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**HOUSE BILL 1460**

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**State of Washington****65th Legislature****2017 Regular Session****By Representatives Buys, Taylor, Van Werven, and Dent**

1 AN ACT Relating to redesigning the transfer of water rights,  
2 including the statutory process of relinquishment; amending RCW  
3 90.14.130, 90.42.040, 90.14.160, 90.14.170, 90.14.180, 90.03.360,  
4 90.03.380, 90.03.380, 90.03.615, and 90.03.635; adding a new section  
5 to chapter 90.14 RCW; adding a new section to chapter 90.03 RCW;  
6 adding a new section to chapter 42.56 RCW; creating a new section;  
7 providing an effective date; and providing an expiration date.

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

9 NEW SECTION. **Sec. 1.** (1) The legislature finds that the policy  
10 of automatic relinquishment of water rights upon periods of extended  
11 nonuse no longer strikes the proper balance of incentives towards the  
12 economically efficient use of water resources. The process of  
13 maintaining or compiling sufficiently detailed records of historic  
14 water use has proven too burdensome and unrealistic to expect of  
15 small farmers and other landowners whose understandable fear of  
16 losing their water due to relinquishment keeps them from pursuing  
17 alternative uses of their water that would require a historic use  
18 analysis. Instead, many senior water right holders are currently  
19 afraid to transfer their water rights or engage with banking programs  
20 for the trading of their water rights because the associated  
21 documentation requirements might result in the loss of the water that

1 they currently use, in addition to the loss of the possible economic  
2 opportunity that would come from transferring or banking their water.

3 (2) Therefore, it is the intent of the legislature to  
4 substantially revise statutory processes of relinquishment and  
5 instead establish a presumption that water right holders have been  
6 putting water to beneficial use, in absence of evidence that water  
7 rights have been intentionally abandoned under common law doctrine  
8 that provides for the loss of water rights. In addition, under this  
9 new formulation of the relinquishment process, water that would  
10 previously have been deemed to be relinquished to the state for  
11 appropriation instead remains available in trust for economically  
12 beneficial uses, with a priority given to use by the original water  
13 right holder.

14 NEW SECTION. **Sec. 2.** A new section is added to chapter 90.14  
15 RCW to read as follows:

16 (1) This section applies to any person entitled to divert or  
17 withdraw waters of the state under the following authorities:

18 (a) Through an appropriation authorized under RCW 90.03.330,  
19 90.44.080, or 90.44.090;

20 (b) By virtue of ownership of land abutting a stream, lake, or  
21 watercourse; or

22 (c) Through any appropriation authorized by enactments of the  
23 legislature prior to enactment of chapter 117, Laws of 1917, or by  
24 custom, or by general adjudication.

25 (2) In the absence of information conclusively demonstrating that  
26 a person abandoned a right to divert or withdraw water, or  
27 voluntarily failed to beneficially use all or part of a right to  
28 divert or withdraw water, the department of ecology shall presume  
29 that the water has been applied to beneficial use in a manner  
30 sufficient to retain the entirety of the water right.

31 **Sec. 3.** RCW 90.14.130 and 2013 c 23 s 607 are each amended to  
32 read as follows:

33 When (~~it appears to~~) the department of ecology has conclusive  
34 evidence demonstrating that a person entitled to the use of water has  
35 not beneficially used his or her water right or some portion thereof,  
36 and it appears that said right (~~has or may have reverted to the~~  
37 ~~state~~) is or may be subject to relinquishment to the trust  
38 consistent with RCW 90.42.040(1)(b) because of such nonuse, (~~as~~

1 ~~provided by RCW 90.14.160, 90.14.170, or 90.14.180,))~~ the department  
2 of ecology shall notify such person by order(~~(- PROVIDED, That where~~  
3 ~~a company, association, district, or the United States has filed a~~  
4 ~~blanket claim under the provisions of RCW 90.14.060 for the total~~  
5 ~~benefits of those served by it, the notice shall be served on such~~  
6 ~~company, association, district or the United States and not upon any~~  
7 ~~of its individual water users who may not have used the water or some~~  
8 ~~portion thereof which they were entitled to use)).~~ The order shall  
9 contain: (1) A description of the water right, including the  
10 approximate location of the point of diversion, the general  
11 description of the lands or places where such waters were used, the  
12 water source, the amount involved, the purpose of use, and the  
13 apparent authority upon which the right is based; (2) a statement  
14 that unless sufficient cause be shown on appeal the water right will  
15 be declared relinquished to the trust consistent with RCW  
16 90.42.040(1); and (3) a statement that such order may be appealed to  
17 the pollution control hearings board. Any person aggrieved by such an  
18 order may appeal it to the pollution control hearings board pursuant  
19 to RCW 43.21B.310. The order shall be served by registered or  
20 certified mail to the last known address of the person and be posted  
21 at the point of division or withdrawal. The order by itself shall not  
22 alter the recipient's right to use water, if any.

