

Chapter 90.42 RCW
WATER RESOURCE MANAGEMENT

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RCW 90.42.005 Policy—Findings. (1) It is the policy of the state of Washington to recognize and preserve water rights in accordance with RCW 90.03.010.

(2) The legislature finds that:

(a) The state of Washington is faced with a shortage of water with which to meet existing and future needs, particularly during the summer and fall months and in dry years when the demand is greatest;

(b) Consistent with RCW 90.54.180, issuance of new water rights, voluntary water transfers, and conservation and water use efficiency programs, including storage, all are acceptable methods of addressing water uses because they can relieve current critical water situations, provide for presently unmet needs, and assist in meeting future water needs. Presently unmet needs or current needs includes the water required to increase the frequency of occurrence of base or minimum flow levels in streams of the state, the water necessary to satisfy existing water rights, or the water necessary to provide full supplies to existing water systems with current supply deficiencies;

(c) The interests of the state and its citizens will be served by developing programs and regional water resource plans, in cooperation with local governments, federally recognized tribal governments,

appropriate federal agencies, private citizens, and the various water users and water interests in the state, that increase the overall ability to manage the state's waters in order to resolve conflicts and to better satisfy both present and future needs for water; and

(d) Water banking as a function of the trust water [rights] program and as authorized by this chapter can provide an effective means to facilitate the voluntary transfer of water rights established through conservation, purchase, lease, or donation, to preserve water rights and provide water for presently unmet and future needs; and to achieve a variety of water resource management objectives throughout the state, including drought response, improving streamflows on a voluntary basis, providing water mitigation, or reserving water supply for future uses. [2003 c 144 § 1; 1991 c 347 § 1.]

Effective date—2003 c 144: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 7, 2003]." [2003 c 144 § 8.]

Purposes—1991 c 347: "The purposes of this act are to:

(1) Improve the ability of the state to work with the United States, local governments, federally recognized tribal governments, water right holders, water users, and various water interests in water conservation and water use efficiency programs designed to satisfy existing rights, presently unmet needs, and future needs, both instream and out-of-stream;

(2) Establish new incentives, enhance existing incentives, and remove disincentives for efficient water use;

(3) Establish improved means to disseminate information to the public and provide technical assistance regarding ways to improve the efficiency of water use;

(4) Create a trust water rights mechanism for the acquisition of water rights on a voluntary basis to be used to meet presently unmet needs and future needs;

(5) Prohibit the sale of nonconforming plumbing fixtures and require the marking and labeling of fixtures meeting state standards;

(6) Reduce tax disincentives to water conservation, reuse, and improved water use efficiency; and

(7) Add achievement of water conservation as a factor to be considered by water supply utilities in setting water rates." [1991 c 347 § 2.]

RCW 90.42.010 Findings—Intent. The legislature finds that a need exists to develop and test a means to facilitate the voluntary transfer of water and water rights, including conserved water, to provide water for presently unmet needs and emerging needs. Further, the legislature finds that water conservation activities have the potential of affecting the quantity of return flow waters to which existing water right holders have a right to and rely upon. It is the intent of the legislature that persons holding rights to water, including return flows, not be adversely affected in the implementation of the provisions of this chapter. [1998 c 245 § 173. Prior: 1993 sp.s. c 4 § 14; 1993 c 98 § 1; 1991 c 347 § 5.]

Findings—Grazing lands—1993 sp.s. c 4: See RCW 79.13.600.

Purposes—1991 c 347: See note following RCW 90.42.005.

RCW 90.42.020 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Department" means the department of ecology.

(2) "Local government" means a city, town, public utility district, irrigation district, public port, county, sewer district, or water district.

(3) "Net water savings" means the amount of water that is determined to be conserved and usable within a specified stream reach or reaches for other purposes without impairment or detriment to water rights existing at the time that a water conservation project is undertaken, reducing the ability to deliver water, or reducing the supply of water that otherwise would have been available to other existing water uses.

