
HOUSE BILL 1523

State of Washington

64th Legislature

2015 Regular Session

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

Read first time 01/22/15. Referred to Committee on Agriculture & Natural Resources.

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

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

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

1 **Sec. 2.** RCW 43.21B.110 and 2013 c 291 s 33 are each amended to
2 read as follows:

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

10 (a) Civil penalties imposed pursuant to RCW 18.104.155,
11 70.94.431, 70.105.080, 70.107.050, 76.09.170, 77.55.291, 78.44.250,
12 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310, 90.56.330, and
13 90.64.102.

14 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
15 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,
16 (~~90.14.130,~~) 90.46.250, 90.48.120, and 90.56.330.

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

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

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

29 (f) Decisions of local health departments regarding the issuance
30 and enforcement of permits to use or dispose of biosolids under RCW
31 70.95J.080.

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

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

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

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

6 (j) Decisions of the department of natural resources, the
7 department of fish and wildlife, and the department that are
8 reviewable under chapter 76.09 RCW, and the department of natural
9 resources' appeals of county, city, or town objections under RCW
10 76.09.050(7).

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

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

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

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

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

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

26 (b) Hearings conducted by the department pursuant to RCW
27 70.94.332, 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and
28 90.44.180.

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

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

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

36 **Sec. 3.** RCW 43.21B.110 and 2013 c 291 s 34 are each amended to
37 read as follows:

38 (1) The hearings board shall only have jurisdiction to hear and
39 decide appeals from the following decisions of the department, the

1 director, local conservation districts, the air pollution control
2 boards or authorities as established pursuant to chapter 70.94 RCW,
3 local health departments, the department of natural resources, the
4 department of fish and wildlife, the parks and recreation commission,
5 and authorized public entities described in chapter 79.100 RCW:

6 (a) Civil penalties imposed pursuant to RCW 18.104.155,
7 70.94.431, 70.105.080, 70.107.050, 76.09.170, 77.55.291, 78.44.250,
8 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310, 90.56.330, and
9 90.64.102.

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

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

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

23 (e) Decisions of local health departments regarding the issuance
24 and enforcement of permits to use or dispose of biosolids under RCW
25 70.95J.080.

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27 fertilizer or micronutrient fertilizer under RCW 15.54.820, and
28 decisions of the department regarding waste-derived soil amendments
29 under RCW 70.95.205.

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

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

39 (i) Decisions of the department of natural resources, the
40 department of fish and wildlife, and the department that are

1 reviewable under chapter 76.09 RCW, and the department of natural
2 resources' appeals of county, city, or town objections under RCW
3 76.09.050(7).

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

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

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

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

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

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

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

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

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

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

29 **Sec. 4.** RCW 90.03.380 and 2011 c 112 s 2 are each amended to
30 read as follows:

31 (1) The right to the use of water which has been applied to a
32 beneficial use in the state shall be and remain appurtenant to the
33 land or place upon which the same is used: PROVIDED, HOWEVER, That
34 the right may be transferred to another or to others and become
35 appurtenant to any other land or place of use without loss of
36 priority of right theretofore established if such change can be made
37 without detriment or injury to existing rights. The point of
38 diversion of water for beneficial use or the purpose of use may be
39 changed, if such change can be made without detriment or injury to

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

37 (2) If an application for change proposes to transfer water
38 rights from one irrigation district to another, the department shall,
39 before publication of notice, receive concurrence from each of the
40 irrigation districts that such transfer or change will not adversely

1 affect the ability to deliver water to other landowners or impair the
2 financial integrity of either of the districts.

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

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

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

19 (b) Applications relating to existing surface or ground water
20 rights may be processed and decisions on them rendered independently
21 of 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,
27 an application relating to an existing surface or ground water right
28 may be processed ahead of a previously filed application relating to
29 an existing right when sufficient information for a decision on the
30 previously filed application is not available and the applicant for
31 the previously filed application is sent written notice that explains
32 what information is not available and informs the applicant that
33 processing of the next application will begin. The previously filed
34 application does not lose its priority date and if the information is
35 provided by the applicant within sixty days, the previously filed
36 application shall be processed at that time. This subsection (5)(c)
37 does not affect any other existing authority to process applications.

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

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

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

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

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

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

26 (b) For the purposes of this subsection:

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

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

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

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

36 For purposes of calculating annual consumptive quantity as
37 defined under RCW 90.03.380(1), if, within the most recent five-year
38 period, the water right has been in the trust water rights program
39 under chapter 90.38 or 90.42 RCW, (~~or the nonuse of the water right~~

1 ~~has been excused from relinquishment under RCW 90.14.140,))~~ the
2 department shall look to the most recent five-year period of
3 continuous beneficial use preceding the date where the excuse for
4 nonuse (~~(under RCW 90.14.140))~~) was established and remained in
5 effect.

6 **Sec. 6.** RCW 90.14.010 and 1967 c 233 s 1 are each amended to
7 read as follows:

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

14 **Sec. 7.** RCW 90.38.040 and 2001 c 237 s 29 are each amended to
15 read as follows:

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

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

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

33 (4) A schedule of the amount of net water saved as a result of
34 water conservation projects carried out in accordance with this
35 chapter, shall be developed annually to reflect the predicted
36 hydrologic and water supply conditions, as well as anticipated water
37 demands, for the upcoming irrigation season. This schedule shall

1 serve as the basis for the distribution and management of trust water
2 rights each year.

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

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

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

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

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

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

1 shall be consistent with that plan if the plan calls for such
2 acquisition.

