
SENATE BILL 5071

State of Washington

63rd Legislature

2013 Regular Session

By Senators Delvin, Holmquist Newbry, Becker, Ericksen, Roach, Schoesler, and Hewitt

Read first time 01/17/13. Referred to Committee on Agriculture, Water & Rural Economic Development.

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, 90.14.140, 90.14.160, 90.14.170,
4 90.14.180, and 90.92.070; adding a new section to chapter 90.14 RCW;
5 providing an effective date; and providing expiration dates.

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

7 **Sec. 1.** RCW 90.03.380 and 2011 c 112 s 2 are each amended to read
8 as follows:

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

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

36 (2) If an application for change proposes to transfer water rights
37 from one irrigation district to another, the department shall, before
38 publication of notice, receive concurrence from each of the irrigation

1 districts that such transfer or change will not adversely affect the
2 ability to deliver water to other landowners or impair the financial
3 integrity of either of the districts.

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

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

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

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

24 (c) Notwithstanding any other existing authority to process
25 applications, including but not limited to the authority to process
26 applications under WAC 173-152-050 as it existed on January 1, 2001, an
27 application relating to an existing surface or ground water right may
28 be processed ahead of a previously filed application relating to an
29 existing right when sufficient information for a decision on the
30 previously filed application is not available and the applicant for the
31 previously filed application is sent written notice that explains what
32 information is not available and informs the applicant that processing
33 of the next application will begin. The previously filed application
34 does not lose its priority date and if the information is provided by
35 the applicant within sixty days, the previously filed application shall
36 be processed at that time. This subsection (5)(c) does not affect any
37 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)(a) The department may only approve an application submitted
24 after July 22, 2011, for an interbasin water rights transfer after
25 providing notice electronically to the board of county commissioners in
26 the county of origin upon receipt of an application.

27 (b) For the purposes of this subsection:

28 (i) "Interbasin water rights transfer" means a transfer of a water
29 right for which the proposed point of diversion is in a different basin
30 than the proposed place of beneficial use.

31 (ii) "County of origin" means the county from which a water right
32 is transferred or proposed to be transferred.

33 (c) This subsection applies to counties located east of the crest
34 of the Cascade mountains.

35 **Sec. 2.** RCW 90.03.380 and 2011 c 112 s 3 are each amended to read
36 as follows:

37 (1) The right to the use of water which has been applied to a

1 beneficial use in the state shall be and remain appurtenant to the land
2 or place upon which the same is used: PROVIDED, HOWEVER, That the
3 right may be transferred to another or to others and become appurtenant
4 to any other land or place of use without loss of priority of right
5 theretofore established if such change can be made without detriment or
6 injury to existing rights. The point of diversion of water for
7 beneficial use or the purpose of use may be changed, if such change can
8 be made without detriment or injury to existing rights. A change in
9 the place of use, point of diversion, and/or purpose of use of a water
10 right to enable irrigation of additional acreage or the addition of new
11 uses may be permitted if such change results in no increase in the
12 annual consumptive quantity of water used under the water right. For
13 purposes of this section, "annual consumptive quantity" means the
14 estimated or actual (~~annual~~) amount of water diverted pursuant to the
15 water right during the peak year of water use within the most recent
16 twenty-year period, reduced by the estimated annual amount of return
17 flows(~~(, averaged over the two years of greatest use within the most~~
18 ~~recent five-year period of continuous beneficial use of the water~~
19 ~~right)~~). Before any transfer of such right to use water or change of
20 the point of diversion of water or change of purpose of use can be
21 made, any person having an interest in the transfer or change, shall
22 file a written application therefor with the department, and the
23 application shall not be granted until notice of the application is
24 published as provided in RCW 90.03.280. If it shall appear that such
25 transfer or such change may be made without injury or detriment to
26 existing rights, the department shall issue to the applicant a
27 certificate in duplicate granting the right for such transfer or for
28 such change of point of diversion or of use. The certificate so issued
29 shall be filed and be made a record with the department and the
30 duplicate certificate issued to the applicant may be filed with the
31 county auditor in like manner and with the same effect as provided in
32 the original certificate or permit to divert water.

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

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

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

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

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

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

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

37 (6) No applicant for a change, transfer, or amendment of a water

1 right may be required to give up any part of the applicant's valid
2 water right or claim to a state agency, the trust water rights program,
3 or to other persons as a condition of processing the application.

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

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

16 (9)(a) The department may only approve an application submitted
17 after June 30, 2019, for an interbasin water rights transfer after
18 providing notice electronically to the board of county commissioners in
19 the county of origin upon receipt of an application.

20 (b) For the purposes of this subsection:

21 (i) "Interbasin water rights transfer" means a transfer of a water
22 right for which the proposed point of diversion is in a different basin
23 than the proposed place of beneficial use.

24 (ii) "County of origin" means the county from which a water right
25 is transferred or proposed to be transferred.

26 (c) This subsection applies to counties located east of the crest
27 of the Cascade mountains.

