
SUBSTITUTE SENATE BILL 6077

State of Washington

61st Legislature

2009 Regular Session

By Senate Environment, Water & Energy (originally sponsored by Senator Rockefeller)

READ FIRST TIME 02/25/09.

1 AN ACT Relating to improving water management through filing notice
2 of foregone water use and establishing a monitoring system; amending
3 RCW 90.42.130; adding a new section to chapter 90.42 RCW; and creating
4 a new section.

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

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 90.42 RCW
7 to read as follows:

8 (1) The legislature finds that on a seasonal or longer term basis,
9 a water right holder or claimant may not need to divert or withdraw any
10 or a part of the water allowable under the right or claim, but may be
11 uncertain whether foregoing the use or a portion of the use for a
12 season or successive seasons may cause the right or a portion of the
13 right to relinquish. It is the intent of this section to provide a
14 streamlined procedure to allow a water right holder to notify the state
15 of the water right holder's intent to forego water use without that
16 period of nonuse counting toward relinquishment of the right and with
17 the forgone water benefitting instream flows.

18 (2) A person entitled to divert or withdraw waters of the state may
19 elect to forego water use or a portion thereof without the period of

1 nonuse being included within the five-year period of nonuse
2 constituting relinquishment under RCW 90.14.160, 90.14.170, or
3 90.14.180, when the person provides prior written notice to the
4 department regarding reduced use.

5 (3)(a) Notice under this section must include:

6 (i) Information regarding the ownership of the rights, including
7 the identifying numbers of pertinent permits, certificates, or
8 previously filed water right claims;

9 (ii) A description of each water right or claim, including the land
10 area to which it is appurtenant, the purpose of use, the location of
11 the point of diversion or withdrawal, and the instantaneous quantity
12 and annual quantity allowed;

13 (iii) The period of time during which it is anticipated that use
14 will be foregone, if known;

15 (iv) An estimate of the quantity of water use that has been and
16 will be foregone, including both the total quantity in acre-feet per
17 year and the instantaneous diversion or withdrawal rate in cubic feet
18 per second or gallons per minute; and

19 (v) An estimate of reduced irrigated acres, if applicable.

20 (b) The anticipated period of future foregone use identified in
21 (a)(iii) of this subsection is not binding on the water right holder
22 and the notice of foregone use remains in effect until the water right
23 holder files a notice of amendment or revocation under subsection (6)
24 of this section.

25 (4) The department shall, through guidelines, establish the forms
26 of notification necessary to implement this section.

27 (5) When the department receives a notice of foregone water use,
28 the foregone water is deemed to be a temporary trust water right under
29 this chapter.

30 (6) The water right holder or claimant must maintain their
31 diversion and conveyance facilities in good working order and capable
32 of diverting and conveying the full quantity of the right while the
33 water is foregone.

34 (7) The water right holder or claimant may revoke or amend the
35 election to forego water use at any time by submitting a notice in
36 writing to the department. Upon receipt of such a notice, the
37 accumulation of time during which nonuse of water may constitute

1 relinquishment must be resumed if the water right holder or claimant
2 does not immediately resume the use of the water.

3 (8) During the period of foregone use of a water right, the water
4 represented by the consumptive use portion of the right must be
5 managed, to the extent practicable, by the department for the
6 maintenance and enhancement of stream flows and to preserve or restore
7 aquifer conditions.

8 (9) The department shall make a record of all notices of election
9 to forego water use and notices to amend or revoke such an election
10 that are received under this section and shall append the notices to
11 the water right and claim files associated with the notices. There is
12 no fee for filing and recording a notice under this section.

13 (10) The person who files a notice of foregone water use under this
14 section shall notify the department in writing of any changes in
15 contact information.

16 (11) The department shall provide notice annually to a water right
17 holder or claimant who has filed a notice of foregone water that is
18 still in operation. The water right holder or claimant must provide
19 updated notice if he or she would like to change any information
20 contained in the existing notice of foregone water use.

21 (12) The department may invalidate a notice of foregone water use
22 for good cause including, but not limited to, situations in which the
23 water right holder or claimant is not acting in good faith, if the
24 water right holder or claimant is acting fraudulently, or in situations
25 in which the foregone water use is not bona fide.

26 **Sec. 2.** RCW 90.42.130 and 2003 c 144 s 5 are each amended to read
27 as follows:

28 (1) The department shall seek input from agricultural
29 organizations, federal agencies, tribal governments, local governments,
30 watershed groups, conservation groups, and developers on (~~water~~
31 ~~banking~~) the trust water rights program, including water banking
32 (~~procedures~~) activities and identification of areas in Washington
33 state where water banking could assist in providing water supplies for
34 instream and out-of-stream uses. The department shall summarize any
35 comments received on (~~water banking~~) the trust water rights program
36 and submit a report, including any recommendations, to the appropriate

1 committees of the legislature for their consideration in the subsequent
2 legislative session.

3 (2) By December 31st of every even-numbered year, the department
4 shall submit a report to the appropriate committees of the legislature
5 on (~~water banking activities~~) the trust water rights program
6 authorized under RCW 90.42.100. The report shall:

7 (a) Evaluate the effectiveness of (~~water banking~~) the trust water
8 rights program in meeting the policies and objectives of this chapter;

9 (b) Describe any statutory, regulatory, or other impediments to
10 water banking in other areas of the state; and

11 (c) Identify other basins or regions that may benefit from
12 authorization for the department to use the trust water (~~rights~~)
13 rights program for water banking purposes.

14 (3) The department shall also include in the report on the trust
15 water rights program the number of notices received under section 1 of
16 this act, how much water the notices involve, the geographic locations
17 affected by the notices, and the impacts on streams.

18 NEW SECTION. Sec. 3. (1) By June 30, 2010, the department of
19 ecology shall prepare a data gap analysis that evaluates existing
20 groundwater and surface water information on water levels and water
21 quality within each water resource inventory area of the state. The
22 analysis must include:

23 (a) A summary of historic and current monitoring of ambient
24 groundwater and surface water levels and water quality across the
25 state;

26 (b) An evaluation of the completeness and quality of the data and
27 conclusions produced from such monitoring;

28 (c) An identification of basins where water quantity levels are of
29 concern but no monitoring is being conducted;

30 (d) An evaluation and recommendations for quality controls and
31 other protocols associated with data collection and management;

32 (e) A compilation and summary of existing studies of groundwater
33 and surface water levels, water quality, and monitoring activities; and

34 (f) Recommendations on the components necessary to establish a
35 comprehensive, statewide ambient groundwater and surface water
36 monitoring and assessment program and the funding necessary to
37 implement the program.

1 (2) The department of ecology must submit the data gap analysis to
2 the relevant policy committees of the senate and house of
3 representatives.

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