
HOUSE BILL 2815

State of Washington

57th Legislature

2002 Regular Session

By Representatives Schoesler, Buck, Clements, Cox, Armstrong, Pearson and Anderson

Read first time 01/29/2002. Referred to Committee on Agriculture & Ecology.

1 AN ACT Relating to water resource management; amending RCW
2 90.03.380, 90.03.370, 90.03.015, 90.42.080, 90.38.020, 90.44.050,
3 90.14.160, 90.14.170, 90.14.180, 90.44.100, and 90.03.330; reenacting
4 and amending RCW 90.14.140 and 43.84.092; adding new sections to
5 chapter 90.03 RCW; adding a new section to chapter 90.14 RCW; and
6 creating a new section.

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

8 **Sec. 1.** RCW 90.03.380 and 2001 c 237 s 5 are each amended to read
9 as follows:

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

1 right to enable irrigation of additional acreage or the addition of new
2 uses may be permitted if such change results in no increase in the
3 annual consumptive quantity of water used under the water right. For
4 purposes of this section, "annual consumptive quantity" means the
5 estimated or actual annual amount of water diverted or withdrawn
6 pursuant to the water right, reduced by the estimated annual amount of
7 return flows, (~~averaged over the two years~~) during the year of
8 greatest use within the most recent (~~five-year~~) fifteen-year period
9 of continuous beneficial use of the water right. Such an annual
10 consumptive quantity represents only the consumptive use portion of the
11 amount of water that may be spread to new or expanded uses; it does not
12 define either the extent of the right or the total amount of water that
13 may be transferred or changed to accomplish the spreading. Before any
14 transfer of such right to use water or change of the point of diversion
15 of water or change of purpose of use can be made, any person having an
16 interest in the transfer or change, shall file a written application
17 therefor with the department, and the application shall not be granted
18 until notice of the application is published as provided in RCW
19 90.03.280. If it shall appear that such transfer or such change may be
20 made without injury or detriment to existing rights, the department
21 shall issue to the applicant a certificate in duplicate granting the
22 right for such transfer or for such change of point of diversion or of
23 use. The certificate so issued shall be filed and be made a record
24 with the department and the duplicate certificate issued to the
25 applicant may be filed with the county auditor in like manner and with
26 the same effect as provided in the original certificate or permit to
27 divert water.

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

34 (3) A change in place of use by an individual water user or users
35 of water provided by an irrigation district need only receive approval
36 for the change from the board of directors of the district if the use
37 of water continues within the irrigation district, and when water is
38 provided by an irrigation entity that is a member of a board of joint
39 control created under chapter 87.80 RCW, approval need only be received

1 from the board of joint control if the use of water continues within
2 the area of jurisdiction of the joint board and the change can be made
3 without detriment or injury to existing rights.

4 (4) The right to use water for any beneficial use within the
5 general category of an agricultural use includes the right to use the
6 water, without applying to the department or any other governmental
7 entity for approval, for any other beneficial use within the general
8 category of an agricultural use. The general category of an
9 agricultural use of water includes, but is not limited to, the
10 beneficial use of water for stock watering, agricultural irrigation,
11 agricultural frost control, processing agricultural commodities into
12 agricultural products, and other agricultural uses.

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

16 (~~(+5)~~) (6)(a) Pending applications for new water rights are not
17 entitled to protection from impairment, injury, or detriment when an
18 application relating to an existing surface or ground water right is
19 considered.

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

25 (c) Notwithstanding any other existing authority to process
26 applications, including but not limited to the authority to process
27 applications under WAC 173-152-050 as it existed on January 1, 2001, an
28 application relating to an existing surface or ground water right may
29 be processed ahead of a previously filed application relating to an
30 existing right when sufficient information for a decision on the
31 previously filed application is not available and the applicant for the
32 previously filed application is sent written notice that explains what
33 information is not available and informs the applicant that processing
34 of the next application will begin. The previously filed application
35 does not lose its priority date and if the information is provided by
36 the applicant within sixty days, the previously filed application shall
37 be processed at that time. This subsection (~~(+5)~~) (6)(c) does not
38 affect any other existing authority to process applications.

1 (d) Nothing in this subsection (~~((5))~~) (6) is intended to stop the
2 processing of applications for new water rights.

3 (~~((6))~~) (7)(a) No applicant for a change, transfer, or amendment of
4 a surface or ground water right may be required to give up any part of
5 the applicant's valid water right or claim to a state agency, the trust
6 water rights program, or to other persons as a condition of processing
7 the application.

8 (~~((7))~~) (b) The department's review of an application for change,
9 transfer, or an amendment of a surface or ground water right shall not
10 include a consideration or investigation of potential relinquishment of
11 the water right or a portion of the right through prior nonuse nor
12 shall the department's receipt or review or other consideration of such
13 an application or its action on such an application be cause for the
14 department's initiation of relinquishment proceedings under chapter
15 90.14 RCW for prior nonuse of the water right that is the subject of
16 the application.