23 **Sec. 4.** RCW 90.42.040 and 2009 c 283 s 4 are each amended to  
24 read as follows:

25 (1) A trust water right acquired by the state shall be placed in  
26 the state trust water rights program to be managed by the department.  
27 The department shall exercise its authorities under the law in a  
28 manner that protects trust water rights.

29 (a) Trust water rights acquired by the state, except for trust  
30 water rights acquired under RCW 90.14.130, shall be held in trust and  
31 authorized for use by the department for instream flows, irrigation,  
32 municipal, or other beneficial uses consistent with applicable  
33 regional plans for pilot planning areas, or to resolve critical water  
34 supply problems.

35 (b) Trust water rights acquired through relinquishment under RCW  
36 90.14.130 shall be held in trust and made available for irrigation,  
37 municipal, and other beneficial uses, made available under water  
38 banking programs consistent with RCW 90.42.100 through 90.42.170, or  
39 used to resolve critical water supply problems.

1       (i) Each year, priority use of trust water rights acquired under  
2 RCW 90.14.130 may be retained by the person who relinquished the  
3 water right upon notification to the department that the person plans  
4 in the coming year to put the relinquished water right to the same  
5 beneficial use to which the relinquished water right had initially  
6 been applied. Upon one such notification, subsequent notification to  
7 the department is not required to retain the water right and the  
8 person is deemed to have retained the full extent of the original  
9 water right, including the original volume, priority, and beneficial  
10 use, unless and until the water is relinquished again to trust  
11 consistent with RCW 90.14.130.

12       (ii) In absence of notification by the most recent possessor of  
13 the relinquished water right, the department shall apply the water  
14 right for the forthcoming year for other uses authorized under this  
15 subsection (1)(b).

16       (iii) The department may not apply trust water rights acquired  
17 through relinquishment under RCW 90.14.130 for a period exceeding one  
18 year and the application of the water right may not be considered a  
19 permanent appropriation or use of the trust water.

20       (c) The state may acquire a groundwater right to be placed in the  
21 state trust water rights program. To the extent practicable and  
22 subject to legislative appropriation, trust water rights acquired in  
23 an area with an approved watershed plan developed under chapter 90.82  
24 RCW shall be consistent with that plan if the plan calls for such  
25 acquisition. Groundwater rights acquired through relinquishment must  
26 be used consistent with (b) of this subsection.

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

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

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

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

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

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

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

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

31 (c) For a trust water right donation described in RCW  
32 90.42.080(1)(b), or for a trust water right lease described in RCW  
33 90.42.080(8) that does not exceed five years, the department may post  
34 equivalent information on its web site to meet the notice  
35 requirements in (a) of this subsection and may send pertinent  
36 information by email to meet the notice requirements in (b) of this  
37 subsection.

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

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

4 (8) Subsection (4)(a) of this section does not apply to a trust  
5 water right resulting from a donation for instream flows described in  
6 RCW 90.42.080(1)(b) or to a trust water right leased under RCW  
7 90.42.080(8) if the period of the lease does not exceed five years.

8 (9) Where a portion of an existing water right that is acquired  
9 or donated to the trust water rights program will assist in achieving  
10 established instream flows, the department shall process the change  
11 or amendment of the existing right without conducting a review of the  
12 extent and validity of the portion of the water right that will  
13 remain with the water right holder.

14 **Sec. 5.** RCW 90.14.160 and 1981 c 291 s 1 are each amended to  
15 read as follows:

16 Any person entitled to divert or withdraw waters of the state  
17 through any appropriation authorized by enactments of the legislature  
18 prior to enactment of chapter 117, Laws of 1917, or by custom, or by  
19 general adjudication, who abandons the same, or who voluntarily  
20 fails, without sufficient cause, to beneficially use all or any part  
21 of said right to divert or withdraw for any period of five successive  
22 years after July 1, 1967, shall relinquish such right or portion  
23 thereof, and said right or portion thereof shall revert to ~~((the~~  
24 ~~state, and the waters affected by said right shall become available~~  
25 ~~for appropriation in accordance with RCW 90.03.250))~~ trust for  
26 application consistent with RCW 90.42.040(1)(b).

