
SENATE BILL 5333

State of Washington

58th Legislature

2003 Regular Session

By Senators Parlette, Fraser, Honeyford, B. Sheldon, Hale, Doumit, Hewitt and Rasmussen; by request of Governor Locke

Read first time 01/22/2003. Referred to Committee on Natural Resources, Energy & Water.

1 AN ACT Relating to the trust water rights program; amending RCW
2 90.42.005, 90.42.020, 90.03.380, and 90.44.100; adding new sections to
3 chapter 90.42 RCW; creating a new section; repealing RCW 90.38.005,
4 90.38.010, 90.38.020, 90.38.030, 90.38.040, 90.38.050, 90.38.900,
5 90.38.901, 90.38.902, 90.42.010, 90.42.030, 90.42.040, 90.42.050,
6 90.42.070, and 90.42.080; and declaring an emergency.

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

8 NEW SECTION. **Sec. 1.** The legislature finds that the trust water
9 rights program is an important tool in meeting the state's current and
10 future needs for water, both instream and out-of-stream. However, the
11 legislature finds that the existing procedures for establishing trust
12 water rights are unnecessarily complex, and are difficult to explain
13 and administer. Further, the legislature finds that groups currently
14 developing local watershed plans and regional water management programs
15 are seeking an effective means to facilitate multiple, voluntary
16 transfers of existing water rights to address presently unmet needs and
17 future needs.

18 It is the intent of this act to enhance the effectiveness of the

1 trust water rights program by improving existing incentives, removing
2 disincentives, clarifying and consolidating procedures for establishing
3 trust water rights, and authorizing the creation of water banks.

4 **Sec. 2.** RCW 90.42.005 and 1991 c 347 s 1 are each amended to read
5 as follows:

6 (1) It is the policy of the state of Washington to recognize and
7 preserve water rights in accordance with RCW 90.03.010.

8 (2) The legislature finds that:

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

12 (b) Consistent with RCW 90.54.180, conservation and water use
13 efficiency programs, including storage, should be the preferred methods
14 of addressing water uses because they can relieve current critical
15 water situations, provide for presently unmet needs, and assist in
16 meeting future water needs. Presently unmet needs or current needs
17 includes the water required to increase the frequency of occurrence of
18 base or minimum flow levels in streams of the state, the water
19 necessary to satisfy existing water rights, or the water necessary to
20 provide full supplies to existing water systems with current supply
21 deficiencies; (~~and~~)

22 (c) The interests of the state will be served by developing
23 programs and regional water resource plans, in cooperation with local
24 governments, federally recognized tribal governments, appropriate
25 federal agencies, private citizens, and the various water users and
26 water interests in the state, that increase the overall ability to
27 manage the state's waters in order to resolve conflicts and to better
28 satisfy both present and future needs for water, both instream and
29 out-of-stream;

30 (d) A state trust water rights program is an effective means to
31 facilitate the voluntary transfer of water and water rights,
32 established through conservation, purchase, lease, or donation, to
33 secure and preserve water rights and provide water for presently unmet
34 needs and emerging needs;

35 (e) The interests of the state will be served by developing water
36 banking programs within the trust water rights program to administer
37 trust water rights in a watershed or region. Water banking is an

1 important tool for implementing watershed plans under chapter 90.82 RCW
2 because it will allow the efficient management of multiple trust water
3 rights and will facilitate three-party transfers of water rights needed
4 to meet the instream and out-of-stream needs of the watershed or
5 region. Water banks can: Make water available at another time or
6 location, which otherwise might not be possible, and thereby assist in
7 minimizing the consequences of drought; help improve stream flows and
8 preserve instream values; hold and provide water mitigation where
9 needed for future water development projects; and facilitate the
10 reallocation of water from one beneficial use to another; and

11 (f) The trust water rights program, including the potential for a
12 water bank, improves the ability of the state to work with the United
13 States and the various water users in the ongoing program to satisfy
14 both existing rights and other presently unmet as well as future needs
15 of the Yakima basin, through improvements to the existing federal water
16 project in the Yakima river basin, authorized under P.L. 96-162.

