
SENATE BILL 6734

State of Washington

58th Legislature

2004 Regular Session

By Senators Morton, Hale, Doumit, Hewitt, B. Sheldon, T. Sheldon, Stevens, Mulliken and Rasmussen; by request of Governor Locke

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1 AN ACT Relating to providing certainty and clarity in the
2 administration of water rights; amending RCW 90.03.380; reenacting and
3 amending RCW 90.14.140; adding new sections to chapter 90.03 RCW;
4 adding a new section to chapter 90.44 RCW; adding a new chapter to
5 Title 90 RCW; creating a new section; and repealing RCW 90.14.130,
6 90.14.160, 90.14.170, 90.14.180, 90.14.190, 90.14.200, 90.14.210,
7 90.14.215, and 90.14.230.

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

9 NEW SECTION. **Sec. 1.** (1) The legislature finds that the present
10 water rights management system is not able to function quickly and
11 efficiently. This is in part due to the variety of types of water
12 rights, including many water rights based on claims established prior
13 to the creation of a statutory permit process, and uncertainty raised
14 by court decisions affecting administration of the water code in light
15 of this variety of rights.

16 Therefore, the legislature declares that the creation of a water
17 rights confirmation process is critical to the economic viability of
18 the state. The goal of this confirmation process is to provide
19 certainty and clarity to water right holders so that the administration

1 of the water code is more effective and expedient while ensuring that
2 water right holders are ensured due process. This process will result
3 in faster, simpler water right transactions, provide a clarified
4 picture of actual water use, and provide greater certainty as to the
5 effect of water withdrawals and diversions on stream flow levels.

6 (2) The legislature finds that the present system for determining
7 that a water right holder has relinquished or abandoned a water right
8 creates disincentives for using water efficiently, and greatly
9 contributes to the uncertainty in the use of water rights and to the
10 administration of an effective water management system.

11 Therefore, the legislature declares that this system should be
12 reformed by repealing the current law of relinquishment and by
13 reforming the law of abandonment to create a system that continues to
14 require continuous beneficial use of water rights, but also provides
15 certainty and flexibility of use for water right holders and state
16 water managers.

17 (3)(a) The legislature finds that the present provisions of the
18 water code are ambiguous regarding whether, in accordance with the
19 relinquishment provisions, the mere nonuse of an otherwise valid water
20 right, without any other action, results in the relinquishment of that
21 water right and creates a corresponding right of use in other users.
22 The legislature finds that this ambiguity creates unacceptable levels
23 of uncertainty for water right holders and state water managers.

24 (b) The legislature further finds that water right holders are
25 entitled to due process under the Washington state Constitution prior
26 to any determination that a water right has relinquished.

27 (c) Therefore, the legislature declares that to ensure an effective
28 and efficient transition to a new water rights confirmation process,
29 water rights are not considered relinquished unless determined to be so
30 by a court of competent jurisdiction or an administrative process
31 subject to judicial review. Any water rights determined to be
32 relinquished by such a court revert to the state for appropriation in
33 accordance with the water code.

34 (4)(a) The legislature further finds that clear and consistent
35 standards for changes and transfers are essential to ensure that
36 existing water rights are an effective tool for water management.

37 (b) Therefore, the legislature declares that the use of water to
38 irrigate additional acres or supply additional uses may take place as

1 long as such a change in the water right does not cause detriment or
2 injury to any other water right. Additionally, the legislature
3 declares that alternatives to the consumptive use test for water
4 spreading to additional lands are essential to achieve flexibility.

5 (5)(a) Further, the legislature finds that certain water uses
6 necessitate greater flexibility and that such uses are currently exempt
7 from relinquishment. These uses include: Power development, standby
8 or reserve water supplies, municipal water supply, federal irrigation
9 projects, water held in trust, and permits still under development.

10 (b) Therefore, the legislature declares that these water uses, and
11 ground water withdrawals exempt from permitting requirements, are not
12 subject to the water rights confirmation process established in this
13 chapter, unless the holder of the water right elects to subject that
14 right to the confirmation process.

15 NEW SECTION. **Sec. 2.** (1) Within one hundred eighty days of the
16 effective date of this section, the presiding judge of the water court,
17 or until establishment of a water court, the chief judges of the
18 Washington court of appeals, shall appoint three or more referees as
19 needed to process water rights under the water rights confirmation
20 process established by this chapter.