27 **Sec. 6.** RCW 90.14.170 and 2013 c 23 s 608 are each amended to  
28 read as follows:

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

1 ~~90.03.250))~~ trust for application consistent with RCW  
2 90.42.040(1)(b).

3 **Sec. 7.** RCW 90.14.180 and 1987 c 109 s 101 are each amended to  
4 read as follows:

5 Any person hereafter entitled to divert or withdraw waters of the  
6 state through an appropriation authorized under RCW 90.03.330,  
7 90.44.080, or 90.44.090 who abandons the same, or who voluntarily  
8 fails, without sufficient cause, to beneficially use all or any part  
9 of said right to withdraw for any period of five successive years  
10 shall relinquish such right or portion thereof, and such right or  
11 portion thereof shall revert to (~~the state, and the waters affected~~  
12 ~~by said right shall become available for appropriation in accordance~~  
13 ~~with RCW 90.03.250. All certificates hereafter issued by the~~  
14 ~~department of ecology pursuant to RCW 90.03.330 shall expressly~~  
15 ~~incorporate this section by reference)) trust for application  
16 consistent with RCW 90.42.040(1)(b).~~

17 **Sec. 8.** RCW 90.03.360 and 1994 c 264 s 85 are each amended to  
18 read as follows:

19 (1) The owner or owners of any water diversion shall maintain, to  
20 the satisfaction of the department of ecology, substantial  
21 controlling works and a measuring device constructed and maintained  
22 to permit accurate measurement and practical regulation of the flow  
23 of water diverted. Every owner or manager of a reservoir for the  
24 storage of water shall construct and maintain, when required by the  
25 department, any measuring device necessary to ascertain the natural  
26 flow into and out of said reservoir.

27 Metering of diversions or measurement by other approved methods  
28 shall be required as a condition for all new surface water right  
29 permits, and except as provided in subsection (2) of this section and  
30 RCW 90.03.380(1), may be required as a condition for all previously  
31 existing surface water rights. The department may also require, as a  
32 condition for all water rights, metering of diversions, and reports  
33 regarding such metered diversions as to the amount of water being  
34 diverted. Such reports shall be in a form prescribed by the  
35 department.

36 (2) Where water diversions are from waters in which the salmonid  
37 stock status is depressed or critical, as determined by the  
38 department of fish and wildlife, or where the volume of water being

1 diverted exceeds one cubic foot per second, the department shall  
2 require metering or measurement by other approved methods as a  
3 condition for all new and previously existing water rights or claims.  
4 The department shall attempt to integrate the requirements of this  
5 subsection into its existing compliance workload priorities, but  
6 shall prioritize the requirements of this subsection ahead of the  
7 existing compliance workload where a delay may cause the decline of  
8 wild salmonids. The department shall notify the department of fish  
9 and wildlife of the status of fish screens associated with these  
10 diversions.

11 This subsection (2) shall not apply to diversions for public or  
12 private hatcheries or fish rearing facilities if the diverted water  
13 is returned directly to the waters from which it was diverted.

14 **Sec. 9.** RCW 90.03.380 and 2011 c 112 s 2 are each amended to  
15 read as follows:

16 (1) The right to the use of water which has been applied to a  
17 beneficial use in the state shall be and remain appurtenant to the  
18 land or place upon which the same is used: PROVIDED, HOWEVER, That  
19 the right may be transferred to another or to others and become  
20 appurtenant to any other land or place of use without loss of  
21 priority of right theretofore established if such change can be made  
22 without detriment or injury to existing rights. The point of  
23 diversion of water for beneficial use or the purpose of use may be  
24 changed, if such change can be made without detriment or injury to  
25 existing rights. A change in the place of use, point of diversion,  
26 and/or purpose of use of a water right to enable irrigation of  
27 additional acreage or the addition of new uses may be permitted if  
28 such change results in no increase in the annual consumptive quantity  
29 of water used under the water right. For purposes of this section,  
30 "annual consumptive quantity" means the estimated or actual annual  
31 amount of water diverted pursuant to the water right, reduced by the  
32 estimated annual amount of return flows, averaged over the two years  
33 of greatest use within the most recent five-year period of continuous  
34 beneficial use of the water right. Before any transfer of such right  
35 to use water or change of the point of diversion of water or change  
36 of purpose of use can be made, any person having an interest in the  
37 transfer or change, shall file a written application therefor with  
38 the department, and the application shall not be granted until notice  
39 of the application is published as provided in RCW 90.03.280. The