17 **Sec. 3.** RCW 90.42.020 and 1991 c 347 s 6 are each amended to read
18 as follows:

19 ~~((Unless the context clearly requires otherwise,))~~ The definitions
20 in this section apply throughout this chapter unless the context
21 clearly requires otherwise.

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

23 (2) "Net water savings" means the amount of water that is
24 determined to be conserved and usable within or from a specified
25 ~~((stream reach or reaches))~~ surface or ground water body for other
26 purposes without impairment ~~((or detriment))~~ to water rights existing
27 at the time that a water conservation project is ~~((undertaken, reducing~~
28 ~~the ability to deliver water, or reducing the supply of water that~~
29 ~~otherwise would have been available to other existing water uses))~~
30 funded.

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

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

36 ~~(5) "Water conservation project" means any project or program that~~
37 ~~achieves physical or operational improvements that provide for~~

1 ~~increased water use efficiency in existing systems of diversion,~~
2 ~~conveyance, application, or use of water under water rights existing on~~
3 ~~July 28, 1991.)~~)

4 NEW SECTION. **Sec. 4.** A new section is added to chapter 90.42 RCW
5 to read as follows:

6 (1) All trust water established by the state must be placed in the
7 state trust water rights program to be held in trust by the department.
8 Trust water rights established by the state must be held or authorized
9 for use by the department for any beneficial use as described in RCW
10 90.54.020(1), and may be established for the protection of water rights
11 secured for mitigation purposes and for preservation of water rights
12 for future needs.

13 (2) Trust water rights may only be established from existing water
14 rights, including rights to divert or withdraw water under existing
15 certificates, claims, and permits, and rights to storage and use of
16 stored water from existing reservoir and secondary use rights.

17 (3) Trust water rights must be administered by the department or by
18 a water bank established under section 9 of this act. Each trust water
19 right must be administered in strict accordance with the terms under
20 which the trust water right was established, including any agreement
21 between the parties executed at the time the trust water right was
22 established, or as subsequently modified by mutual agreement of the
23 parties.

24 (4) Trust water rights retain the priority date of the right from
25 which they were established.

26 (5) To the extent practicable and subject to legislative
27 appropriation, trust water rights established in a watershed with an
28 approved watershed plan developed under chapter 90.82 RCW must be used
29 in a manner consistent with that plan.

30 (6) The department may make arrangements, including entering into
31 contracts with other persons or entities as appropriate, to ensure that
32 trust water rights established in accordance with this chapter can be
33 exercised to the fullest possible extent consistent with applicable
34 state laws.

35 (7) The department shall cooperate fully with the United States in
36 the implementation of this chapter. Trust water rights may be

1 established through expenditure of funds provided by the United States
2 and must be treated in the same manner as trust water rights
3 established as a result of the expenditure of state funds.

4 NEW SECTION. **Sec. 5.** A new section is added to chapter 90.42 RCW
5 to read as follows:

6 (1) The state may establish a trust water right from all or a
7 portion of an existing surface or ground water right through purchase,
8 lease, donation to the state, funding of a conservation project, or
9 other appropriate means other than by condemnation.

10 (a) A trust water right may be established on a temporary or
11 permanent basis.

12 (b) Water rights may be established for the trust water rights
13 program only to the extent the water right has been perfected through
14 actual beneficial use.

15 (c) Once established by the state, these rights are trust water
16 rights.

17 (d) The department shall develop a form for use in the
18 establishment of trust water rights to gather information pertaining to
19 the water right including, but not limited to, the existing purpose,
20 place of use, and point of diversion or withdrawal of the right, extent
21 of water use under the right, and the use or uses proposed for the
22 right as a trust water right.

23 (e) The provisions of RCW 90.03.380 and 90.44.100 do not apply to
24 trust water rights established under this chapter.