(4) "Pilot planning areas" means the geographic areas designated under RCW 90.54.045(2).

(5) "Trust water right" means any water right acquired by the state under this chapter for management in the state's trust water rights program.

(6) "Water conservation project" means any project or program that achieves physical or operational improvements that provide for increased water use efficiency in existing systems of diversion, conveyance, application, or use of water under water rights existing on July 28, 1991. [2009 c 283 § 3; 1991 c 347 § 6.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Findings—Intent—2009 c 283: See note following RCW 90.42.100.

Purposes—1991 c 347: See note following RCW 90.42.005.

RCW 90.42.030 Contracts to finance water conservation projects—Public benefits—Trust water rights. (1) For purposes of this chapter, the state may enter into contracts to provide moneys to assist in the financing of water conservation projects. In consideration for the financial assistance provided, the state shall obtain public benefits defined in guidelines developed under RCW 90.42.050.

(2) If the public benefits to be obtained require conveyance or modification of a water right, the recipient of funds shall convey to the state the recipient's interest in that part of the water right or claim constituting all or a portion of the resulting net water savings for deposit in the trust water rights program. The amount to be conveyed shall be finitely determined by the parties, in accordance with the guidelines developed under RCW 90.42.050, before the expenditure of state funds. Conveyance may consist of complete transfer, lease contracts, or other legally binding agreements. When negotiating for the acquisition of conserved water or net water savings, or a portion thereof, the state may require evidence of a valid water right.

(3) As part of the contract, the water right holder and the state shall specify the process to determine the amount of water the water

right holder would continue to be entitled to once the water conservation project is in place.

(4) The state shall cooperate fully with the United States in the implementation of this chapter. Trust water rights may be acquired through expenditure of funds provided by the United States and shall be treated in the same manner as trust water rights resulting from the expenditure of state funds.

(5) If water is proposed to be acquired by or conveyed to the state as a trust water right by an irrigation district, evidence of the district's authority to represent the water right holders shall be submitted to and for the satisfaction of the department.

(6) The state shall not contract with any person to acquire a water right served by an irrigation district without the approval of the board of directors of the irrigation district. Disapproval by a board shall be factually based on probable adverse effects on the ability of the district to deliver water to other members or on maintenance of the financial integrity of the district. [1993 c 98 § 2; 1991 c 347 § 7.]

Purposes—1991 c 347: See note following RCW 90.42.005.

RCW 90.42.040 Trust water rights program—Water right certificate—Notice of creation or modification. (1) A trust water right acquired by the state shall be placed in the state trust water rights program to be managed by the department. The department shall exercise its authorities under the law in a manner that protects trust water rights. Trust water rights acquired by the state shall be held in trust and authorized for use by the department for instream flows, irrigation, municipal, or other beneficial uses consistent with applicable regional plans for pilot planning areas, or to resolve critical water supply problems. The state may acquire a groundwater right to be placed in the state trust water rights program. To the extent practicable and subject to legislative appropriation, trust water rights acquired in an area with an approved watershed plan developed under chapter 90.82 RCW shall be consistent with that plan if the plan calls for such acquisition.

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

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

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

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

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

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

(5) (a) Before any trust water right is created or modified, the department shall, at a minimum, require that a notice be published in a newspaper of general circulation published in the county or counties in which the storage, diversion, and use are to be made, and in other newspapers as the department determines is necessary, once a week for two consecutive weeks.

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

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

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

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

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

(9) Where a portion of an existing water right that is acquired or donated to the trust water rights program will assist in achieving established instream flows, the department shall process the change or amendment of the existing right without conducting a review of the extent and validity of the portion of the water right that will remain with the water right holder. [2009 c 283 § 4; 2002 c 329 § 8; 2001 c 237 § 30; 1993 c 98 § 3; 1991 c 347 § 8.]

Findings—Intent—2009 c 283: See note following RCW 90.42.100.