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

23 **Sec. 2.** RCW 90.14.140 and 2001 c 240 s 1, 2001 c 237 s 27, and
24 2001 c 69 s 5 are each reenacted and amended to read as follows:

25 (1) For the purposes of RCW 90.14.130 through 90.14.180,
26 "sufficient cause" shall be defined as the nonuse of all or a portion
27 of the water by the owner of a water right for a period of (~~(five))~~)
28 fifteen or more consecutive years where such nonuse occurs as a result
29 of:

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

31 (b) The destruction of works, diversions, or other facilities
32 essential to use of the water by a cause not within the control of the
33 owner of the appropriation, and good faith efforts to repair or replace
34 the works, diversions, or facilities have been and are being made;

35 (c) Nonuse occurring during a period of time within which the
36 exercise of all or part of the water right was not necessary due to
37 climatic conditions, if the water right holder had the facility capable
38 of handling the full allowed rate and duty, and was otherwise ready,

1 willing, and able to use the entire amount of water allowed under the
2 water right;

3 (d) Nonuse occurring during a period of time within which the water
4 was included in a pending transfer application;

5 (e) Active service in the armed forces of the United States during
6 military crisis;

7 ~~((e))~~ (f) Nonvoluntary service in the armed forces of the United
8 States;

9 ~~((d))~~ (g) The operation of legal proceedings;

10 ~~((e))~~ (h) Federal or state agency leases of or options to
11 purchase lands or water rights which preclude or reduce the use of the
12 right by the owner of the water right;

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

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

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

29 ~~((i))~~ (l) Water conservation measures ~~((implemented under the~~
30 ~~Yakima river basin water enhancement project, so long as the conserved~~
31 ~~water is reallocated in accordance with the provisions of P.L. 103-~~
32 ~~434)) or improved efficiency in distributing or using water under the~~
33 right;

34 ~~((j))~~ (m) Reliance by an irrigation water user on the transitory
35 presence of return flows in lieu of diversion or withdrawal of water
36 from the primary source of supply, if such return flows are measured or
37 reliably estimated using a scientific methodology generally accepted as
38 reliable within the scientific community; ~~((or~~

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

8 (o) Economic hardship that financially prevents, restricts, or
9 hinders the ability of the holder of the water right to use water under
10 the right.

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

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

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

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

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

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

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

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

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

1 (i) For a nonuse of water during foreclosure or bankruptcy
2 proceedings that involve the water right authorizing the water use or
3 involve the land to which the water right is appurtenant; or

4 (j) Unless an action is initiated by the department or is before
5 the pollution control hearings board or a court to relinquish the right
6 within fifteen years of the date the alleged nonuse of water under a
7 right occurred, or a finding that the right or a portion of the right
8 has been relinquished is made by the department within fifteen years of
9 the date the alleged nonuse of water under a right occurred, or a
10 motion or order is before the pollution control hearings board or court
11 that would result in relinquishment within fifteen years of the date
12 the alleged nonuse of water under a right occurred.

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

18 **Sec. 3.** RCW 90.03.370 and 2000 c 98 s 3 are each amended to read
19 as follows:

20 (1)(a) All applications for reservoir permits shall be subject to
21 the provisions of RCW 90.03.250 through 90.03.320. But the party or
22 parties proposing to apply to a beneficial use the water stored in any
23 such reservoir shall also file an application for a permit, to be known
24 as the secondary permit, which shall be in compliance with the
25 provisions of RCW 90.03.250 through 90.03.320. Such secondary
26 application shall refer to such reservoir as its source of water supply
27 and shall show documentary evidence that an agreement has been entered
28 into with the owners of the reservoir for a permanent and sufficient
29 interest in said reservoir to impound enough water for the purposes set
30 forth in said application. When the beneficial use has been completed
31 and perfected under the secondary permit, the department shall take the
32 proof of the water users under such permit and the final certificate of
33 appropriation shall refer to both the ditch and works described in the
34 secondary permit and the reservoir described in the primary permit.

35 (b) The department shall expedite processing applications for the
36 following types of storage proposals:

37 (i) Development of storage facilities that will not require a new
38 water right for the source of water to be stored;

1 (ii) Adding or changing one or more purposes of use of stored
2 water;

3 (iii) Adding to the storage capacity of an existing storage
4 facility; and

5 (iv) Applications for secondary permits to secure use from existing
6 storage facilities.

7 (c) The following types of storage facilities do not require a
8 reservoir or secondary permit from the department for the storage and
9 use of stored water:

10 (i) Rain barrels, cisterns, and other similar facilities for
11 capturing runoff from roofs, paved areas, and other hard surfaces on a
12 single residential, commercial, or industrial property or public
13 facility when the total amount of storage does not exceed ten thousand
14 gallons and the water stored is intended to be put to beneficial use;

15 (ii) Facilities to recapture and reuse return flow from irrigation
16 operations when serving a single farm operation if the acreage
17 irrigated is not increased beyond the acreage allowed to be irrigated
18 under the water right that applies to the property;

19 (iii) Off-stream ponds filled from a separate source not exceeding
20 ten acre feet in capacity;

21 (iv) Excavated ponds not filled from a separate source, but rather
22 from interception of the water table;

23 (v) Storm water management storage facilities if no beneficial use
24 is made of the captured water; and

25 (vi) Excavated municipal water reservoirs, water towers, and other
26 similar facilities that are integral to a water supply system's
27 distribution system.

28 (d) The storage and use of water from facilities described in (c)
29 of this subsection may be regulated by the department if necessary to
30 prevent or remedy the impairment of any water right or the diminishment
31 of instream flows.

32 (2)(a) For the purposes of this section, "reservoir" includes, in
33 addition to any surface reservoir, any naturally occurring underground
34 geological formation where water is collected and stored for subsequent
35 use as part of an underground artificial storage and recovery project.
36 To qualify for issuance of a reservoir permit an underground geological
37 formation must meet standards for review and mitigation of adverse
38 impacts identified, for the following issues:

39 (i) Aquifer vulnerability and hydraulic continuity;

- 1 (ii) Potential impairment of existing water rights;
- 2 (iii) Geotechnical impacts and aquifer boundaries and
- 3 characteristics;
- 4 (iv) Chemical compatibility of surface waters and ground water;
- 5 (v) Recharge and recovery treatment requirements;
- 6 (vi) System operation;
- 7 (vii) Water rights and ownership of water stored for recovery; and
- 8 (viii) Environmental impacts.