25 (f) Acceptance of an existing right as a trust water right under
26 this chapter does not provide independent evidence of the validity or
27 quantity of a right.

28 (2) If the holder of a right to water from a body of water chooses
29 to donate all or a portion of the person's water right to the trust
30 water program to assist in providing instream flows on a temporary or
31 permanent basis, the department shall accept the donation on such terms
32 as the person may prescribe as long as the donation satisfies the
33 applicable requirements of this chapter, and the terms prescribed are
34 relevant and material to protecting any interest in the water right
35 retained by the donor. Once accepted, these rights are trust water
36 rights within the conditions prescribed by the donor.

1 (3) When the department has determined that it will establish a
2 trust water right, the department shall provide notice and opportunity
3 for comment on the proposed provisions of the trust water right.

4 (a) The department shall publish notice thereof in a newspaper of
5 general circulation in the county or counties in which the right is
6 diverted or withdrawn and exercised, and in other newspapers as the
7 department may decide, once a week for two consecutive weeks. The
8 notice must describe the trust water right and provide a time period
9 for written comments, including any protest of the trust water right
10 provisions.

11 (b) Any person, party, or entity who submits to the department a
12 written comment must receive a copy of the department's final decision
13 regarding establishment of the trust water right.

14 (c) At the same time as the newspaper notice, the department shall
15 also send a notice containing pertinent information to all appropriate
16 state agencies, potentially affected local governments, federally
17 recognized tribal governments, and other interested parties. The
18 department shall also provide a copy of the department's final decision
19 to these parties.

20 (d) The notice provisions of this section do not apply in the case
21 of trust water rights established during a formally declared drought.

22 (4)(a) The quantity of water to be transferred to the trust water
23 rights program must be determined through the application of water
24 system engineering or other appropriate, quantitative methods, and may
25 not exceed:

26 (i) The extent to which the water right has been perfected through
27 actual beneficial use; and

28 (ii) The extent to which water use under the original right is
29 reduced or foregone, resulting in a net benefit to the water body as a
30 result of establishing the trust water right.

31 (b) A reduction in water use may result from one or more of the
32 following:

33 (i) Reduced diversion or withdrawal of water under the original
34 right as a result of a water conservation project;

35 (ii) A reduction in the number of acres irrigated under the right,
36 or a long-term change in the type of crop grown that will require less
37 water;

1 (iii) A reduction in the period of use of the right, on a seasonal
2 basis, during periods of low stream flows, or according to conditions
3 prescribed for the trust water right;

4 (iv) The elimination of water use under the original right;

5 (v) A downstream change in point of diversion of a water right that
6 results in increased flows in the reach of the stream affected by the
7 change;

8 (vi) The temporary or permanent use of a different source of supply
9 to meet all or a portion of the water needs under the original right;
10 or

11 (vii) Other appropriate changes in activities under the original
12 right, as agreed to between the water right holder and the department.

13 (c) Where the state establishes a trust water right from a portion
14 of an existing water right, the state must quantify only the portion of
15 the right to be placed in the trust water rights program. The
16 reduction in water use and related activities under the remaining
17 portion of the right must be reflected in the superseding document
18 issued to the water right holder by the state, and the superseding
19 document issued by the state must be conditioned to ensure that the
20 reduced water use is achieved.

21 (d) Where the department provides funding for a water conservation
22 project as a means of establishing a trust water right, the recipient
23 of funds conveys to the state that portion of the water right or claim
24 constituting all or a portion of the net water savings resulting from
25 the project for deposit in the trust water rights program. Before the
26 expenditure of state funds for a water conservation project, the state
27 and the water right holder must agree on the procedures for determining
28 net water savings to be placed into trust as a result of a conservation
29 project.

30 (5) After notice and consideration of comments received, the
31 department shall issue a final decision regarding the establishment of
32 a trust water right.