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

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

Purposes—1991 c 347: See note following RCW 90.42.005.

RCW 90.42.050 Guidelines governing trust water rights—Submission of guidelines to joint select committee. The department, in cooperation with federally recognized Indian tribes, local governments, state agencies, and other interested parties, shall establish guidelines by July 1, 1992, governing the acquisition, administration, and management of trust water rights. The guidelines shall address at a minimum the following:

(1) Methods for determining the net water savings resulting from water conservation projects or programs carried out in accordance with this chapter, and other factors to be considered in determining the quantity or value of water available for potential designation as a trust water right;

(2) Criteria for determining the portion of net water savings to be conveyed to the state under this chapter;

(3) Criteria for prioritizing water conservation projects;

(4) A description of potential public benefits that will affect consideration for state financial assistance in RCW 90.42.030;

(5) Procedures for providing notification to potentially interested parties;

(6) Criteria for the assignment of uses of trust water rights acquired in areas of the state not addressed in a regional water resource plan or critical area agreement; and

(7) Contracting procedures and other procedures not specifically addressed in this section.

These guidelines shall be submitted to the joint select committee on water resource policy before adoption. [1991 c 347 § 9.]

Purposes—1991 c 347: See note following RCW 90.42.005.

RCW 90.42.060 Chapter 43.83B RCW or RCW 43.83.340 not replaced or amended. The policies and purposes of this chapter shall not be construed as replacing or amending the policies or the purposes for which funds available under chapter 43.83B RCW or RCW 43.83.340 may be used. [2015 1st sp.s. c 4 § 55; 1991 c 347 § 10.]

Purposes—1991 c 347: See notes following RCW 90.42.005.

RCW 90.42.070 Involuntary impairment of existing water rights not authorized. Nothing in this chapter authorizes the involuntary impairment of any existing water rights. [1991 c 347 § 11.]

Purposes—1991 c 347: See note following RCW 90.42.005.

RCW 90.42.080 Trust water rights—Acquisition, donation, exercise, and transfer—Appropriation required for expenditure of funds. (1) (a) The state may acquire all or portions of existing surface water or groundwater rights, by purchase, gift, or other appropriate means other than by condemnation, from any person or entity or combination of persons or entities. Once acquired, such rights are trust water rights. A water right acquired by the state

that is expressly conditioned to limit its use to instream purposes shall be administered as a trust water right in compliance with that condition.

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

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

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

(4) Except as provided in subsections (10), (11), and (12) of this section, a water right donated under subsection (1)(b) of this section shall not exceed the extent to which the water right was exercised during the five years before the donation nor may the total of any portion of the water right remaining with the donor plus the donated portion of the water right exceed the extent to which the water right was exercised during the five years before the donation. A water right holder who believes his or her water right has been impaired by a trust water right donated under subsection (1)(b) of this section may request that the department review the impairment claim. If the department determines that a trust water right resulting from a donation under subsection (1)(b) of this section is impairing existing water rights in violation of RCW 90.42.070, the trust water right shall be altered by the department to eliminate the impairment. Any decision of the department to alter or not to alter a trust water right donated under subsection (1)(b) of this section is appealable to the pollution control hearings board under RCW 43.21B.230. A donated water right's status as a trust water right under this subsection is not evidence of the validity or quantity of the water right.

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

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

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

(8) Except as provided in subsections (10) and (11) of this section, if the department acquires a trust water right by lease, the

amount of the trust water right shall not exceed the extent to which the water right was exercised during the five years before the acquisition was made nor may the total of any portion of the water right remaining with the original water right holder plus the portion of the water right leased by the department exceed the extent to which the water right was exercised during the five years before the acquisition. A water right holder who believes his or her water right has been impaired by a trust water right leased under this subsection may request that the department review the impairment claim. If the department determines that a trust water right resulting from the leasing of that trust water right leased under this subsection is impairing existing water rights in violation of RCW 90.42.070, the trust water right shall be altered by the department to eliminate the impairment. Any decision of the department to alter or not to alter a trust water right leased under this subsection is appealable to the pollution control hearings board under RCW 43.21B.230. The department's leasing of a trust water right under this subsection is not evidence of the validity or quantity of the water right.