9 (b) Standards for review and standards for mitigation of adverse
10 impacts for an underground artificial storage and recovery project
11 shall be established by the department by rule. Notwithstanding the
12 provisions of RCW 90.03.250 through 90.03.320, analysis of each
13 underground artificial storage and recovery project and each
14 underground geological formation for which an applicant seeks the
15 status of a reservoir shall be through applicant-initiated studies
16 reviewed by the department.

17 (3) For the purposes of this section, "underground artificial
18 storage and recovery project" means any project in which it is intended
19 to artificially store water in the ground through injection, surface
20 spreading and infiltration, or other department-approved method, and to
21 make subsequent use of the stored water. However, (a) this subsection
22 does not apply to irrigation return flow, or to operational and seepage
23 losses that occur during the irrigation of land, or to water that is
24 artificially stored due to the construction, operation, or maintenance
25 of an irrigation district project, or to projects involving water
26 reclaimed in accordance with chapter 90.46 RCW; and (b) RCW 90.44.130
27 applies to those instances of claimed artificial recharge occurring due
28 to the construction, operation, or maintenance of an irrigation
29 district project or operational and seepage losses that occur during
30 the irrigation of land, as well as other forms of claimed artificial
31 recharge already existing at the time a ground water subarea is
32 established.

33 (4) Nothing in chapter 98, Laws of 2000 changes the requirements of
34 existing law governing issuance of permits to appropriate or withdraw
35 the waters of the state.

36 (5) The department shall report to the legislature by December 31,
37 2001, on the standards for review and standards for mitigation
38 developed under subsection (3) of this section and on the status of any

1 applications that have been filed with the department for underground
2 artificial storage and recovery projects by that date.

3 (6) Where needed to ensure that existing storage capacity is
4 effectively and efficiently used to meet multiple purposes, the
5 department may authorize reservoirs to be filled more than once per
6 year or once per season of use.

7 NEW SECTION. Sec. 4. A new section is added to chapter 90.03 RCW
8 to read as follows:

9 (1) The place of use for the water right of a public water system
10 as defined by RCW 70.119A.020(4) is whichever of the following that
11 provides the largest service area for the system:

12 (a) The place of use listed on the system's water right certificate
13 or in the statements of claim for the system's water rights filed in
14 the state's water rights claims registry established under RCW
15 90.14.111;

16 (b) The place of use identified in the water system plan most
17 recently approved by the department of health for the system under RCW
18 43.20.050 or as part of a coordinated water system plan under chapter
19 70.116 RCW; or

20 (c) The place of use identified in the water system plan most
21 recently submitted by the system to the department of health for
22 approval under RCW 43.20.050 or as part of a coordinated water system
23 plan under chapter 70.116 RCW.

24 (2) Subsection (1)(b) and (c) of this section apply only to public
25 water systems for which water system plans have been submitted for
26 approval under RCW 43.20.050 or as part of a coordinated water system
27 plan under chapter 70.116 RCW.

28 **Sec. 5.** RCW 90.03.015 and 1987 c 109 s 65 are each amended to read
29 as follows:

30 ~~((As used in this chapter:))~~ The definitions in this section apply
31 throughout this chapter unless the context clearly requires otherwise.

32 (1) "Department" means the department of ecology(~~(+)~~).

33 (2) "Director" means the director of ecology(~~(+ and)~~).

34 (3) "Municipal water supplier" means a purveyor, as defined in RCW
35 70.116.030(4), that operates a public water system with fifteen or more
36 service connections.

1 (4) "Municipal water supply purposes" means any use for which water
2 is or is anticipated to be provided by a municipal water supplier.

3 (5) "Person" means any firm, association, water users' association,
4 corporation, irrigation district, or municipal corporation, as well as
5 an individual.

6 **Sec. 6.** RCW 90.42.080 and 2001 c 237 s 31 are each amended to read
7 as follows:

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

15 (b) If an aquatic species is listed as threatened or endangered
16 under federal law for a body of water, or is listed as depressed or
17 threatened by reason of inadequate stream flow under state law, and the
18 holder of a right to water from the body of water chooses to donate all
19 or a portion of the person's water right to the trust water system to
20 assist in providing those instream flows on a temporary or permanent
21 basis, the department shall accept the donation on such terms as the
22 person may prescribe as long as the donation satisfies the requirements
23 of subsection (4) of this section and the other applicable requirements
24 of this chapter and the terms prescribed are relevant and material to
25 protecting any interest in the water right retained by the donor. Once
26 accepted, such rights are trust water rights within the conditions
27 prescribed by the donor.

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

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

34 (4) A water right donated under subsection (1)(b) of this section
35 shall not exceed the extent to which the water right was exercised
36 during the five years before the donation nor may the total of any
37 portion of the water right remaining with the donor plus the donated
38 portion of the water right exceed the extent to which the water right

1 was exercised during the five years before the donation. A water right
2 holder who believes his or her water right has been impaired by a trust
3 water right donated under subsection (1)(b) of this section may request
4 that the department review the impairment claim. If the department
5 determines that exercising the trust water right resulting from the
6 donation or exercising a portion of that trust water right donated
7 under subsection (1)(b) of this section is impairing existing water
8 rights in violation of RCW 90.42.070, the trust water right shall be
9 altered by the department to eliminate the impairment. Any decision of
10 the department to alter or not to alter a trust water right donated
11 under subsection (1)(b) of this section is appealable to the pollution
12 control hearings board under RCW 43.21B.230. A donated water right's
13 status as a trust water right under this subsection is not evidence of
14 the validity or quantity of the water right.