21 (2) Each referee shall consult with the department of ecology to
22 establish a water quantity confirmation schedule for each water
23 resource inventory area of the state. The water rights confirmation
24 process created in this chapter must be completed by December 31, 2014,
25 for each water resource inventory area.

26 (3) As of the effective date of this section, all state-based water
27 rights are subject to the water rights confirmation process, except
28 those rights described in: RCW 90.14.140 (13), (14), (15), (16), (17),
29 and (20); rights exempt from permit requirements under RCW 90.44.050;
30 or permits still under development as described in RCW 90.14.150.

31 (4) Any holder of a right described in RCW 90.14.140 (13), (14),
32 (15), (16), and (17) may choose to have such right confirmed under the
33 provisions of this chapter. Only the portion of the water right
34 actually put to beneficial use may be confirmed. Any portion of the
35 right not put to beneficial use may not be confirmed or altered by the
36 confirmation process established in this chapter.

1 (5) Water rights exempt from permit requirements under RCW
2 90.44.050 or permits still under development as described in RCW
3 90.14.150 may be confirmed as to quantity under the provisions of this
4 act. Only the portion of the water right put to beneficial use may be
5 confirmed. Any portion of the right not put to beneficial use may not
6 be confirmed or altered by the confirmation process established in this
7 chapter.

8 NEW SECTION. **Sec. 3.** Within ninety days of the effective date of
9 this section, the department of ecology shall issue notice to all water
10 right holders of record through direct mailing and through general
11 means such as newspaper listings and internet postings. The notice
12 shall include: (1) A brief description of the water rights
13 confirmation process created by this chapter; and (2) a request that
14 each water right holder file current contact information with the
15 department of ecology by July 1, 2005.

16 The contact information must include the current name of the water
17 right holder, mailing address, telephone numbers, electronic mail
18 address, if any, and the tax parcel number of the land to which the
19 water right is appurtenant.

20 The department of ecology shall make the contact information
21 available to the referees appointed under section 2 of this act.

22 NEW SECTION. **Sec. 4.** (1) Each referee shall issue notice of
23 opportunity to confirm water right quantities to all water right
24 holders within their assigned jurisdiction. The notice must be made
25 through direct mailing to water right holders of record, and through
26 general means such as newspaper listings and internet postings. The
27 notice must also include information related to any technical
28 assistance available to water right holders to aid in complying with
29 the provisions of this section.

30 (2) Upon receipt of such a notice, but no later than the time
31 specified in the notice, all water right holders subject to the water
32 rights confirmation process shall file a statement of water use with
33 the referee. The statement of use must include: (a) The highest
34 instantaneous quantity diverted or withdrawn during the period from
35 January 1, 1994, through December 31, 2003; (b) the highest annual
36 quantity diverted or withdrawn during the period from January 1, 1994,

1 through December 31, 2003; (c) documentation showing that the
2 quantities in (a) and (b) of this subsection were put to beneficial
3 use; (d) the basis for withdrawal or diversion of water, including the
4 permit number, certificate number, claim filing number, or other
5 statutory authority for the right; and (e) the quantities authorized by
6 the permit, certificate, claim, or other statutory authority.

7 (3) Documentation under subsection (2)(c) of this section may
8 include power meter records, water meter records, crop and acreage
9 records, or any other information to show the quantity of water used.
10 For rights that embody quantities of water use under one-tenth of a
11 cubic foot per second, the referee shall develop simplified procedures
12 such as a checklist for submitting evidence of use. For purposes of
13 this section, the highest instantaneous and annual quantities may occur
14 in different years.

15 (4)(a) If the water right holder did not fully exercise a water
16 right from January 1, 1994, through December 31, 2003, the water right
17 holder may document the reasons for the nonuse in accordance with
18 subsections (2) and (3) of this section. If the reason for the nonuse
19 was valid based on RCW 90.14.140, the water right holder may document
20 the highest instantaneous quantity and annual quantity put to
21 beneficial use during the ten-year period immediately preceding the
22 period of nonuse.

23 (b) For rights described in RCW 90.14.140 (13), (14), (15), (16),
24 and (17), the instantaneous quantity and annual quantity shall be the
25 highest quantities put to beneficial use.