33 (a) The department shall provide copies of its final decision to
34 the affected parties and to those parties identified in subsection
35 (3)(b) and (c) of this section. The department's final decision on
36 establishment of a trust water right is appealable to the pollution
37 control hearings board under RCW 43.21B.230 or other applicable law.

1 (b) A trust water right is established upon issuance of the
2 document described in subsection (6) of this section.

3 (6) The department shall issue a water right certificate,
4 certificate of change, or other appropriate legal document in the name
5 of the state of Washington for all trust water rights established by
6 the state.

7 (a) The document must be issued upon the final decision of the
8 department to establish a trust water right, after an appeal period has
9 lapsed without appeal.

10 (b) The document must indicate the quantity of the trust water
11 right, the location within the water body or portions thereof where the
12 trust water right will be exercised, the use or uses to which the trust
13 water right may be applied, the duration of the trust water right if
14 applicable, and other terms as specified for the trust water right.
15 The documentation must also include all applicable information
16 contained in the form prescribed by the department in subsection (1)(d)
17 of this section.

18 (c) Where only a portion of an existing right is established as a
19 trust water right, the department shall issue a superseding certificate
20 or other appropriate legal document to the original water right holder.
21 The superseding document must indicate the quantity of water remaining
22 with the original right holder.

23 (d) For temporary trust water rights, the department may issue a
24 certificate of change or other appropriate legal document to reflect
25 the terms of the trust water right.

26 (e) When the department establishes a trust water right from a
27 water right claim filed under chapter 90.14 RCW, the department shall
28 issue a certificate of change or other appropriate legal document to
29 reflect the terms of the trust water right.

30 (7) A trust water right retains the same priority as the water
31 right from which it originated. In the case of partial transfers into
32 trust, the portion of the right in trust is deemed to be junior in
33 priority to the portion of the right not in trust unless otherwise
34 specified in the terms of the trust water right.

35 (8) Exercise of trust water rights may not impair existing rights.
36 If, during the exercise of the right, it becomes apparent that exercise
37 of the right is impairing existing rights, the department must cease or
38 modify its exercise of the right to eliminate the impairment. Any

1 water right holder may file an impairment claim with the department if
2 the water right holder claims that the exercise of a trust water right
3 has impaired his or her right. The department shall review the
4 impairment claim, and will provide a written decision to the party that
5 filed the impairment claim. Where the department determines to modify
6 its exercise of a trust water right under this section, it shall
7 provide notice to the parties identified in subsection (5) of this
8 section. Any final decision by the department upon an impairment claim
9 is appealable to the pollution control hearings board under RCW
10 43.21B.230 or other applicable law.

11 (9) For a water right established by the trust water rights program
12 on a temporary basis, the full quantity of water diverted or withdrawn
13 to exercise the right before the trust water right was established must
14 be placed in the trust water rights program and reverts to the person
15 or entity from whom it was obtained upon the expiration of the trust
16 period.

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

19 Notwithstanding other requirements of this chapter, an unperfected
20 water right in good standing or portion thereof may become established
21 as a trust water right. During the period of time that the right is in
22 the trust water rights program, the priority date of the unperfected
23 trust water right is the date of establishment of the trust water
24 right, and is senior in priority only to water rights established after
25 that time. An unperfected water right established as a temporary trust
26 water right reverts to the original owner as an unperfected right, with
27 the priority date of the original right.

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

30 No state funds may be expended to establish trust water rights by
31 the state under this chapter unless specifically appropriated for this
32 purpose by the legislature. Prior to expending state or federal funds
33 for a trust water right, the department shall exercise appropriate due
34 diligence, as practiced by other water right purchasers, to ensure the
35 validity of the water right or portion thereof for which the funds will
36 be expended.

1 NEW SECTION. **Sec. 8.** A new section is added to chapter 90.42 RCW
2 to read as follows:

3 A water right conveyed to the trust water right program as a
4 donation that is expressly conditioned to limit its use to instream
5 purposes must be managed by the department for public purposes to
6 ensure that it qualifies as a donation that is deductible for federal
7 income taxation purposes for the person or entity conveying the water
8 right.