15 (5) The provisions of RCW 90.03.380 and 90.03.390 do not apply to
16 donations for instream flows described in subsection (1)(b) of this
17 section, but do apply to other transfers of water rights under this
18 section.

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

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

28 (8) If the department acquires a trust water right by lease in an
29 area in which a drought order has been issued under RCW 43.83B.405 and
30 is in effect at the time the department leases the water right, the
31 amount of the trust water right shall not exceed the extent to which
32 the water right was exercised during the five years before the
33 acquisition was made nor may the total of any portion of the water
34 right remaining with the original water right holder plus the portion
35 of the water right leased by the department exceed the extent to which
36 the water right was exercised during the five years before the
37 acquisition. A water right holder who believes his or her water right
38 has been impaired by a trust water right leased under this subsection
39 may request that the department review the impairment claim. If the

1 department determines that exercising the trust water right resulting
2 from the leasing or exercising (~~{}~~) of a portion of that trust
3 water right leased under this subsection is impairing existing water
4 rights in violation of RCW 90.42.070, the trust water right shall be
5 altered by the department to eliminate the impairment. Any decision of
6 the department to alter or not to alter a trust water right leased
7 under this subsection is appealable to the pollution control hearings
8 board under RCW 43.21B.230. The department's leasing of a trust water
9 right under this subsection is not evidence of the validity or quantity
10 of the water right.

11 (9) For a water right donated to or acquired by the trust water
12 rights program on a temporary basis, the full quantity of water
13 diverted or withdrawn to exercise the right before the donation or
14 acquisition shall be placed in the trust water rights program and shall
15 revert to the donor or person from whom it was acquired when the trust
16 period ends.

17 (10) The procedures identified in subsection (1)(b) of this section
18 for donations and identified in subsection (8) of this section for
19 leases also apply to donations or leases of existing water rights
20 where:

21 (a) Existing water rights related to agriculture are donated or
22 leased to preserve the opportunity for future agricultural use and to
23 enhance instream flows temporarily; or

24 (b) Existing water rights acquired for the purpose of providing
25 water supply to industrial lands as designated in a land use plan
26 adopted under chapter 36.70A RCW are donated or leased to preserve the
27 opportunity for future industrial use and to enhance instream flows
28 temporarily.

29 **Sec. 7.** RCW 90.38.020 and 2001 c 237 s 28 are each amended to read
30 as follows:

31 (1)(a) The department may acquire water rights, including but not
32 limited to storage rights, by purchase, lease, gift, or other
33 appropriate means other than by condemnation, from any person or entity
34 or combination of persons or entities. Once acquired, such rights are
35 trust water rights. A water right acquired by the state that is
36 expressly conditioned to limit its use to instream purposes shall be
37 administered as a trust water right in compliance with that condition.

1 (b) If an aquatic species is listed as threatened or endangered
2 under federal law for a body of water, or is listed as depressed or
3 threatened by reason of inadequate stream flows under state law, and
4 the holder of a right to water from the body of water chooses to donate
5 all or a portion of the person's water right to the trust water system
6 to assist in providing those instream flows on a temporary or permanent
7 basis, the department shall accept the donation on such terms as the
8 person may prescribe as long as the donation satisfies the requirements
9 of subsection (4) of this section and the other applicable requirements
10 of this chapter and the terms prescribed are relevant and material to
11 protecting any interest in the water right retained by the donor. Once
12 accepted, such rights are trust water rights within the conditions
13 prescribed by the donor.

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

18 (3) The trust water rights may be acquired on a temporary or
19 permanent basis.

20 (4) A water right donated under subsection (1)(b) of this section
21 shall not exceed the extent to which the water right was exercised
22 during the five years before the donation nor may the total of any
23 portion of the water right remaining with the donor plus the donated
24 portion of the water right exceed the extent to which the water right
25 was exercised during the five years before the donation. A water right
26 holder who believes his or her water right has been impaired by a trust
27 water right donated under subsection (1)(b) of this section may request
28 that the department review the impairment claim. If the department
29 determines that exercising the trust water right resulting from the
30 donation or exercising a portion of that trust water right donated
31 under subsection (1)(b) of this section is impairing existing water
32 rights in violation of RCW 90.38.902, the trust water right shall be
33 altered by the department to eliminate the impairment. Any decision of
34 the department to alter or not alter a trust water right donated under
35 subsection (1)(b) of this section is appealable to the pollution
36 control hearings board under RCW 43.21B.230. A donated water right's
37 status as a trust water right under this subsection is not evidence of
38 the validity or quantity of the water right.