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

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

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

1 (2) "Beneficial use" shall include, but not be limited to, use for
2 domestic water, irrigation, fish, shellfish, game and other aquatic
3 life, municipal, recreation, industrial water, generation of electric
4 power, and navigation. For the purposes of this chapter, "beneficial
5 use" means or refers to the peak year of water use during the most
6 recent twenty-year period.

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

9 (1) Notwithstanding any time restrictions imposed by the provisions
10 of chapter 90.14 RCW, a person may file a claim pursuant to RCW
11 90.14.041 if such person obtains a certification from the pollution
12 control hearings board as provided in this section.

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

16 (a) Waters of the state have been applied to beneficial use
17 continuously (with no period of nonuse exceeding (~~five~~) twenty
18 consecutive years) in the case of surface water beginning not later
19 than June 7, 1917, and in the case of groundwater beginning not later
20 than June 7, 1945, or

21 (b) Waters of the state have been applied to beneficial use
22 continuously (with no period of nonuse exceeding (~~five~~) twenty
23 consecutive years) from the date of entry of a court decree confirming
24 a water right and any failure to register a claim resulted from a
25 reasonable misinterpretation of the requirements as they related to
26 such court decreed rights.

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

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

33 (5) The department of ecology is directed to accept for filing any
34 claim certified by the board as provided in subsection (2) of this
35 section. The department of ecology, upon request of the board, may
36 provide assistance to the board pertinent to any certification
37 petition.

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

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

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

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

11 When it appears to the department of ecology that a person entitled
12 to the use of water has not beneficially used his or her water right as
13 defined in RCW 90.14.031 or some portion thereof, and it appears that
14 said right has or may have reverted to the state because of such
15 nonuse, as provided by RCW 90.14.160, 90.14.170, or 90.14.180, the
16 department of ecology shall notify such person by order: PROVIDED,
17 That where a company, association, district, or the United States has
18 filed a blanket claim under the provisions of RCW 90.14.060 for the
19 total benefits of those served by it, the notice shall be served on
20 such company, association, district or the United States and not upon
21 any of its individual water users who may not have used the water or
22 some portion thereof which they were entitled to use. The order shall
23 contain: (1) A description of the water right, including the
24 approximate location of the point of diversion, the general description
25 of the lands or places where such waters were used, the water source,
26 the amount involved, the purpose of use, and the apparent authority
27 upon which the right is based; (2) a statement that unless sufficient
28 cause be shown on appeal the water right will be declared relinquished;
29 and (3) a statement that such order may be appealed to the pollution
30 control hearings board. Any person aggrieved by such an order may
31 appeal it to the pollution control hearings board pursuant to RCW
32 43.21B.310. The order shall be served by registered or certified mail
33 to the last known address of the person and be posted at the point of
34 division or withdrawal. The order by itself shall not alter the
35 recipient's right to use water, if any.

1 **Sec. 6.** RCW 90.14.140 and 2012 c 7 s 1 are each amended to read as
2 follows:

3 (1) For the purposes of RCW 90.14.130 through 90.14.180,
4 "sufficient cause" shall be defined as the nonuse of all or a portion
5 of the water by the owner of a water right for a period of (~~five~~)
6 twenty or more consecutive years where such nonuse occurs as a result
7 of:

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

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

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

12 (d) The operation of legal proceedings;

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

16 (f) Federal laws imposing land or water use restrictions either
17 directly or through the voluntary enrollment of a landowner in a
18 federal program implementing those laws, or acreage limitations, or
19 production quotas;

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

26 (h) Temporarily reduced diversions or withdrawals of irrigation
27 water directly resulting from the provisions of a contract or similar
28 agreement in which a supplier of electricity buys back electricity from
29 the water right holder and the electricity is needed for the diversion
30 or withdrawal or for the use of the water diverted or withdrawn for
31 irrigation purposes;

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

35 (j) Reliance by an irrigation water user on the transitory presence
36 of return flows in lieu of diversion or withdrawal of water from the
37 primary source of supply, if such return flows are measured or reliably

1 estimated using a scientific methodology generally accepted as reliable
2 within the scientific community;

3 (k) The reduced use of irrigation water resulting from crop
4 rotation. For purposes of this subsection, crop rotation means the
5 temporary change in the type of crops grown resulting from the exercise
6 of generally recognized sound farming practices. Unused water
7 resulting from crop rotation will not be relinquished if the remaining
8 portion of the water continues to be beneficially used; or

9 (1) Waiting for a final determination from the department of
10 ecology on a change application filed under RCW 90.03.250, 90.03.380,
11 or 90.44.100.

12 (2) Notwithstanding any other provisions of RCW 90.14.130 through
13 90.14.180, there shall be no relinquishment of any water right:

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

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

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

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

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

28 (f) If such right or portion of the right is leased to another
29 person for use on land other than the land to which the right is
30 appurtenant as long as the lessee makes beneficial use of the right in
31 accordance with this chapter and a transfer or change of the right has
32 been approved by the department in accordance with RCW 90.03.380,
33 90.03.383, 90.03.390, or 90.44.100;

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

37 (h) If such right is a trust water right under chapter 90.38 or
38 90.42 RCW;

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

5 (3) In adding provisions to this section by chapter 237, Laws of
6 2001, the legislature does not intend to imply legislative approval or
7 disapproval of any existing administrative policy regarding, or any
8 existing administrative or judicial interpretation of, the provisions
9 of this section not expressly added or revised.