9 NEW SECTION. **Sec. 9.** A new section is added to chapter 90.42 RCW
10 to read as follows:

11 (1) Under the trust water right program, the department may
12 establish water banks to administer trust water rights.

13 (a) The department shall create water banks by rules adopted under
14 chapter 34.05 RCW.

15 (b) A water bank may be created to administer rights in one or more
16 watersheds or for one water body.

17 (c) The department shall identify the trust water rights to be
18 administered by a water bank. A water bank may be created to
19 administer water rights for either a specified geographic area, or for
20 select types of trust water rights, or both, as specified in the rules
21 creating the water bank.

22 (d) A water bank may be created either within or outside the
23 department. A water bank created outside the department must be
24 constituted as a public entity or a private-public partnership.

25 (2) The department is authorized to enter into agreements with
26 neighboring states to establish a joint water bank for a watershed or
27 water body shared between states. Such a joint water bank must operate
28 subject to the applicable legal requirements of each state.

29 (3) Water banks may be created for one or more of the following
30 purposes:

31 (a) To solicit water rights for the trust water rights program;

32 (b) To hold trust water rights for mitigation of future activities;

33 (c) To accept and manage funds to be used to establish trust water
34 rights;

35 (d) To purchase or lease water rights to be held in trust by the
36 department and to be administered by the water bank;

1 (e) To create a system of credits to track deposits of water rights
2 to, and withdrawals from, the bank;

3 (f) To assign water rights or credits to third parties authorizing
4 the beneficial use of water from the trust program, in a manner
5 consistent with the terms of a trust water right; and

6 (g) To develop a schedule of the amount of net water saved as a
7 result of water conservation projects carried out in a watershed,
8 developed annually to reflect the predicted hydrologic and water supply
9 conditions, as well as anticipated water demands, for the upcoming
10 irrigation season, to serve as the basis for the distribution and
11 management of trust water rights each year.

12 NEW SECTION. **Sec. 10.** A new section is added to chapter 90.42 RCW
13 to read as follows:

14 (1) The department shall conduct pilot rule making under RCW
15 34.05.313 to evaluate the effectiveness of different types of water
16 banks.

17 (2) In selecting areas for the pilot rule making, the department
18 shall consider the following factors:

19 (a) The likelihood that water banking could provide a temporary or
20 permanent water supply to address drought or future water supply
21 demands;

22 (b) The existence of plans, programs, or technical resources within
23 the water resource inventory area to assist with implementation and
24 review of the pilot rule making;

25 (c) Whether the area is located in one of the sixteen salmon
26 critical basins identified in the state salmon recovery strategy; and

27 (d) The degree of local watershed or regional group support.

28 (3) The department's pilot rules may include, but need not be
29 limited to, the following provisions:

30 (a) Procedures for establishing and quantifying consumptive and
31 nonconsumptive trust credits;

32 (b) Procedures for ensuring that assignments of trust water rights
33 or credits comply with the impairment provisions of this chapter;

34 (c) Geographical constraints on assignment of trust water rights or
35 credits by basin, subbasin, or water source; and

36 (d) Procedures for appeals of assignment of trust water rights or
37 credits.

1 (4) Within one year of adopting a pilot rule under this section,
2 the department shall request review and comments from tribal and local
3 governments, federal agencies, watershed groups, regional entities,
4 conservation groups, developers, agricultural organizations, and
5 others, on the pilot rule. The department shall summarize the comments
6 received on the rule and prepare a report, including any
7 recommendations, to the appropriate committees of the legislature for
8 their consideration during the subsequent legislative session.

9 NEW SECTION. **Sec. 11.** A new section is added to chapter 90.42 RCW
10 to read as follows:

11 The water right relinquishment provisions of RCW 90.14.130 through
12 90.14.230 do not apply to trust water rights held or exercised by the
13 department under this chapter as of the date the trust water right is
14 established.