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

7 (6) If the department acquires a trust water right by lease in an
8 area in which a drought order has been issued under RCW 43.83B.405 and
9 is in effect at the time the department leases the water right, the
10 amount of the trust water right shall not exceed the extent to which
11 the water right was exercised during the five years before the
12 acquisition was made nor may the total of any portion of the water
13 right remaining with the original water right holder plus the portion
14 of the water right leased by the department exceed the extent to which
15 the water right was exercised during the five years before the
16 acquisition. A water right holder who believes his or her water right
17 has been impaired by a trust water right leased under this subsection
18 may request that the department review the impairment claim. If the
19 department determines that exercising the trust water right resulting
20 from the leasing or exercising (~~{}~~) of a portion of that trust
21 water right leased under this subsection is impairing existing water
22 rights in violation of RCW 90.38.902, the trust water right shall be
23 altered by the department to eliminate the impairment. Any decision of
24 the department to alter or not to alter a trust water right leased
25 under this subsection is appealable to the pollution control hearings
26 board under RCW 43.21B.230. The department's leasing of a trust water
27 right under this subsection is not evidence of the validity or quantity
28 of the water right.

29 (7) For a water right donated to or acquired by the trust water
30 rights program on a temporary basis, the full quantity of water
31 diverted or withdrawn to exercise the right before the donation or
32 acquisition shall be placed in the trust water rights program and shall
33 revert to the donor or person from whom it was acquired when the trust
34 period ends.

35 (8) The procedures identified in subsection (1)(b) of this section
36 for donations and identified in subsection (6) of this section for
37 leases shall also apply to donations or leases of existing water rights
38 where:

1 (a) Existing water rights related to agriculture are donated or
2 leased to preserve the opportunity for future agricultural use and to
3 enhance instream flows temporarily; or

4 (b) Existing water rights acquired for the purpose of providing
5 water supply to industrial lands as designated in a land use plan
6 adopted under chapter 36.70A RCW are donated or leased to preserve the
7 opportunity for future industrial use and to enhance instream flows
8 temporarily.

9 NEW SECTION. Sec. 8. The legislature finds that the state has a
10 significant need to provide a reliable water supply for people, farms,
11 and fish, and that this can be accomplished through such activities as
12 the construction of multiple purpose water storage facilities, and the
13 leasing of water.

14 NEW SECTION. Sec. 9. A new section is added to chapter 90.03 RCW
15 to read as follows:

16 The water for agriculture, salmon, and humans account is hereby
17 created in the state treasury. The moneys in this account shall only
18 be used for activities that develop water storage projects for multiple
19 purposes, lease water, ensure safe drinking water, increase municipal
20 and agricultural water conservation, promote water reuse, and to
21 implement projects developed through locally based watershed planning.
22 All interest earnings on moneys deposited into the account, including
23 loan repayments, shall remain in the account and may be used for
24 eligible purposes. Moneys in the account may be spent only after
25 appropriation.

26 NEW SECTION. Sec. 10. A new section is added to chapter 90.03 RCW
27 to read as follows:

28 (1) The proceeds from the sale of bonds authorized by this chapter
29 shall be deposited into the water for agriculture, salmon, and humans
30 account created in section 9 of this act unless otherwise specified
31 below. These funds shall be appropriated by the legislature as
32 follows:

33 (a) Fifty percent of the funding shall be used for water storage
34 and conveyance projects for multiple instream and out-of-stream
35 purposes. For this purpose, funding for a water storage facility that
36 is within the distribution works of a public water system and within an

1 incorporated area or within an area designated as an urban growth area
2 under chapter 36.70A RCW shall be considered funding for a drinking
3 water system and not funding that applies to the fifty percent
4 dedicated by this subsection (1)(a). The department shall establish
5 criteria for a grant and loan program for the construction, planning,
6 design, and studies necessary for water storage and conveyance
7 projects. The department shall contract with the public works board
8 created under RCW 43.155.030 to administer these grants and loans;

9 (b) Twenty-five percent of the funding shall be deposited into the
10 public works assistance account under chapter 43.155 RCW and shall be
11 used for safe drinking water and reclaimed water projects;

12 (c) Ten percent of the funding shall be used for agricultural water
13 conservation projects and instream flows;

14 (d) Seven and one-half percent of the funding shall be used to
15 lease water to meet instream flow levels needed by fish; and

16 (e) Seven and one-half percent of the funding shall be used for
17 implementing projects developed through the watershed planning process
18 authorized under chapter 90.82 RCW.

19 (2) The percentage of the local funding for a capital project that
20 is required under this section to receive state funding shall be the
21 same for all types and categories of capital projects.

22 (3) If an agricultural water conservation project is provided
23 funding under this section and in consideration thereof a portion of
24 the water available under a water right involved in the project is to
25 be transferred or otherwise dedicated to the state, the transfer or
26 dedication shall be in the form of a lease of water for a period that
27 is not more than the period during which the elements of the
28 conservation project are estimated to operate effectively and
29 efficiently. The quantity of water transferred or dedicated to the
30 state expressed as a percentage of the total water available under the
31 right before the transfer or dedication shall not exceed the percentage
32 of the total cost of the conservation project represented by the funds
33 provided by the state for the conservation project.

34 (4) The legislature may authorize expenditures from the water for
35 agriculture, salmon, and humans account to pay for the costs of
36 establishing and administering the water infrastructure programs
37 described in subsection (1) of this section. The amount of funding
38 dedicated to this purpose shall not exceed one percent of the total
39 amount of bonds sold in any calendar year. These funds may be used to

1 define technical and financial program requirements, such as grant and
2 loan criteria, to solicit, review, and award funds, and to monitor
3 performance, make payments, and conduct other administrative
4 activities.

