H-0189.1

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**HOUSE BILL 1523**

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**State of Washington 64th Legislature 2015 Regular Session**

**By** Representatives Taylor, Shea, G. Hunt, Buys, Scott, Condotta, and Young

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

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

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

**Sec.**  RCW 43.21B.110 and 2013 c 291 s 33 are each amended to read as follows:

(1) The hearings board shall only have jurisdiction to hear and decide appeals from the following decisions of the department, the director, local conservation districts, the air pollution control boards or authorities as established pursuant to chapter 70.94 RCW, local health departments, the department of natural resources, the department of fish and wildlife, the parks and recreation commission, and authorized public entities described in chapter 79.100 RCW:

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

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

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

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

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

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

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

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

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

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

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

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

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

(n) Decisions of an authorized public entity under RCW 79.100.010 to take temporary possession or custody of a vessel or to contest the amount of reimbursement owed that are reviewable by the hearings board under RCW 79.100.120.

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

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

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

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

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

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

**Sec.**  RCW 43.21B.110 and 2013 c 291 s 34 are each amended to read as follows:

(1) The hearings board shall only have jurisdiction to hear and decide appeals from the following decisions of the department, the director, local conservation districts, the air pollution control boards or authorities as established pursuant to chapter 70.94 RCW, local health departments, the department of natural resources, the department of fish and wildlife, the parks and recreation commission, and authorized public entities described in chapter 79.100 RCW:

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

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

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

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

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

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

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

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

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

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

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

(l) Decisions of the department of natural resources that are reviewable under RCW 78.44.270.

(m) Decisions of an authorized public entity under RCW 79.100.010 to take temporary possession or custody of a vessel or to contest the amount of reimbursement owed that are reviewable by the hearings board under RCW 79.100.120.

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

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

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

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

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

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

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

(1) The right to the use of water which has been applied to a beneficial use in the state shall be and remain appurtenant to the land or place upon which the same is used: PROVIDED, HOWEVER, That the right may be transferred to another or to others and become appurtenant to any other land or place of use without loss of priority of right theretofore established if such change can be made without detriment or injury to existing rights. The point of diversion of water for beneficial use or the purpose of use may be changed, if such change can be made without detriment or injury to existing rights. A change in the place of use, point of diversion, and/or purpose of use of a water right to enable irrigation of additional acreage or the addition of new uses may be permitted if such change results in no increase in the annual consumptive quantity of water used under the water right. For purposes of this section, "annual consumptive quantity" means the estimated or actual annual amount of water diverted pursuant to the water right, reduced by the estimated annual amount of return flows, averaged over the two years of greatest use within the most recent five-year period of continuous beneficial use of the water right. Before any transfer of such right to use water or change of the point of diversion of water or change of purpose of use can be made, any person having an interest in the transfer or change, shall file a written application therefor with the department, and the application shall not be granted until notice of the application is published as provided in RCW 90.03.280. If it shall appear that such transfer or such change may be made without injury or detriment to existing rights, the department shall issue to the applicant a certificate in duplicate granting the right for such transfer or for such change of point of diversion or of use. The certificate so issued shall be filed and be made a record with the department and the duplicate certificate issued to the applicant may be filed with the county auditor in like manner and with the same effect as provided in the original certificate or permit to divert water. The time period that the water right was banked under RCW 90.92.070, in an approved local water plan created under RCW 90.92.090, or the water right was subject to an agreement to not divert under RCW 90.92.050 will not be included in the most recent five-year period of continuous beneficial use for the purpose of determining the annual consumptive quantity under this section. ((~~If the water right has not been used during the previous five years but the nonuse of which qualifies for one or more of the statutory good causes or exceptions to relinquishment in RCW 90.14.140 and 90.44.520, the period of nonuse is not included in the most recent five-year period of continuous beneficial use for purposes of determining the annual consumptive quantity of water under this section.~~))

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

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

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

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

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

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

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

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

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

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

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

(10)(a) The department may only approve an application submitted after July 22, 2011, for an interbasin water rights transfer after providing notice electronically to the board of county commissioners in the county of origin upon receipt of an application.