15 NEW SECTION. **Sec. 12.** A new section is added to chapter 90.42 RCW
16 to read as follows:

17 Nothing in this chapter authorizes the impairment of, or operates
18 to impair, any existing water rights.

19 NEW SECTION. **Sec. 13.** A new section is added to chapter 90.42 RCW
20 to read as follows:

21 (1) When water is proposed to be provided to the department as a
22 trust water right by an irrigation district, evidence of the district's
23 authority to represent the water right holders must be submitted to,
24 and for the satisfaction of, the department.

25 (2) The department may not establish a trust water right from an
26 individual's water right under this chapter that is appurtenant to land
27 lying within an irrigation district without the approval of the board
28 of directors of the irrigation district.

29 **Sec. 14.** RCW 90.03.380 and 2001 c 237 s 5 are each amended to read
30 as follows:

31 (1) The right to the use of water which has been applied to a
32 beneficial use in the state shall be and remain appurtenant to the land
33 or place upon which the same is used: PROVIDED, HOWEVER, That the
34 right may be transferred to another or to others and become appurtenant

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

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

35 (3) A change in place of use by an individual water user or users
36 of water provided by an irrigation district need only receive approval
37 for the change from the board of directors of the district if the use
38 of water continues within the irrigation district, and when water is

1 provided by an irrigation entity that is a member of a board of joint
2 control created under chapter 87.80 RCW, approval need only be received
3 from the board of joint control if the use of water continues within
4 the area of jurisdiction of the joint board and the change can be made
5 without detriment or injury to existing rights.

6 (4) The requirements of this section (~~shall~~) do not apply to
7 trust water rights (~~acquired by the state through the funding of water~~
8 ~~conservation projects under chapter 90.38 RCW or RCW 90.42.010 through~~
9 ~~90.42.070~~) established under chapter 90.42 RCW.

10 (5)(a) Pending applications for new water rights are not entitled
11 to protection from impairment, injury, or detriment when an application
12 relating to an existing surface or ground water right is considered.

13 (b) Applications relating to existing surface or ground water
14 rights may be processed and decisions on them rendered independently of
15 processing and rendering decisions on pending applications for new
16 water rights within the same source of supply without regard to the
17 date of filing of the pending applications for new water rights.

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

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

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

1 (7) In revising the provisions of this section and adding
2 provisions to this section by chapter 237, Laws of 2001, the
3 legislature does not intend to imply legislative approval or
4 disapproval of any existing administrative policy regarding, or any
5 existing administrative or judicial interpretation of, the provisions
6 of this section not expressly added or revised.

7 **Sec. 15.** RCW 90.44.100 and 1997 c 316 s 2 are each amended to read
8 as follows:

9 (1) After an application to, and upon the issuance by the
10 department of an amendment to the appropriate permit or certificate of
11 ground water right, the holder of a valid right to withdraw public
12 ground waters may, without losing the holder's priority of right,
13 construct wells or other means of withdrawal at a new location in
14 substitution for or in addition to those at the original location, or
15 the holder may change the manner or the place of use of the water.

16 (2) An amendment to construct replacement or a new additional well
17 or wells at a location outside of the location of the original well or
18 wells or to change the manner or place of use of the water shall be
19 issued only after publication of notice of the application and findings
20 as prescribed in the case of an original application. Such amendment
21 shall be issued by the department only on the conditions that: (a) The
22 additional or replacement well or wells shall tap the same body of
23 public ground water as the original well or wells; (b) where a
24 replacement well or wells is approved, the use of the original well or
25 wells shall be discontinued and the original well or wells shall be
26 properly decommissioned as required under chapter 18.104 RCW; (c) where
27 an additional well or wells is constructed, the original well or wells
28 may continue to be used, but the combined total withdrawal from the
29 original and additional well or wells shall not enlarge the right
30 conveyed by the original permit or certificate; and (d) other existing
31 rights shall not be impaired. The department may specify an approved
32 manner of construction and shall require a showing of compliance with
33 the terms of the amendment, as provided in RCW 90.44.080 in the case of
34 an original permit.