5 NEW SECTION. **Sec. 11.** A new section is added to chapter 90.03 RCW
6 to read as follows:

7 The legislature shall appropriate any moneys that are provided
8 under section 10 of this act for capital projects, including planning,
9 engineering, and other studies for such projects, to the public works
10 board created under RCW 43.155.030. Before November 1st of each year,
11 the board shall develop and submit to the governor and the legislature
12 a prioritized list of projects that are recommended for funding by the
13 legislature under this section. The board shall approve and disburse
14 grants and loans for such projects from appropriations made under this
15 section.

16 **Sec. 12.** RCW 43.84.092 and 2001 2nd sp.s. c 14 s 608, 2001 c 273
17 s 6, 2001 c 141 s 3, and 2001 c 80 s 5 are each reenacted and amended
18 to read as follows:

19 (1) All earnings of investments of surplus balances in the state
20 treasury shall be deposited to the treasury income account, which
21 account is hereby established in the state treasury.

22 (2) The treasury income account shall be utilized to pay or receive
23 funds associated with federal programs as required by the federal cash
24 management improvement act of 1990. The treasury income account is
25 subject in all respects to chapter 43.88 RCW, but no appropriation is
26 required for refunds or allocations of interest earnings required by
27 the cash management improvement act. Refunds of interest to the
28 federal treasury required under the cash management improvement act
29 fall under RCW 43.88.180 and shall not require appropriation. The
30 office of financial management shall determine the amounts due to or
31 from the federal government pursuant to the cash management improvement
32 act. The office of financial management may direct transfers of funds
33 between accounts as deemed necessary to implement the provisions of the
34 cash management improvement act, and this subsection. Refunds or
35 allocations shall occur prior to the distributions of earnings set
36 forth in subsection (4) of this section.

1 (3) Except for the provisions of RCW 43.84.160, the treasury income
2 account may be utilized for the payment of purchased banking services
3 on behalf of treasury funds including, but not limited to, depository,
4 safekeeping, and disbursement functions for the state treasury and
5 affected state agencies. The treasury income account is subject in all
6 respects to chapter 43.88 RCW, but no appropriation is required for
7 payments to financial institutions. Payments shall occur prior to
8 distribution of earnings set forth in subsection (4) of this section.

9 (4) Monthly, the state treasurer shall distribute the earnings
10 credited to the treasury income account. The state treasurer shall
11 credit the general fund with all the earnings credited to the treasury
12 income account except:

13 (a) The following accounts and funds shall receive their
14 proportionate share of earnings based upon each account's and fund's
15 average daily balance for the period: The capitol building
16 construction account, the Cedar River channel construction and
17 operation account, the Central Washington University capital projects
18 account, the charitable, educational, penal and reformatory
19 institutions account, the common school construction fund, the county
20 criminal justice assistance account, the county sales and use tax
21 equalization account, the data processing building construction
22 account, the deferred compensation administrative account, the deferred
23 compensation principal account, the department of retirement systems
24 expense account, the drinking water assistance account, the drinking
25 water assistance administrative account, the drinking water assistance
26 repayment account, the Eastern Washington University capital projects
27 account, the education construction fund, the emergency reserve fund,
28 the federal forest revolving account, the health services account, the
29 public health services account, the health system capacity account, the
30 personal health services account, the state higher education
31 construction account, the higher education construction account, the
32 highway infrastructure account, the industrial insurance premium refund
33 account, the judges' retirement account, the judicial retirement
34 administrative account, the judicial retirement principal account, the
35 local leasehold excise tax account, the local real estate excise tax
36 account, the local sales and use tax account, the medical aid account,
37 the mobile home park relocation fund, the multimodal transportation
38 account, the municipal criminal justice assistance account, the
39 municipal sales and use tax equalization account, the natural resources

1 deposit account, the oyster reserve land account, the perpetual
2 surveillance and maintenance account, the public employees' retirement
3 system plan 1 account, the public employees' retirement system combined
4 plan 2 and plan 3 account, the public health supplemental account, the
5 Puyallup tribal settlement account, the resource management cost
6 account, the site closure account, the special wildlife account, the
7 state employees' insurance account, the state employees' insurance
8 reserve account, the state investment board expense account, the state
9 investment board commingled trust fund accounts, the supplemental
10 pension account, the teachers' retirement system plan 1 account, the
11 teachers' retirement system combined plan 2 and plan 3 account, the
12 tobacco prevention and control account, the tobacco settlement account,
13 the transportation infrastructure account, the tuition recovery trust
14 fund, the University of Washington bond retirement fund, the University
15 of Washington building account, the volunteer fire fighters' and
16 reserve officers' relief and pension principal fund, the volunteer fire
17 fighters' and reserve officers' administrative fund, the Washington
18 fruit express account, the Washington judicial retirement system
19 account, the Washington law enforcement officers' and fire fighters'
20 system plan 1 retirement account, the Washington law enforcement
21 officers' and fire fighters' system plan 2 retirement account, the
22 Washington school employees' retirement system combined plan 2 and 3
23 account, the Washington state health insurance pool account, the
24 Washington state patrol retirement account, the Washington State
25 University building account, the Washington State University bond
26 retirement fund, the water for agriculture, salmon, and humans account,
27 the water pollution control revolving fund, and the Western Washington
28 University capital projects account. Earnings derived from investing
29 balances of the agricultural permanent fund, the normal school
30 permanent fund, the permanent common school fund, the scientific
31 permanent fund, and the state university permanent fund shall be
32 allocated to their respective beneficiary accounts. All earnings to be
33 distributed under this subsection (4)(a) shall first be reduced by the
34 allocation to the state treasurer's service fund pursuant to RCW
35 43.08.190.