26 (5) Those water rights required to be confirmed under section 2(3)
27 of this act, for which a statement of water use is not filed within the
28 time frame established in subsection (1) of this section, are presumed
29 by the referee to be abandoned. The right must be reported to the
30 water court if one has been established or the superior court of
31 competent jurisdiction. The court shall annually hear such reports and
32 find that the rights have been abandoned, unless the water right holder
33 can prove otherwise.

34 NEW SECTION. **Sec. 5.** (1) The referee shall examine the
35 documentation submitted for a right under section 4 of this act. The
36 examination may only consider if the:

1 (a) Right is based on a permit, certificate, or claim filed in
2 accordance with chapter 90.14 RCW, or other statutory authority;

3 (b) Beneficial use is consistent with the place of use, purpose of
4 use, point of diversion or withdrawal, or season of use contained in
5 the permit, certificate, or claim filed in accordance with chapter
6 90.14 RCW, or other statutory authority;

7 (c) Instantaneous quantity and annual quantity put to beneficial
8 use are within the quantity authorized by the permit, certificate,
9 claim, or other statutory authority;

10 (d) Reason for the nonuse, if any, was valid based on RCW
11 90.14.140, for water rights addressed in section 4(3) of this act; or

12 (e) Water use in the filing is accurate based on the documentation
13 provided.

14 (2)(a) By exception and for good cause, the referee may conduct
15 field investigations of a filing to ensure that the requirements of
16 subsection (1) of this section are met. The referee may not hold
17 evidentiary hearings. A filing may be further investigated and
18 evidentiary hearings may be held only if the referee's decision is
19 appealed in accordance with subsection (4) of this section, at the
20 direction of the court.

21 (b) If any filing is incomplete or appears to be inaccurate, the
22 referee shall return it to the water right holder with an explanation
23 of what additional information is needed.

24 (c) If a water right embodied in a filing requires changes to
25 properly reflect the current place of use, purpose of use, point of
26 diversion or withdrawal, or season of use, the referee shall direct the
27 water right holder to apply to the department of ecology or a water
28 conservancy board for such change in accordance with section 11 of this
29 act.

30 (3) The referee shall issue a record of decision consistent with
31 sections 2 through 4 of this act and twice each month the referee shall
32 publish a notice reflecting the record of decision of rights confirmed
33 since issuance of the last notice and provide copies of such a notice
34 to water right holders in the same water resource inventory area.

35 (4)(a) Any aggrieved water right holder in the same water resource
36 inventory area or relying on the same source of supply, including the
37 holder of the right for which a record of decision is issued in

1 accordance with subsection (3) of this section, may file an appeal of
2 the record of decision within thirty days of publication under the
3 provisions of subsection (3) of this section.

4 (b) The appeal must be filed with the water court if established,
5 or until such time as it is established, with the superior court of
6 competent jurisdiction.

7 (c) For purposes of this section, the department of ecology is
8 deemed a water right holder for all instream flows established by rule
9 and trust water rights acquired under the authority of chapter 90.38 or
10 90.42 RCW. This subsection (4)(c) does not affect the authority of the
11 department to regulate existing water rights through the exercise of
12 regulatory powers granted to the department.

13 (5) If no appeal is filed, the referee shall issue a superseding
14 document reflecting the confirmed quantities. The superseding document
15 does not change the type of underlying right. A superseding claim is
16 issued for a water right claim, a superseding permit is issued for a
17 water right permit, and a superseding certificate is issued for a water
18 right certificate.

19 (6)(a) If an appeal is filed, the court may only examine whether
20 the record of decision is in accordance with the provisions of
21 subsection (1) of this section.

22 (b) The burden of proof is on the appellant to show that the record
23 of decision is inaccurate.

24 (c) The court may conduct evidentiary hearings or field
25 investigations to supplement the record of decision as needed to
26 determine if the record of decision is accurate.

27 (d) The decision of the court will serve as the new confirmed
28 quantity for the water right, and the court shall direct the referee to
29 issue the appropriate superceding document in accordance with
30 subsection (5) of this section.