1 department may not require the installation of new metering for  
2 purposes of measuring annual consumptive quantity of water under this  
3 section in support of a transfer, sale, or partial transfer or sale  
4 of a water right. Instead, the department must rely on existing water  
5 use data that is available to the applicant and the department for  
6 purposes of determining whether a change can be made without  
7 detriment or injury to existing rights. If it shall appear that such  
8 transfer or such change may be made without injury or detriment to  
9 existing rights, the department shall issue to the applicant a  
10 certificate in duplicate granting the right for such transfer or for  
11 such change of point of diversion or of use. The certificate so  
12 issued shall be filed and be made a record with the department and  
13 the duplicate certificate issued to the applicant may be filed with  
14 the county auditor in like manner and with the same effect as  
15 provided in the original certificate or permit to divert water. The  
16 time period that the water right was banked under RCW 90.92.070, in  
17 an approved local water plan created under RCW 90.92.090, or the  
18 water right was subject to an agreement to not divert under RCW  
19 90.92.050 will not be included in the most recent five-year period of  
20 continuous beneficial use for the purpose of determining the annual  
21 consumptive quantity under this section. If the water right has not  
22 been used during the previous five years but the nonuse of which  
23 qualifies for one or more of the statutory good causes or exceptions  
24 to relinquishment in RCW 90.14.140 and 90.44.520, the period of  
25 nonuse is not included in the most recent five-year period of  
26 continuous beneficial use for purposes of determining the annual  
27 consumptive quantity of water under this section.

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

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

1 continues within the area of jurisdiction of the joint board and the  
2 change can be made without detriment or injury to existing rights.

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

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

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

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

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

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

36 (7) In revising the provisions of this section and adding  
37 provisions to this section by chapter 237, Laws of 2001, the  
38 legislature does not intend to imply legislative approval or  
39 disapproval of any existing administrative policy regarding, or any

1 existing administrative or judicial interpretation of, the provisions  
2 of this section not expressly added or revised.

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

9 (9) This section does not apply to a water right involved in an  
10 approved local water plan created under RCW 90.92.090, a water right  
11 that is subject to an agreement not to divert under RCW 90.92.050, or  
12 a banked water right under RCW 90.92.070.

13 (10)(a) The department may only approve an application submitted  
14 after July 22, 2011, for an interbasin water rights transfer after  
15 providing notice electronically to the board of county commissioners  
16 in the county of origin upon receipt of an application.

17 (b) For the purposes of this subsection:

18 (i) "Interbasin water rights transfer" means a transfer of a  
19 water right for which the proposed point of diversion is in a  
20 different basin than the proposed place of beneficial use.

21 (ii) "County of origin" means the county from which a water right  
22 is transferred or proposed to be transferred.

23 (c) This subsection applies to counties located east of the crest  
24 of the Cascade mountains.

25 **Sec. 10.** RCW 90.03.380 and 2011 c 112 s 3 are each amended to  
26 read as follows:

27 (1) The right to the use of water which has been applied to a  
28 beneficial use in the state shall be and remain appurtenant to the  
29 land or place upon which the same is used: PROVIDED, HOWEVER, That  
30 the right may be transferred to another or to others and become  
31 appurtenant to any other land or place of use without loss of  
32 priority of right theretofore established if such change can be made  
33 without detriment or injury to existing rights. The point of  
34 diversion of water for beneficial use or the purpose of use may be  
35 changed, if such change can be made without detriment or injury to  
36 existing rights. A change in the place of use, point of diversion,  
37 and/or purpose of use of a water right to enable irrigation of  
38 additional acreage or the addition of new uses may be permitted if  
39 such change results in no increase in the annual consumptive quantity