36 (b) The following accounts and funds shall receive eighty percent
37 of their proportionate share of earnings based upon each account's or
38 fund's average daily balance for the period: The aeronautics account,
39 the aircraft search and rescue account, the county arterial

1 preservation account, the department of licensing services account, the
2 essential rail assistance account, the ferry bond retirement fund, the
3 grade crossing protective fund, the high capacity transportation
4 account, the highway bond retirement fund, the highway safety account,
5 the motor vehicle fund, the motorcycle safety education account, the
6 pilotage account, the public transportation systems account, the Puget
7 Sound capital construction account, the Puget Sound ferry operations
8 account, the recreational vehicle account, the rural arterial trust
9 account, the safety and education account, the special category C
10 account, the state patrol highway account, the transportation equipment
11 fund, the transportation fund, the transportation improvement account,
12 the transportation improvement board bond retirement account, and the
13 urban arterial trust account.

14 (5) In conformance with Article II, section 37 of the state
15 Constitution, no treasury accounts or funds shall be allocated earnings
16 without the specific affirmative directive of this section.

17 **Sec. 13.** RCW 90.44.050 and 1987 c 109 s 108 are each amended to
18 read as follows:

19 After June 6, 1945, no withdrawal of public ground waters of the
20 state shall be begun, nor shall any well or other works for such
21 withdrawal be constructed, unless an application to appropriate such
22 waters has been made to the department and a permit has been granted by
23 it ~~((as herein))~~ provided ~~((: EXCEPT, HOWEVER, That))~~ in this section.
24 The following uses are exempt from this section, to the extent that the
25 uses are regularly used beneficially, and are entitled to a right equal
26 to that established by a permit issued under this chapter:

27 (1) Any withdrawal of public ground waters for stock-watering
28 purposes ~~((, or for))~~;

29 (2) Any withdrawal of public ground waters in an amount not
30 exceeding five thousand gallons a day for:

31 (a) The watering of a lawn; or

32 (b) The watering of a noncommercial garden not exceeding one-half
33 acre in area ~~((,))~~; or ~~((for))~~

34 (c) Single or group domestic uses ~~((in an amount not exceeding five~~
35 thousand gallons a day,)) or ~~((for))~~

36 (d) An industrial purpose ~~((in an amount not exceeding five~~
37 thousand gallons a day, is and shall be exempt from the provisions of
38 this section, but, to the extent that it is regularly used

1 beneficially, shall be entitled to a right equal to that established by
2 a permit issued under the provisions of this chapter:—PROVIDED,
3 HOWEVER, That)). However, the department from time to time may require
4 the person or agency making any such small withdrawal to furnish
5 information as to the means for and the quantity of that withdrawal(÷
6 PROVIDED, FURTHER, That)), but the department does not have authority
7 to require the metering or measuring of the withdrawals authorized in
8 this section. At the option of the party making withdrawals of ground
9 waters of the state not exceeding five thousand gallons per day,
10 applications under this section or declarations under RCW 90.44.090 may
11 be filed and permits and certificates obtained in the same manner and
12 under the same requirements as is in this chapter provided in the case
13 of withdrawals in excess of five thousand gallons a day.

14 **Sec. 14.** RCW 90.14.160 and 1981 c 291 s 1 are each amended to read
15 as follows:

16 Any person entitled to divert or withdraw waters of the state
17 through any appropriation authorized by enactments of the legislature
18 prior to enactment of chapter 117, Laws of 1917, or by custom, or by
19 general adjudication, who abandons the same, or who voluntarily fails,
20 without sufficient cause, to beneficially use all or any part of said
21 right to divert or withdraw for any period of ((five)) fifteen
22 successive years after July 1, 1967, shall relinquish such right or
23 portion thereof, and said right or portion thereof shall revert to the
24 state, after a process providing due process in accordance with RCW
25 90.14.130 and not at the time of the nonuse, and the waters affected by
26 said right shall become available for appropriation in accordance with
27 RCW 90.03.250.

28 **Sec. 15.** RCW 90.14.170 and 1967 c 233 s 17 are each amended to
29 read as follows:

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

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

3 **Sec. 16.** RCW 90.14.180 and 1987 c 109 s 101 are each amended to
4 read as follows:

5 Any person hereafter entitled to divert or withdraw waters of the
6 state through an appropriation authorized under RCW 90.03.330,
7 90.44.080, or 90.44.090 who abandons the same, or who voluntarily
8 fails, without sufficient cause, to beneficially use all or any part of
9 said right to withdraw for any period of ((five)) fifteen successive
10 years shall relinquish such right or portion thereof, and such right or
11 portion thereof shall revert to the state, and the waters affected by
12 said right shall become available for appropriation in accordance with
13 RCW 90.03.250. All certificates hereafter issued by the department of
14 ecology pursuant to RCW 90.03.330 shall expressly incorporate this
15 section by reference. Such relinquishment occurs after a process
16 providing due process in accordance with RCW 90.14.130 and not at the
17 time of the nonuse.

18 NEW SECTION. **Sec. 17.** A new section is added to chapter 90.14 RCW
19 to read as follows:

20 To determine the measurement for beneficial use, there must be at
21 least five years of use within the last fifteen years. Of these five
22 years of use within the last fifteen years, the one year with the
23 largest volume is the beneficial use amount.

24 **Sec. 18.** RCW 90.44.100 and 1997 c 316 s 2 are each amended to read
25 as follows:

26 (1) After an application to, and upon the issuance by the
27 department of an amendment to the appropriate permit or certificate of
28 ground water right, the holder of a valid right to withdraw public
29 ground waters may, without losing the holder's priority of right,
30 construct wells or other means of withdrawal at a new location in
31 substitution for or in addition to those at the original location, or
32 the holder may change the ((manner)) purpose or the place of use of the
33 water.