31 NEW SECTION. **Sec. 6.** (1)(a) Except as provided in (d) of this
32 subsection, once a right has been confirmed in accordance with section
33 4 of this act, the holder of the right must annually submit a notice of
34 water use to the department of ecology showing measured or estimated
35 beneficial use from the previous year and planned beneficial use of the
36 right during the current calendar year. The notice must be filed by
37 May 1st of each year. The department of ecology shall mail a reminder

1 to each holder of a confirmed water right that the annual notice is due
2 no later than May 1st, and shall provide the holder with a notice card
3 for reporting annual use under the right.

4 (b) The annual notice must include how the water will be used, and
5 if any amount of the confirmed right is not planned to be put to use,
6 the water right holder must designate whether such water will be
7 transferred to another user or donated, leased, or sold to the state
8 trust water right program.

9 (c) Water right holders may file by mail, electronic mail, or
10 through the internet. The department of ecology shall keep the notices
11 and post them on an internet site categorized by watershed.

12 (d) For the purposes of this section, annual notice of water use
13 for municipal water suppliers means the reports provided to the
14 department of health as required by chapter 70.119A RCW.

15 (2)(a) The department of ecology shall monitor and review submitted
16 notices of water use to ensure the notices are complete and may require
17 the water right holder to correct incomplete notices.

18 (b) If a water right holder fails to file an annual notice of water
19 use for a confirmed water right for five consecutive years, the
20 department of ecology must notify the water right holder stating that
21 failure to file such a notice of water use for ten consecutive years
22 constitutes abandonment of the right. The department of ecology shall
23 annually provide such a notice until a notice of water use is filed in
24 accordance with subsection (1) of this section.

25 (3) If a notice of water use for a right confirmed under the
26 provisions of section 4 of this act is not filed for ten consecutive
27 years, the right is deemed abandoned on December 31st of the tenth
28 year. Such a right must be reported to the water court if one has been
29 established or the superior court of competent jurisdiction. The court
30 shall annually hear such reports and find that the rights have been
31 abandoned, unless the water right holder can prove that the notices
32 were filed.

33 NEW SECTION. **Sec. 7.** The department of ecology may issue grants
34 to public bodies or private associations to provide technical
35 assistance to water right holders in preparing the initial statement of
36 water use or the annual notice of water use, or both. The grants may
37 be made from funds appropriated by the legislature for that purpose.

1 **Sec. 8.** RCW 90.03.380 and 2003 c 329 s 2 are each amended to read
2 as follows:

3 (1) The right to the use of water which has been applied to a
4 beneficial use in the state shall be and remain appurtenant to the land
5 or place upon which the same is used: PROVIDED, HOWEVER, That the
6 right may be transferred to another or to others and become appurtenant
7 to any other land or place of use without loss of priority of right
8 theretofore established if such change can be made without detriment or
9 injury to existing rights. The point of diversion of water for
10 beneficial use or the purpose of use may be changed, if such change can
11 be made without detriment or injury to existing rights. (~~A change in
12 the place of use, point of diversion, and/or purpose of use of a water
13 right to enable irrigation of additional acreage or the addition of new
14 uses may be permitted if such change results in no increase in the
15 annual consumptive quantity of water used under the water right. For
16 purposes of this section, "annual consumptive quantity" means the
17 estimated or actual annual amount of water diverted pursuant to the
18 water right, reduced by the estimated annual amount of return flows,
19 averaged over the two years of greatest use within the most recent
20 five-year period of continuous beneficial use of the water right.~~)
21 Before any transfer of such right to use water or change of the point
22 of diversion of water or change of purpose of use can be made, any
23 person having an interest in the transfer or change, shall file a
24 written application therefor with the department, and the application
25 shall not be granted until notice of the application is published as
26 provided in RCW 90.03.280. If it shall appear that such transfer or
27 such change may be made without injury or detriment to existing rights,
28 the department shall issue to the applicant a certificate in duplicate
29 granting the right for such transfer or for such change of point of
30 diversion or of use. The certificate so issued shall be filed and be
31 made a record with the department and the duplicate certificate issued
32 to the applicant may be filed with the county auditor in like manner
33 and with the same effect as provided in the original certificate or
34 permit to divert water.