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

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

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

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

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

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

36 (5)(a) Before any trust water right is created or modified, the
37 department shall, at a minimum, require that a notice be published in
38 a newspaper of general circulation published in the county or
39 counties in which the storage, diversion, and use are to be made, and

1 in other newspapers as the department determines is necessary, once a
2 week for two consecutive weeks.

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

7 (c) For a trust water right donation described in RCW
8 90.42.080(1)(b), or for a trust water right lease described in RCW
9 90.42.080(8) that does not exceed five years, the department may post
10 equivalent information on its web site to meet the notice
11 requirements in (a) of this subsection and may send pertinent
12 information by email to meet the notice requirements in (b) of this
13 subsection.

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

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

20 ~~((8))~~ (7) Subsection (4)(a) of this section does not apply to a
21 trust water right resulting from a donation for instream flows
22 described in RCW 90.42.080(1)(b) or to a trust water right leased
23 under RCW 90.42.080(8) if the period of the lease does not exceed
24 five years.

25 ~~((9))~~ (8) Where a portion of an existing water right that is
26 acquired or donated to the trust water rights program will assist in
27 achieving established instream flows, the department shall process
28 the change or amendment of the existing right without conducting a
29 review of the extent and validity of the portion of the water right
30 that will remain with the water right holder.

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

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

1 administered as a trust water right in compliance with that
2 condition.

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

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

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

20 (4) (~~Except as provided in subsections (10) and (11) of this~~
21 ~~section,~~) A water right donated under subsection (1)(b) of this
22 section shall not exceed the extent to which the water right was
23 exercised during the five years before the donation nor may the total
24 of any portion of the water right remaining with the donor plus the
25 donated portion of the water right exceed the extent to which the
26 water right was exercised during the five years before the donation.
27 A water right holder who believes his or her water right has been
28 impaired by a trust water right donated under subsection (1)(b) of
29 this section may request that the department review the impairment
30 claim. If the department determines that a trust water right
31 resulting from a donation under subsection (1)(b) of this section is
32 impairing existing water rights in violation of RCW 90.42.070, the
33 trust water right shall be altered by the department to eliminate the
34 impairment. Any decision of the department to alter or not to alter a
35 trust water right donated under subsection (1)(b) of this section is
36 appealable to the pollution control hearings board under RCW
37 43.21B.230. A donated water right's status as a trust water right
38 under this subsection is not evidence of the validity or quantity of
39 the water right.

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

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

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

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

37 (9) For a water right donated to or acquired by the trust water
38 rights program on a temporary basis, the full quantity of water
39 diverted or withdrawn to exercise the right before the donation or
40 acquisition shall be placed in the trust water rights program and

1 shall revert to the donor or person from whom it was acquired when
2 the trust period ends. For a trust water right acquired by the state
3 and held or authorized for use by the department, the consumptive
4 quantity of the right when it reverts to the donor or person from
5 whom it was acquired is equal to the consumptive quantity of the
6 right prior to transfer into the trust water rights program.

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

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

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

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

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

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

29 **Sec. 10.** RCW 90.44.510 and 2011 c 72 s 1 are each amended to
30 read as follows:

31 The department shall issue a superseding water right permit or
32 certificate for a groundwater right where the source of water is an
33 aquifer for which the department adopts rules establishing a
34 groundwater management subarea and water from the federal Columbia
35 Basin project is delivered for use by a person who holds such a
36 groundwater right. The superseding water right permit or certificate
37 shall designate that portion of the groundwater right that is
38 replaced by water from the federal Columbia Basin project as a
39 standby or reserve right that may be used when water delivered by the

1 federal project is curtailed or otherwise not available. (~~The period~~
2 ~~of curtailment or unavailability shall be deemed a low flow period~~
3 ~~under RCW 90.14.140(2)(b).~~) The total number of acres irrigated by
4 the person under the groundwater right and through the use of water
5 delivered from the federal project must not exceed the quantity of
6 water authorized by the federal bureau of reclamation and number of
7 acres irrigated under the person's water right permit or certificate
8 for the use of water from the aquifer.

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

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

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

17 ~~(b) Such~~), unused water is deemed a standby or reserve water
18 supply that may again be used after the period of nonuse, as long as:

19 ~~((i))~~ (a) Reductions in water use are a result of conservation
20 practices, irrigation or water use efficiencies, long or short-term
21 changes in the types or rotations of crops grown, economic hardship,
22 pumping or system infrastructure costs, unavailability or
23 unsuitability of water, or willing and documented participation in
24 cooperative efforts to reduce aquifer depletion and optimize
25 available water resources; ~~((ii))~~ (b) withdrawal or diversion
26 facilities are maintained in good operating condition; and ~~((iii))~~
27 (c) the department has not issued a superseding water right permit or
28 certificate to designate a portion of the groundwater right replaced
29 by federal Columbia basin project water as a standby or reserve right
30 under RCW 90.44.510.

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

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

1 is not fully exercised as reflected in the notice provided under (a)
2 of this subsection.

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

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

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

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

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

25 **Sec. 12.** RCW 90.92.070 and 2009 c 183 s 7 are each amended to
26 read 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
29 deposit them on a temporary or permanent basis.

30 (2) The board has the following authority regarding banked water
31 in 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
36 water right, or portion thereof, that will be made available under
37 local water plans for stream flow enhancement under the terms of the
38 local water plan, as provided in this chapter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 NEW SECTION. Sec. 16. Section 3 of this act takes effect June
36 30, 2019.

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

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

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

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

12 (4) RCW 90.14.170 (Relinquishment of right for abandonment or
13 failure to beneficially use without sufficient cause—Rights acquired
14 due to ownership of land abutting stream, lake, or watercourse) and
15 2013 c 23 s 608 & 1967 c 233 s 17;

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

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

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

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