
SUBSTITUTE HOUSE BILL 2212

State of Washington 62nd Legislature 2012 Regular Session

By House Agriculture & Natural Resources (originally sponsored by Representatives Blake and Chandler; by request of Department of Ecology)

READ FIRST TIME 01/16/12.

1 AN ACT Relating to extending the expiration date of RCW 90.90.030;
2 amending RCW 90.90.030; and providing an expiration date.

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

4 **Sec. 1.** RCW 90.90.030 and 2006 c 6 s 4 are each amended to read as
5 follows:

6 (1) The department of ecology may enter into voluntary regional
7 agreements for the purpose of providing new water for out-of-stream
8 use, streamlining the application process, and protecting instream
9 flow.

10 (2) Such agreements shall ensure that:

11 (a) For water rights issued from the Columbia river mainstem, there
12 is no negative impact on Columbia river mainstem instream flows in the
13 months of July and August as a result of the new appropriations issued
14 under the agreement;

15 (b) For water rights issued from the lower Snake river mainstem,
16 there is no negative impact on Snake river mainstem instream flows from
17 April through August as a result of the new appropriations issued under
18 the agreement; and

1 (c) Efforts are made to harmonize such agreements with watershed
2 plans adopted under the authority of chapter 90.82 RCW that are
3 applicable to the area covered by the agreement.

4 (3) The protection of instream flow as set forth in subsection (2)
5 of this section is adequate for purposes of mitigating instream flow
6 impacts resulting from any appropriations for out-of-stream use made
7 under a voluntary regional agreement, and the only applicable
8 consultation provisions under state law regarding instream flow impacts
9 shall be those set forth in subsection (4) of this section.

10 (4) Before executing a voluntary agreement under this section, the
11 department of ecology shall:

12 (a) Provide a sixty-day period for consultation with county
13 legislative authorities and watershed planning groups with jurisdiction
14 over the area where the water rights included in the agreement are
15 located, the department of fish and wildlife, and affected tribal
16 governments, and federal agencies. The department of fish and wildlife
17 shall provide written comments within that time period. The
18 consultation process for voluntary regional agreements developed under
19 the provisions of this section is deemed adequate for the issuance of
20 new water rights provided for in this section and satisfies all
21 consultation requirements under state law related to the issuance of
22 new water rights; and

23 (b) Provide a thirty-day public review and comment period for a
24 draft agreement, and publish a summary of any public comments received.
25 The thirty-day review period shall not begin until after the department
26 of ecology has concluded its consultation under (a) of this subsection
27 and the comments that have been received by the department are made
28 available to the public.

29 (5) The provisions of subsection (4) of this section satisfy all
30 applicable consultation requirements under state law.

31 (6) The provisions of this section and any voluntary regional
32 agreements developed under such provisions may not be relied upon by
33 the department of ecology as a precedent, standard, or model that must
34 be followed in any other voluntary regional agreements.

35 (7) Nothing in this section may be interpreted or administered in
36 a manner that precludes the processing of water right applications
37 under chapter 90.03 or 90.44 RCW that are not included in a voluntary
38 regional agreement.

1 (8) Nothing in this section may be interpreted or administered in
2 a manner that impairs or diminishes a valid water right or a habitat
3 conservation plan approved for purposes of compliance with the federal
4 endangered species act.

5 ~~(9) ((The department of ecology shall monitor and evaluate the~~
6 ~~water allocated to instream and out-of-stream uses under this section,~~
7 ~~evaluate the program, and provide an interim report to the appropriate~~
8 ~~committees of the legislature by June 30, 2008. A final report shall~~
9 ~~be provided to the appropriate committees of the legislature by June~~
10 ~~30, 2011.~~

11 ~~(10))~~ If the department of ecology executes a voluntary agreement
12 under this section that includes water rights appropriated from the
13 lower Snake river mainstem, the department shall develop aggregate data
14 in accordance with the provisions of RCW 90.90.050 for the lower Snake
15 river mainstem.

16 ~~((11))~~ (10) Any agreement entered into under this section shall
17 remain in full force and effect through the term of the agreement
18 regardless of the expiration of this section.

19 ~~((12))~~ (11) The definitions in this subsection apply to this
20 section and RCW 90.90.050, and may only be used for purposes of
21 implementing these sections.

22 (a) "Columbia river mainstem" means all water in the Columbia river
23 within the ordinary high water mark of the main channel of the Columbia
24 river between the border of the United States and Canada and the
25 Bonneville dam, and all groundwater within one mile of the high water
26 mark.

27 (b) "Lower Snake river mainstem" means all water in the lower Snake
28 river within the ordinary high water mark of the main channel of the
29 lower Snake river from the head of Ice Harbor pool to the confluence of
30 the Snake and Columbia rivers, and all groundwater within one mile of
31 the high water mark.

32 ~~((13))~~ (12) This section expires June 30, ~~((2012))~~ 2018.

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