35 (2) If an application for change proposes to transfer water rights
36 from one irrigation district to another, the department shall, before
37 publication of notice, receive concurrence from each of the irrigation

1 districts that such transfer or change will not adversely affect the
2 ability to deliver water to other landowners or impair the financial
3 integrity of either of the districts.

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

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

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

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

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

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

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

19 NEW SECTION. **Sec. 9.** A new section is added to chapter 90.03 RCW
20 to read as follows:

21 A holder of a confirmed water right may transfer any portion of the
22 right to another person, to additional lands, or to a different use if
23 the change does not impair another water right under the procedures in
24 RCW 90.03.380. In reviewing proposed changes that would enable
25 irrigation of additional acres beyond the number of acres authorized by
26 the right or the addition of new uses to a water right, the department
27 shall evaluate and determine whether the proposed change would increase
28 the average annual consumptive quantity of water use in comparison to
29 the authorized use as confirmed under the right. If the proposed
30 change would increase the average annual consumptive quantity of water
31 used under the right, the department must determine and ensure that
32 other existing water rights are not impaired as a result of the water
33 right change.

34 NEW SECTION. **Sec. 10.** A new section is added to chapter 90.44 RCW
35 to read as follows:

36 A holder of a confirmed water right may transfer any portion of the

1 right to another person, to additional lands, or to a different use if
2 the change does not impair another water right under the procedures in
3 RCW 90.44.100. In reviewing proposed changes that would enable
4 irrigation of additional acres beyond the number of acres authorized by
5 the right or the addition of new uses to a water right, the department
6 shall evaluate and determine whether the proposed change would increase
7 the average annual consumptive quantity of water use in comparison to
8 the authorized use as confirmed under the right. If the proposed
9 change would increase the average annual consumptive quantity of water
10 used under the right, the department must determine and ensure that
11 other existing water rights are not impaired as a result of the water
12 right change.

13 NEW SECTION. **Sec. 11.** (1) A surface or ground water right must be
14 confirmed by the process established in this chapter prior to change or
15 transfer of a water right after the effective date of this section. If
16 a water right proposed for change or transfer has not been confirmed,
17 the water right holder may choose to have the right confirmed in
18 accordance with section 2 of this act or by the department of ecology
19 or a conservancy board, except when the referee has directed the right
20 to the department of ecology or conservancy board under the provisions
21 of section 5(2)(c) of this act.

22 (2) If the water right holder chooses to use the department of
23 ecology or a conservancy board, the department of ecology or
24 conservancy board shall apply the confirmation standards as provided in
25 sections 4 and 5 of this act, and shall provide a written report to the
26 referee detailing the water use as reported by the water right holder.
27 The referee need not be bound by any findings in the report, and shall
28 complete the confirmation process in accordance with the provisions of
29 section 5 of this act.

30 (3) The court, the department of ecology, and water conservancy
31 boards must develop procedures to ensure that changes and transfers to
32 water rights are not delayed during the confirmation process.

33 (4) When evaluating water rights for the purpose of change or
34 transfer of the right, the department of ecology shall rely on the
35 quantity as confirmed by the referee.

36 (5) Prior to the appointment of a referee for a watershed, water
37 right changes and transfers issued by the department of ecology or

1 local water conservancy boards and new certificates for permitted water
2 rights must be annotated to indicate that confirmation of the quantity
3 of the right will be conducted upon appointment of a referee. Upon
4 appointment of a referee, the department of ecology will submit copies
5 of all water right change decisions and certificates for new water
6 rights issued since the effective date of this section to the
7 appropriate referee for independent review and confirmation of the
8 quantity of the right.

9 NEW SECTION. **Sec. 12.** The provisions of this chapter do not apply
10 to surface water rights and claims already undergoing adjudication in
11 the Yakima basin for which final orders or conditional final orders
12 have not yet been issued. However, surface water rights and claims for
13 which final orders or conditional final orders have been issued are
14 subject to the provisions of sections 6, 7, 9, 10, and 11(4) of this
15 act and RCW 90.03.380 and 90.14.140, and with respect to quantity are
16 equivalent to rights confirmed under the provisions of this chapter.