(b) For the purposes of this subsection:

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

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

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

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

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

**Sec.**  RCW 90.14.010 and 1967 c 233 s 1 are each amended to read as follows:

The future growth and development of the state is dependent upon effective management and efficient use of the state's water resources. The purpose of this chapter is to provide adequate records for efficient administration of the state's waters((~~, and to cause a return to the state of any water rights which are no longer exercised by putting said waters to beneficial use~~)).

**Sec.**  RCW 90.38.040 and 2001 c 237 s 29 are each amended to read as follows:

(1) All trust water rights acquired by the department shall be placed in the Yakima river basin trust water rights program to be managed by the department. The department shall issue a water right certificate in the name of the state of Washington for each trust water right it acquires.

(2) Trust water rights shall retain the same priority date as the water right from which they originated. Trust water rights may be modified as to purpose or place of use or point of diversion, including modification from a diversionary use to a nondiversionary instream use.

(3) Trust water rights may be held by the department for instream flows, irrigation use, or other beneficial use. Trust water rights may be acquired on a temporary or permanent basis. To the extent practicable and subject to legislative appropriation, trust water rights acquired in an area with an approved watershed plan developed under chapter 90.82 RCW shall be consistent with that plan if the plan calls for such acquisition.

(4) A schedule of the amount of net water saved as a result of water conservation projects carried out in accordance with this chapter, shall be developed annually to reflect the predicted hydrologic and water supply conditions, as well as anticipated water demands, for the upcoming irrigation season. This schedule shall serve as the basis for the distribution and management of trust water rights each year.

(5)(a) No exercise of a trust water right may be authorized unless the department first determines that no existing water rights, junior or senior in priority, will be impaired as to their exercise or injured in any manner whatever by such authorization.

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

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

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

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

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

(2) The department shall issue a water right certificate in the name of the state of Washington for each permanent trust water right conveyed to the state indicating the quantity of water transferred to trust, the reach or reaches of the stream or the body of public groundwater that constitutes the place of use of the trust water right, and the use or uses to which it may be applied. A superseding certificate shall be issued that specifies the amount of water the water right holder would continue to be entitled to as a result of the water conservation project. The superseding certificate shall retain the same priority date as the original right. For nonpermanent conveyances, the department shall issue certificates or such other instruments as are necessary to reflect the changes in purpose or place of use or point of diversion or withdrawal.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Sec.**  RCW 90.44.510 and 2011 c 72 s 1 are each amended to read as follows:

The department shall issue a superseding water right permit or certificate for a groundwater right where the source of water is an aquifer for which the department adopts rules establishing a groundwater management subarea and water from the federal Columbia Basin project is delivered for use by a person who holds such a groundwater right. The superseding water right permit or certificate shall designate that portion of the groundwater right that is replaced by water from the federal Columbia Basin project as a standby or reserve right that may be used when water delivered by the federal project is curtailed or otherwise not available. ((~~The period of curtailment or unavailability shall be deemed a low flow period under RCW 90.14.140(2)(b).~~)) The total number of acres irrigated by the person under the groundwater right and through the use of water delivered from the federal project must not exceed the quantity of water authorized by the federal bureau of reclamation and number of acres irrigated under the person's water right permit or certificate for the use of water from the aquifer.

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

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

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

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

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

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

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

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

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

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

(7) This section expires July 1, 2021.

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

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

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

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

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

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

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

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

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

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

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

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

(6) This section expires June 30, 2019.

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

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

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

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

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

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

(3) This section expires June 30, 2019.

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

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

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

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

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

(1) RCW 90.14.130 (Reversion of rights to state due to nonuse—Notice by order—Relinquishment determinations—Appeal) and 2013 c 23 s 607, 1987 c 109 s 13, & 1967 c 233 s 13;

(2) RCW 90.14.140 ("Sufficient cause" for nonuse defined—Rights exempted) and 2012 c 7 s 2, 2012 c 7 s 1, & 2009 c 183 s 14;

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

(4) RCW 90.14.170 (Relinquishment of right for abandonment or failure to beneficially use without sufficient cause—Rights acquired due to ownership of land abutting stream, lake, or watercourse) and 2013 c 23 s 608 & 1967 c 233 s 17;

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

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

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

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