(9) For a water right donated to or acquired by the trust water rights program on a temporary basis, the full quantity of water diverted or withdrawn to exercise the right before the donation or acquisition shall be placed in the trust water rights program and shall revert to the donor or person from whom it was acquired when the trust period ends. For a trust water right acquired by the state and held or authorized for use by the department, the consumptive quantity of the right when it reverts to the donor or person from whom it was acquired is equal to the consumptive quantity of the right prior to transfer into the trust water rights program.

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

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

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

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

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

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

(12) Upon a request made by a water right holder to the department on or before June 30, 2021, a water right banked pursuant to *RCW 90.92.070, as that section existed on April 15, 2021, must be accepted by the department as a temporary trust water right donation for a period of up to two years, in the same quantity that the water right was banked pursuant to *RCW 90.92.070. [2021 c 110 § 1; 2009 c

283 § 5; 2002 c 329 § 9; 2001 c 237 § 31; 1993 c 98 § 4; 1991 c 347 § 12.]

***Reviser's note:** RCW 90.92.070 expired June 30, 2021, pursuant to 2009 c 183 § 20 and 2019 c 78 § 4.

Effective date—2021 c 110: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 21, 2021]." [2021 c 110 § 2.]

Findings—Intent—2009 c 283: See note following RCW 90.42.100.

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

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

Purposes—1991 c 347: See note following RCW 90.42.005.

RCW 90.42.090 Jurisdictional authorities not altered. It is the intent of the legislature that jurisdictional authorities that exist in law not be expanded, diminished, or altered in any manner whatsoever by this chapter. [1991 c 347 § 13.]

Purposes—1991 c 347: See note following RCW 90.42.005.

RCW 90.42.100 Water banking. (1) The department is hereby authorized to use the trust water rights program for water banking purposes statewide.

(2) Water banking may be used for one or more of the following purposes:

(a) To authorize the use of trust water rights to mitigate for water resource impacts, future water supply needs, or any beneficial use under chapter 90.03, 90.44, or 90.54 RCW, consistent with any terms and conditions established by the transferor, except that within the Yakima river basin return flows from water rights authorized in whole or in part for any purpose shall remain available as part of the Yakima basin's total water supply available and to satisfy existing rights for other downstream uses and users;

(b) To document transfers of water rights to and from the trust water rights program; and

(c) To provide a source of water rights the department can make available to third parties on a temporary or permanent basis for any beneficial use under chapter 90.03, 90.44, or 90.54 RCW.

(3) The department shall not use water banking to:

(a) Cause detriment or injury to existing rights;

(b) Issue temporary water rights or portions thereof for new potable uses requiring an adequate and reliable water supply under RCW 19.27.097;

(c) Administer federal project water rights, including federal storage rights; or

(d) Allow carryover of stored water in the Yakima basin from one water year to another water year if it would negatively impact the total water supply available.

(4) The department shall provide electronic notice and opportunity for comment to affected local governments and affected federally recognized tribal governments prior to initiating use of the trust water rights program for water banking purposes for the first time in each water resource inventory area.

(5) Nothing in this section may be interpreted or administered in a manner that precludes the use of the department's existing authority to process trust water rights applications under this chapter or to process water right applications under chapter 90.03 or 90.44 RCW.

(6) For purposes of this section and RCW 90.42.135, "total water supply available" shall be defined as provided in the 1945 consent decree between the United States and water users in the Yakima river basin, and consistent with later interpretation by state and federal courts. [2009 c 283 § 2; 2003 c 144 § 2.]

