

**RCW 90.38.040 Trust water rights program.** (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 no applicability to trust water rights held by the department under this chapter or exercised under this section. [2001 c 237 s 29; 1994 c 264 s 90; 1989 c 429 s 5.]

**Finding—Intent—Severability—Effective date—2001 c 237:** See notes following RCW 90.82.040.

**Intent—2001 c 237:** See note following RCW 90.66.065.