17 **Sec. 13.** RCW 90.14.140 and 2001 c 240 s 1, 2001 c 237 s 27, and
18 2001 c 69 s 5 are each reenacted and amended to read as follows:

19 ~~((1)) For the ((purposes of RCW 90.14.130 through 90.14.180,~~
20 ~~"sufficient cause" shall be defined as the nonuse of all or a portion~~
21 ~~of the water by the owner of a water right for a period of five or more~~
22 ~~consecutive years where such nonuse occurs as a result of)) purpose of~~
23 sections 4 and 5 of this act, valid reasons for the nonuse of all or a
24 portion of a water right include:

- 25 ~~((a))~~ (1) Drought, or other unavailability of water;
- 26 ~~((b))~~ (2) Active service in the armed forces of the United States
27 during military crisis;
- 28 ~~((c))~~ (3) Nonvoluntary service in the armed forces of the United
29 States;
- 30 ~~((d))~~ (4) The operation of legal proceedings, including
31 bankruptcy;
- 32 ~~((e))~~ (5) Federal or state agency leases of or options to
33 purchase lands or water rights which preclude or reduce the use of the
34 right by the owner of the water right;
- 35 ~~((f))~~ (6) Federal laws imposing land or water use restrictions

1 either directly or through the voluntary enrollment of a landowner in
2 a federal program implementing those laws, or acreage limitations, or
3 production quotas;

4 ~~((g))~~ (7) Temporarily reduced water need for irrigation use where
5 such reduction is due to varying weather conditions, including but not
6 limited to precipitation and temperature, that warranted the reduction
7 in water use, so long as the water user's diversion and delivery
8 facilities are maintained in good operating condition consistent with
9 beneficial use of the full amount of the water right;

10 ~~((h))~~ (8) Temporarily reduced diversions or withdrawals of
11 irrigation water directly resulting from the provisions of a contract
12 or similar agreement in which a supplier of electricity buys back
13 electricity from the water right holder and the electricity is needed
14 for the diversion or withdrawal or for the use of the water diverted or
15 withdrawn for irrigation purposes;

16 ~~((i))~~ (9) Water conservation measures implemented under the
17 Yakima river basin water enhancement project, so long as the conserved
18 water is reallocated in accordance with the provisions of P.L. 103-434;

19 ~~((j))~~ (10) Reliance by an irrigation water user on the transitory
20 presence of return flows in lieu of diversion or withdrawal of water
21 from the primary source of supply, if such return flows are measured or
22 reliably estimated using a scientific methodology generally accepted as
23 reliable within the scientific community; ~~((or~~

24 ~~(k))~~ (11) The reduced use of irrigation water resulting from crop
25 rotation~~((. For purposes of this subsection, crop rotation means the~~
26 ~~temporary change in the type of crops grown resulting from the exercise~~
27 ~~of generally recognized sound farming practices. Unused water~~
28 ~~resulting from crop rotation will not be relinquished)) or long-term~~
29 changes in crops if the remaining portion of the water continues to be
30 beneficially used~~((-~~

31 ~~(2) Notwithstanding any other provisions of RCW 90.14.130 through~~
32 ~~90.14.180, there shall be no relinquishment of any water right:~~

33 ~~(a))~~ and the full right is exercised at least once every fifteen
34 years;

35 (12) The reduced use of irrigation water as the result of water use
36 efficiency measures, where the amount of water affected by the
37 efficiency measures is reduced through the voluntary application of
38 advanced technologies or programmatic measures, if such measures are

1 fully funded by the water right holder and the full right is exercised
2 at least once every fifteen years, and such use does not impair any
3 other existing water right. For purposes of this subsection, reduced
4 use is to be measured on the basis of per acre irrigation use or water
5 use per unit of production;

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

9 ~~((b))~~ (14) If such right is used for a standby or reserve water
10 supply to be used in time of drought or other low flow period so long
11 as withdrawal or diversion facilities are maintained in good operating
12 condition for the use of such reserve or standby water supply;

13 ~~((c))~~ (15) If such right is claimed for a determined future
14 development to take place either within fifteen years of July 1, 1967,
15 or the most recent beneficial use of the water right, whichever date is
16 later;

17 ~~((d))~~ (16) If such right is claimed for municipal water supply
18 purposes under chapter 90.03 RCW;

19 ~~((e))~~ (17) If such waters are not subject to appropriation under
20 the applicable provisions of RCW 90.40.030;

21 ~~((f))~~ (18) If such right or portion of the right is leased to
22 another person for use on land other than the land to which the right
23 is appurtenant as long as the lessee makes beneficial use of the right
24 in accordance with this chapter and a transfer or change of the right
25 has been approved by the department in accordance with RCW 90.03.380,
26 90.03.383, 90.03.390, or 90.44.100;

27 ~~((g))~~ (19) If such a right or portion of the right is authorized
28 for a purpose that is satisfied by the use of agricultural industrial
29 process water as authorized under RCW 90.46.150; or

30 ~~((h))~~ (20) If such right is a trust water right under chapter
31 90.38 or 90.42 RCW.