Findings—Intent—2009 c 283: "The legislature finds that many watershed groups and programs, including but not limited to watershed planning units operating under chapter 90.82 RCW, have proposed or considered using the state trust water rights program for water banking purposes to meet vital instream and out-of-stream needs within a watershed or region. The legislature also finds that water banking can: Provide critical tools to make water supplies available when and where needed during times of drought; improve streamflows and preserve instream values during fish critical periods; reduce water transaction costs, time, and risk to purchasers; facilitate fair and efficient reallocation of water from one beneficial use to another; provide water supplies to offset impacts related to future development and the issuance of new water rights; and facilitate water agreements that protect upstream community values while retaining flexibility to meet critical downstream water needs in times of scarcity. The legislature therefore declares that the intent of this act is to provide clear authority for water banking throughout the state and to improve the effectiveness of the state trust water rights program." [2009 c 283 § 1.]

Effective date—2003 c 144: See note following RCW 90.42.005.

RCW 90.42.110 Water banking—Application to transfer water rights. (1) The department, with the consent of the water right holder, may identify trust water rights for administration for water banking purposes, including trust water rights established before May 7, 2003.

(2) An application to transfer a water right to the trust water [rights] program shall be reviewed under RCW 90.03.380 at the time the water right is transferred to the trust water [rights] program for administration for water banking purposes, and notice of the application shall be published by the applicant as provided under RCW 90.03.280. The application must indicate the reach or reaches of the stream where the trust water right will be established before the transfer of the water right or portion thereof from the trust water [rights] program, and identify reasonably foreseeable future temporary or permanent beneficial uses for which the water right or portion thereof may be used by a third party upon transfer from the trust water right[s] program. In the event the future place of use, period of use, or other elements of the water right are not specifically

identified at the time of the transfer into the trust water [rights] program, another review under RCW 90.03.380 will be necessary at the time of a proposed transfer from the trust water [rights] program. [2003 c 144 § 3.]

Effective date—2003 c 144: See note following RCW 90.42.005.

RCW 90.42.120 Water banking—Transfer of water rights—

Requirements—Appeals. (1) The department shall transfer a water right or portion thereof being administered for water banking purposes from the trust water [rights] program to a third party upon occurrence of all of the following:

(a) The department receives a request for transfer of a water right or portion thereof currently administered by the department for water banking purposes;

(b) The request is consistent with any previous review under RCW 90.03.380 of the water right and future temporary or permanent beneficial uses;

(c) The request is consistent with any condition, limitation, or agreement affecting the water right, including but not limited to any trust water right transfer agreement executed at the time the water right was transferred to the trust water rights program; and

(d) The request is accompanied by and is consistent with an assignment of interest or portion thereof from a person or entity retaining an interest in the trust water right or portion thereof to the party requesting transfer of the water right or portion thereof.

(2) The priority date of the water right or portion thereof transferred by the department from the trust water [rights] program for water banking purposes shall be the priority date of the underlying water right.

(3) The department shall issue documentation for that water right or portion thereof to the new water right holder based on the requirements applicable to the transfer of other water rights from the trust water rights program. Such documentation shall include a description of the property to which the water right will be appurtenant after the water right or portion thereof is transferred from the trust water [rights] program to a third party.

(4) The department's decision on the transfer of a water right or portion thereof from the trust water [rights] program for water banking purposes may be appealed to the pollution control hearings board under RCW 43.21B.230, or to a superior court conducting a general adjudication under RCW 90.03.210. [2003 c 144 § 4.]

Effective date—2003 c 144: See note following RCW 90.42.005.

RCW 90.42.130 Water banking—Input from affected entities. The department shall seek input from agricultural organizations, federal agencies, tribal governments, local governments, watershed groups, conservation groups, and developers on water banking, including water banking procedures and identification of areas in Washington where water banking could assist in providing water supplies for instream and out-of-stream uses. [2016 c 215 § 1; 2014 c 76 § 9; 2003 c 144 § 5.]

Effective date—2003 c 144: See note following RCW 90.42.005.