34 (2) An amendment to construct replacement or a new additional well
35 or wells at a location outside of the location of the original well or
36 wells or to change the ((manner)) purpose or place of use of the water

1 shall be issued only after publication of notice of the application and
2 findings as prescribed in the case of an original application. Such
3 amendment shall be issued by the department only on the conditions
4 that: (a) The additional or replacement well or wells shall tap the
5 same body of public ground water as the original well or wells; (b)
6 where a replacement well or wells is approved, the use of the original
7 well or wells shall be discontinued and the original well or wells
8 shall be properly decommissioned as required under chapter 18.104 RCW;
9 (c) where an additional well or wells is constructed, the original well
10 or wells may continue to be used, but the combined total withdrawal
11 from the original and additional well or wells shall not enlarge by
12 increasing the annual consumptive quantity of the right conveyed by the
13 original permit or certificate; and (d) other existing rights shall not
14 be impaired. The department may specify an approved manner of
15 construction and shall require a showing of compliance with the terms
16 of the amendment, as provided in RCW 90.44.080 in the case of an
17 original permit.

18 (3) The construction of a replacement or new additional well or
19 wells at the location of the original well or wells shall be allowed
20 without application to the department for an amendment. However, the
21 following apply to such a replacement or new additional well: (a) The
22 well shall tap the same body of public ground water as the original
23 well or wells; (b) if a replacement well is constructed, the use of the
24 original well or wells shall be discontinued and the original well or
25 wells shall be properly decommissioned as required under chapter 18.104
26 RCW; (c) if a new additional well is constructed, the original well or
27 wells may continue to be used, but the combined total withdrawal from
28 the original and additional well or wells shall not enlarge the right
29 conveyed by the original water use permit or certificate; (d) the
30 construction and use of the well shall not interfere with or impair
31 water rights with an earlier date of priority than the water right or
32 rights for the original well or wells; (e) the replacement or
33 additional well shall be located no closer than the original well to a
34 well it might interfere with; (f) the department may specify an
35 approved manner of construction of the well; and (g) the department
36 shall require a showing of compliance with the conditions of this
37 subsection (3).

1 (4) A certificate issued by the department under this chapter may
2 not be revoked or diminished without specific statutory direction to do
3 so unless:

4 (a) The water right represented by the certificate has been
5 relinquished under chapter 90.14 RCW and the revocation or diminishment
6 represents that relinquishment; or

7 (b) The certificate was issued with ministerial errors or was
8 obtained through the misrepresentation of the completion of the project
9 or the quantity appropriated. The department may adjust a certificate
10 under this subsection (4)(b) if ministerial errors are discovered, but
11 only to the extent necessary to correct the ministerial errors, and it
12 may revoke a certificate or diminish the right represented by a
13 certificate if the certificate has been obtained through such a
14 misrepresentation. However, the authority provided by this subsection
15 (4) does not include revoking, diminishing, or adjusting a certificate
16 based on any change in policy regarding the issuance of such
17 certificates occurring since the certificate was issued except as
18 specifically directed by statute.

19 (5) As used in this section, the "location of the original well or
20 wells" is the area described as the point of withdrawal in the original
21 public notice published for the application for the water right for the
22 well.

23 (6) The right to use water for any beneficial use within the
24 general category of an agricultural use includes the right to use the
25 water, without applying to the department or any other governmental
26 entity for approval, for any other beneficial use within the general
27 category of an agricultural use. The general category of an
28 agricultural use of water includes, but is not limited to, the
29 beneficial use of water for stock watering, agricultural irrigation,
30 agricultural frost control, processing agricultural commodities into
31 agricultural products, and other agricultural uses.

32 **Sec. 19.** RCW 90.03.330 and 1987 c 109 s 89 are each amended to
33 read as follows:

34 (1) Upon a showing satisfactory to the department that any
35 appropriation has been perfected in accordance with the provisions of
36 this chapter, it shall be the duty of the department to issue to the
37 applicant a certificate stating such facts in a form to be prescribed
38 by him, and such certificate shall thereupon be recorded with the

1 department. Any original water right certificate issued, as provided
2 by this chapter, shall be recorded with the department and thereafter,
3 at the expense of the party receiving the same, be by the department
4 transmitted to the county auditor of the county or counties where the
5 distributing system or any part thereof is located, and be recorded in
6 the office of such county auditor, and thereafter be transmitted to the
7 owner thereof.

8 (2) A certificate issued by the department under this chapter may
9 not be revoked or diminished without specific statutory direction to do
10 so unless:

11 (a) The water right represented by the certificate has been
12 relinquished under chapter 90.14 RCW and the revocation or diminishment
13 represents that relinquishment; or

14 (b) The certificate was issued with ministerial errors or was
15 obtained through the misrepresentation of the completion of the project
16 or the quantity appropriated. The department may adjust a certificate
17 under this subsection (2)(b) if ministerial errors are discovered, but
18 only to the extent necessary to correct the ministerial errors, and it
19 may revoke a certificate or diminish the right represented by a
20 certificate if the certificate has been obtained through such a
21 misrepresentation. However, the authority provided by this subsection
22 (2) does not include revoking, diminishing, or adjusting a certificate
23 based on any change in policy regarding the issuance of such
24 certificates occurring since the certificate was issued except as
25 specifically directed by statute.

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