person entitled to divert or withdraw waters of the state  
27 through any appropriation authorized by enactments of the legislature  
28 prior to enactment of chapter 117, Laws of 1917, or by custom, or by  
29 general adjudication, who abandons the same, or who voluntarily fails,  
30 without sufficient cause, to beneficially use all or any part of said  
31 right to divert or withdraw for any period of (~~five~~) fifteen  
32 successive years after July 1, 1967, shall relinquish such right or  
33 portion thereof, and said right or portion thereof shall revert to the  
34 state, and the waters affected by said right shall become available for  
35 appropriation in accordance with RCW 90.03.250.

1       **Sec. 9.** RCW 90.14.170 and 1967 c 233 s 17 are each amended to read  
2 as follows:

3       Any person entitled to divert or withdraw waters of the state by  
4 virtue of his or her ownership of land abutting a stream, lake, or  
5 watercourse, who abandons the same, or who voluntarily fails, without  
6 sufficient cause, to beneficially use all or any part of said right to  
7 withdraw or divert said water for any period of (~~five~~) fifteen  
8 successive years after July 1, 1967, shall relinquish such right or  
9 portion thereof, and such right or portion thereof shall revert to the  
10 state, and the waters affected by said right shall become available for  
11 appropriation in accordance with the provisions of RCW 90.03.250.

12       **Sec. 10.** RCW 90.14.180 and 1987 c 109 s 101 are each amended to  
13 read as follows:

14       Any person hereafter entitled to divert or withdraw waters of the  
15 state through an appropriation authorized under RCW 90.03.330,  
16 90.44.080, or 90.44.090 who abandons the same, or who voluntarily  
17 fails, without sufficient cause, to beneficially use all or any part of  
18 said right to withdraw for any period of (~~five~~) fifteen successive  
19 years shall relinquish such right or portion thereof, and such right or  
20 portion thereof shall revert to the state, and the waters affected by  
21 said right shall become available for appropriation in accordance with  
22 RCW 90.03.250. All certificates hereafter issued by the department of  
23 ecology pursuant to RCW 90.03.330 shall expressly incorporate this  
24 section by reference.

25       **Sec. 11.** RCW 90.92.070 and 2009 c 183 s 7 are each amended to read  
26 as follows:

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

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

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

35       (b) On a temporary or permanent basis, the board may accept a water

1 right, or portion thereof, that will be made available under local  
2 water plans for stream flow enhancement under the terms of the local  
3 water plan, as provided in this chapter.

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

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

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

20 (b) A water right banked on a permanent basis must be transferred  
21 to the state of Washington as a trust water right consistent with RCW  
22 90.42.080.

23 (4) A water right or portion of a water right banked under this  
24 chapter is not subject to loss by forfeiture under RCW 90.14.130  
25 through 90.14.200. When a temporary water right is withdrawn from  
26 banking, the time period that the water right was banked may not be  
27 calculated as time water was not used for purposes of RCW 90.14.160,  
28 90.14.170, and 90.14.180.

29 (5) When a temporarily deposited water right is withdrawn from  
30 banking, the time period that the water right was banked may not be  
31 included in the ((~~five~~)) fifteen years of prior water use for purposes  
32 of applications to add acreage or purposes of water use under RCW  
33 90.03.380(1).

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

1           (7) This section expires June 30, 2019.

2           NEW SECTION. Sec. 12. A new section is added to chapter 90.14 RCW  
3 to read as follows:

4           (1) This act applies to all administrative applications, petitions,  
5 claims, actions, adjudications, determinations, orders, or other  
6 decisions of the department of ecology or pollution control hearings  
7 board involving any matter that was commenced prior to or is pending on  
8 the effective date of this section, and to the determination of any  
9 judicial action arising under this chapter in which no final  
10 nonappealable judicial order has been entered prior to the effective  
11 date of this section.

12           (2) Subsection (1) of this section does not apply if a senior water  
13 right holder objects to the application of this act to a matter, and it  
14 is determined that the objecting party holds an existing water right  
15 that would be impaired by the application of this act to the matter.  
16 In such cases, the law as it existed prior to the effective date of  
17 this section applies.

18           NEW SECTION. Sec. 13. Sections 2 and 7 of this act take effect  
19 June 30, 2019.

--- END ---