RCW 90.42.135 Limitations of act—2003 c 144. Nothing in chapter 144, Laws of 2003 shall:

(1) Cause detriment or injury to existing rights or to the operation of the federal Yakima project to provide water for irrigation purposes, existing water supply contracts, or existing water rights;

(2) Diminish in any way existing rights or the total water supply available for irrigation and other purposes in the Yakima basin;

(3) Affect or modify the authority of a court conducting a general adjudication pursuant to RCW 90.03.210; or

(4) Affect or modify the rights of any person or entity under a water rights adjudication or under any order of the court conducting a water rights adjudication. [2003 c 144 § 6.]

Effective date—2003 c 144: See note following RCW 90.42.005.

RCW 90.42.138 Construction—2003 c 144. Nothing in chapter 144, Laws of 2003 may be construed to:

(1) Affect or modify any treaty or other federal rights of an Indian tribe, or the rights of any federal agency or other person or entity arising under state or federal law;

(2) Affect or modify the rights or jurisdictions of the United States, the state of Washington, the Yakama Nation, or other person or entity over waters of any river or stream or over any groundwater resource;

(3) Alter, amend, repeal, interpret, modify, or be in conflict with any interstate compact made by the states;

(4) Alter, establish, or impair the respective rights of states, the United States, the Yakama Nation, or any other person or entity with respect to any water or water-related right;

(5) Alter, diminish, or abridge the rights and obligations of any federal, state, or local agency, the Yakama Nation, or other person or entity;

(6) Affect or modify the rights of the Yakama Indian Nation or its successors in interest to, and management and regulation of, those water resources arising or used, within the external boundaries of the Yakama Indian Reservation;

(7) Affect or modify the settlement agreement between the United States and the state of Washington filed in Yakima county superior court with regard to federal reserved water rights other than those rights reserved by the United States for the benefit of the Yakama Indian Nation and its members; or

(8) Affect or modify the rights of any federal, state, or local agency, the Yakama Nation, or any other person or entity, public or private, with respect to any unresolved and unsettled claims in any water right adjudications, or court decisions, including *State v. Acquavella*, or constitute evidence in any such proceeding in which any water or water-related right is adjudicated. [2003 c 144 § 7.]

Effective date—2003 c 144: See note following RCW 90.42.005.

RCW 90.42.150 Recovery of department's costs associated with water service contracts with federal agencies. Costs incurred by the department associated with water service contracts with federal agencies may be recovered by the department from persons withdrawing water or credits for water associated with water banking purposes as a condition of the exercise of a water right supplied from a federal water project. [2009 c 283 § 6.]

Findings—Intent—2009 c 283: See note following RCW 90.42.100.

RCW 90.42.160 Adoption of rules. The department may adopt rules as necessary to implement this chapter. [2009 c 283 § 8.]

Findings—Intent—2009 c 283: See note following RCW 90.42.100.

RCW 90.42.170 Water banking—Department must maintain information on its website. (1) (a) The department must maintain information on its website regarding water banking, including information on water banks and related programs in various areas of the state.

(b) The information maintained on the department's website under this subsection must include a schedule or table for each water bank that shows:

- (i) The amount charged for mitigation, including any fees;
- (ii) If applicable, the priority date of the water rights made available for mitigation;
- (iii) The amount of water made available for mitigation;
- (iv) If applicable, any geographic areas in the state where the department may issue permits or other approvals to use the water rights associated with the water bank as mitigation;
- (v) The processes utilized by the water bank to obtain approval from the department, or any other applicable governmental agency, to use the water rights as mitigation for new water uses; and
- (vi) The nature of the ownership interest of the water right available to be conveyed to the landowner and whether the ownership interest will be recorded on the title.

(2) The department must update the schedule or table required under this section on a quarterly basis, using information provided to the department by the operator of each water bank. Any person operating a water bank in Washington must provide the information required under this section to the department upon request. [2016 c 215 § 2.]