32 ~~((3) In adding provisions to this section by chapter 237, Laws of~~
33 ~~2001, the legislature does not intend to imply legislative approval or~~
34 ~~disapproval of any existing administrative policy regarding, or any~~
35 ~~existing administrative or judicial interpretation of, the provisions~~
36 ~~of this section not expressly added or revised.))~~

1 NEW SECTION. **Sec. 14.** A new section is added to chapter 90.03 RCW
2 to read as follows:

3 For water rights that have previously been confirmed as to quantity
4 under sections 4 and 5 of this act, and have not been abandoned under
5 section 6 of this act, a court conducting a water rights adjudication
6 shall adopt the previously confirmed quantity. For water rights that
7 have not been confirmed as to quantity under sections 4 and 5 of this
8 act, the court shall review and establish the valid quantity of the
9 right based on the standards and requirements of sections 4 and 5 of
10 this act. For rights that cannot be quantified based on beneficial
11 use, the court shall apply legally applicable standards.

12 NEW SECTION. **Sec. 15.** Section 13 of this act applies to all
13 causes of action commenced on or after the effective date of this
14 section, regardless of when the cause of action arose. To this extent,
15 section 13 of this act applies retroactively, but in all other respects
16 it applies prospectively.

17 NEW SECTION. **Sec. 16.** The following acts or parts of acts are
18 each repealed:

19 (1) RCW 90.14.130 (Reversion of rights to state due to nonuse--
20 Notice by order--Relinquishment determinations--Appeal) and 1987 c 109
21 s 13 & 1967 c 233 s 13;

22 (2) RCW 90.14.160 (Relinquishment of right for abandonment or
23 failure to beneficially use without sufficient cause--Prior rights
24 acquired through appropriation, custom or general adjudication) and
25 1981 c 291 s 1, 1979 ex.s. c 216 s 5, & 1967 c 233 s 16;

26 (3) RCW 90.14.170 (Relinquishment of right for abandonment or
27 failure to beneficially use without sufficient cause--Rights acquired
28 due to ownership of land abutting stream, lake, or watercourse) and
29 1967 c 233 s 17;

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

33 (5) RCW 90.14.190 (Water resources decisions--Appeals--Attorneys'
34 fees) and 1987 c 109 s 14 & 1967 c 233 s 19;

35 (6) RCW 90.14.200 (Implementation and enforcement of chapter--

1 Proceedings under RCW 90.14.130 deemed adjudicative--Application of RCW
2 sections to specific proceedings) and 1989 c 175 s 180, 1979 ex.s. c
3 216 s 6, & 1967 c 233 s 20;

4 (7) RCW 90.14.210 (Chapter applies to all rights to withdraw ground
5 waters) and 1967 c 233 s 21;

6 (8) RCW 90.14.215 (Chapter not applicable to trust water rights
7 under chapter 90.38 or 90.42 RCW) and 1991 c 347 s 14; and

8 (9) RCW 90.14.230 (Rules and regulations) and 1987 c 109 s 102 &
9 1967 c 233 s 23.

10 NEW SECTION. **Sec. 17.** Nothing in this act may be interpreted or
11 administered in a manner that impairs or diminishes a valid water
12 right, including rights established under state law and rights
13 established under federal law.

14 NEW SECTION. **Sec. 18.** Sections 1 through 7, 11, 12, 17, and 19 of
15 this act constitute a new chapter in Title 90 RCW.

16 NEW SECTION. **Sec. 19.** If any provision of this act or its
17 application to any person or circumstance is held invalid, the
18 remainder of the act or the application of the provision to other
19 persons or circumstances is not affected.

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