35 (3) The construction of a replacement or new additional well or
36 wells at the location of the original well or wells shall be allowed
37 without application to the department for an amendment. However, the

1 following apply to such a replacement or new additional well: (a) The
2 well shall tap the same body of public ground water as the original
3 well or wells; (b) if a replacement well is constructed, the use of the
4 original well or wells shall be discontinued and the original well or
5 wells shall be properly decommissioned as required under chapter 18.104
6 RCW; (c) if a new additional well is constructed, the original well or
7 wells may continue to be used, but the combined total withdrawal from
8 the original and additional well or wells shall not enlarge the right
9 conveyed by the original water use permit or certificate; (d) the
10 construction and use of the well shall not interfere with or impair
11 water rights with an earlier date of priority than the water right or
12 rights for the original well or wells; (e) the replacement or
13 additional well shall be located no closer than the original well to a
14 well it might interfere with; (f) the department may specify an
15 approved manner of construction of the well; and (g) the department
16 shall require a showing of compliance with the conditions of this
17 subsection (3).

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

22 (5) The requirements of this section do not apply to trust water
23 rights established under chapter 90.42 RCW.

24 NEW SECTION. Sec. 16. The following acts or parts of acts are
25 each repealed:

- 26 (1) RCW 90.38.005 (Findings--Purpose) and 1989 c 429 s 1;
27 (2) RCW 90.38.010 (Definitions) and 1989 c 429 s 2;
28 (3) RCW 90.38.020 (Acquisition or donation of trust water rights)
29 and 2002 c 329 s 7, 2001 c 237 s 28, & 1989 c 429 s 3;
30 (4) RCW 90.38.030 (Water conservation projects--Contracts for
31 financial assistance) and 1989 c 429 s 4;
32 (5) RCW 90.38.040 (Trust water rights program) and 2001 c 237 s 29,
33 1994 c 264 s 90, & 1989 c 429 s 5;
34 (6) RCW 90.38.050 (Rules) and 1989 c 429 s 6;
35 (7) RCW 90.38.900 (Existing policies not replaced) and 1989 c 429
36 s 7;

- 1 (8) RCW 90.38.901 (Transfer of rights between irrigation districts
2 not intended) and 1989 c 429 s 8;
3 (9) RCW 90.38.902 (Existing rights not impaired) and 1989 c 429 s
4 9;
5 (10) RCW 90.42.010 (Findings--Intent) and 1998 c 245 s 173;
6 (11) RCW 90.42.030 (Contracts to finance water conservation
7 projects--Public benefits--Trust water rights) and 1993 c 98 s 2 & 1991
8 c 347 s 7;
9 (12) RCW 90.42.040 (Trust water rights program--Water right
10 certificate--Notice of creation or modification) and 2002 c 329 s 8,
11 2001 c 237 s 30, 1993 c 98 s 3, & 1991 c 347 s 8;
12 (13) RCW 90.42.050 (Guidelines governing trust water rights--
13 Submission of guidelines to joint select committee) and 1991 c 347 s 9;
14 (14) RCW 90.42.070 (Involuntary impairment of existing water rights
15 not authorized) and 1991 c 347 s 11; and
16 (15) RCW 90.42.080 (Trust water rights--Acquisition, donation,
17 exercise, and transfer--Appropriation required for expenditure of
18 funds) and 2002 c 329 s 9, 2001 c 237 s 31, 1993 c 98 s 4, & 1991 c 347
19 s 12.

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

24 NEW SECTION. **Sec. 18.** This act is necessary for the immediate
25 preservation of the public peace, health, or safety, or support of the
26 state government and its existing public institutions, and takes effect
27 immediately.

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