10 **Sec. 7.** RCW 90.14.140 and 2012 c 7 s 2 are each amended to read as
11 follows:

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

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

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

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

21 (d) The operation of legal proceedings;

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

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

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

35 (h) Temporarily reduced diversions or withdrawals of irrigation
36 water directly resulting from the provisions of a contract or similar
37 agreement in which a supplier of electricity buys back electricity from

1 the water right holder and the electricity is needed for the diversion
2 or withdrawal or for the use of the water diverted or withdrawn for
3 irrigation purposes;

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

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

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

18 (l) Waiting for a final determination from the department of
19 ecology on a change application filed under RCW 90.03.250, 90.03.380,
20 or 90.44.100.

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; or

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

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

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

17 Any person entitled to divert or withdraw waters of the state
18 through any appropriation authorized by enactments of the legislature
19 prior to enactment of chapter 117, Laws of 1917, or by custom, or by
20 general adjudication, who abandons the same, or who voluntarily fails,
21 without sufficient cause, to beneficially use all or any part of said
22 right to divert or withdraw for any period of (~~five~~) twenty
23 successive years after July 1, 1967, shall relinquish such right or
24 portion thereof, and said right or portion thereof shall revert to the
25 state, and the waters affected by said right shall become available for
26 appropriation in accordance with RCW 90.03.250.

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

29 Any person entitled to divert or withdraw waters of the state by
30 virtue of his or her ownership of land abutting a stream, lake, or
31 watercourse, who abandons the same, or who voluntarily fails, without
32 sufficient cause, to beneficially use all or any part of said right to
33 withdraw or divert said water for any period of (~~five~~) twenty
34 successive years after July 1, 1967, shall relinquish such right or
35 portion thereof, and such right or portion thereof shall revert to the

1 state, and the waters affected by said right shall become available for
2 appropriation in accordance with the provisions of RCW 90.03.250.

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

5 Any person hereafter entitled to divert or withdraw waters of the
6 state through an appropriation authorized under RCW 90.03.330,
7 90.44.080, or 90.44.090 who abandons the same, or who voluntarily
8 fails, without sufficient cause, to beneficially use all or any part of
9 said right to withdraw for any period of (~~five~~) twenty successive
10 years shall relinquish such right or portion thereof, and such right or
11 portion thereof shall revert to the state, and the waters affected by
12 said right shall become available for appropriation in accordance with
13 RCW 90.03.250. All certificates hereafter issued by the department of
14 ecology pursuant to RCW 90.03.330 shall expressly incorporate this
15 section by reference.

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

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

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

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

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

30 (c) Except as provided in (d) of this subsection, the board must
31 accept a water right temporarily banked for instream flow without
32 conducting a review of the extent and validity of the water right.
33 Such a water right may not thereafter be authorized for any other
34 purposes. A banked water right that has not been tentatively
35 determined as to its extent and validity is not entitled to be
36 protected from impairment by another water right.

1 (d) The board may manage a water right that has been banked as
2 mitigation for impairment to instream flows and other existing water
3 rights. However, the water right may only be available for mitigation
4 to the extent the department determines the water right is valid and
5 use of the water right for mitigation will not cause detriment or
6 injury to existing water rights.

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

10 (b) A water right banked on a permanent basis must be transferred
11 to the state of Washington as a trust water right consistent with RCW
12 90.42.080.

13 (4) A water right or portion of a water right banked under this
14 chapter is not subject to loss by forfeiture under RCW 90.14.130
15 through 90.14.200. When a temporary water right is withdrawn from
16 banking, the time period that the water right was banked may not be
17 calculated as time water was not used for purposes of RCW 90.14.160,
18 90.14.170, and 90.14.180.

19 (5) When a temporarily deposited water right is withdrawn from
20 banking, the time period that the water right was banked may not be
21 included in the ((five)) twenty years of prior water use for purposes
22 of applications to add acreage or purposes of water use under RCW
23 90.03.380(1).

24 (6) Nothing in this chapter forecloses or diminishes the rights of
25 any person to apply to the department to transfer a water right to the
26 state trust water rights program under the authority of chapter 90.42
27 RCW or to apply for a change of a water right to the department or to
28 a water conservancy board authorized under chapter 90.80 RCW.

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

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

32 (1) This act applies to all administrative applications, petitions,
33 claims, actions, adjudications, determinations, orders, or other
34 decisions of the department of ecology or pollution control hearings
35 board involving any matter that was commenced prior to or is pending on
36 the effective date of this section, and to the determination of any

1 judicial action arising under this chapter in which no final
2 nonappealable judicial order has been entered prior to the effective
3 date of this section.

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

10 NEW SECTION. **Sec. 13.** Sections 1 and 6 of this act expire June
11 30, 2019.

12 NEW SECTION. **Sec. 14.** Sections 2 and 7 of this act take effect
13 June 30, 2019.

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