1 of water used under the water right. For purposes of this section,  
2 "annual consumptive quantity" means the estimated or actual annual  
3 amount of water diverted pursuant to the water right, reduced by the  
4 estimated annual amount of return flows, averaged over the two years  
5 of greatest use within the most recent five-year period of continuous  
6 beneficial use of the water right. Before any transfer of such right  
7 to use water or change of the point of diversion of water or change  
8 of purpose of use can be made, any person having an interest in the  
9 transfer or change, shall file a written application therefor with  
10 the department, and the application shall not be granted until notice  
11 of the application is published as provided in RCW 90.03.280. The  
12 department may not require the installation of new metering for  
13 purposes of measuring annual consumptive quantity of water under this  
14 section in support of a transfer, sale, or partial transfer or sale  
15 of a water right. Instead, the department must rely on existing water  
16 use data that is available to the applicant and the department for  
17 purposes of determining whether a change can be made without  
18 detriment or injury to existing rights. If it shall appear that such  
19 transfer or such change may be made without injury or detriment to  
20 existing rights, the department shall issue to the applicant a  
21 certificate in duplicate granting the right for such transfer or for  
22 such change of point of diversion or of use. The certificate so  
23 issued shall be filed and be made a record with the department and  
24 the duplicate certificate issued to the applicant may be filed with  
25 the county auditor in like manner and with the same effect as  
26 provided in the original certificate or permit to divert water.

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

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

1 continues within the area of jurisdiction of the joint board and the  
2 change can be made without detriment or injury to existing rights.

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

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

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

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

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

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

36 (7) In revising the provisions of this section and adding  
37 provisions to this section by chapter 237, Laws of 2001, the  
38 legislature does not intend to imply legislative approval or  
39 disapproval of any existing administrative policy regarding, or any

1 existing administrative or judicial interpretation of, the provisions  
2 of this section not expressly added or revised.

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

9 (9)(a) The department may only approve an application submitted  
10 after June 30, 2019, for an interbasin water rights transfer after  
11 providing notice electronically to the board of county commissioners  
12 in the county of origin upon receipt of an application.

13 (b) For the purposes of this subsection:

14 (i) "Interbasin water rights transfer" means a transfer of a  
15 water right for which the proposed point of diversion is in a  
16 different basin than the proposed place of beneficial use.

17 (ii) "County of origin" means the county from which a water right  
18 is transferred or proposed to be transferred.

19 (c) This subsection applies to counties located east of the crest  
20 of the Cascade mountains.

21 **Sec. 11.** RCW 90.03.615 and 2009 c 283 s 7 are each amended to  
22 read as follows:

23 For purposes of calculating annual consumptive quantity as  
24 defined under RCW 90.03.380(1), if, within the most recent five-year  
25 period, the water right has been in the trust water rights program  
26 under chapter 90.38 or 90.42 RCW, or the nonuse of the water right  
27 has been excused from relinquishment to trust under RCW 90.14.140,  
28 the department shall look to the most recent five-year period of  
29 continuous beneficial use preceding the date where the excuse for  
30 nonuse under RCW 90.14.140 was established and remained in effect.

31 **Sec. 12.** RCW 90.03.635 and 2009 c 332 s 8 are each amended to  
32 read as follows:

33 Within the date set by the court for filing evidence, each  
34 claimant shall file with the court evidence to support the claimant's  
35 adjudication claims. The court is encouraged to set a date for filing  
36 evidence that is reasonable and fair for the timely processing of the  
37 adjudication. The evidence may include, without limitation, permits  
38 or certificates of water right, statements of claim made under

1 chapter 90.14 RCW, deeds, documents related to issuance of a land  
2 patent, aerial photographs, decrees of previous water rights  
3 adjudications, crop records, records of livestock purchases and  
4 sales, records of power use, metering records, declarations  
5 containing testimonial evidence, records of diversion, withdrawal or  
6 storage and delivery by irrigation districts or ditch companies, and  
7 any other evidence to support that a water right was obtained and was  
8 not thereafter abandoned or relinquished to trust. The evidence filed  
9 may include matters that are outside the original adjudication claim  
10 filed, and within the date set by the court for filing evidence, the  
11 claimant may amend the adjudication claim to conform to the evidence  
12 filed. Thereafter, except for good cause shown, a claimant may not  
13 file additional evidence to support the claim.

14 NEW SECTION. **Sec. 13.** A new section is added to chapter 90.03  
15 RCW to read as follows:

16 The department may not retain annual consumptive use data  
17 provided pursuant to RCW 90.03.380 for a period longer than is  
18 necessary to finalize the determination on the water right transfer  
19 application. Within thirty days of a final decision by the department  
20 on an application under RCW 90.03.380, the department must transfer  
21 all annual consumptive use data to the department of agriculture.  
22 Annual consumptive use data in the possession of the department of  
23 ecology or the department of agriculture is not subject to disclosure  
24 under section 14 of this act. However, the department of agriculture  
25 must certify, upon the request of a third party, whether the annual  
26 consumptive use was equal to the full amount of the appropriated  
27 water right.

28 NEW SECTION. **Sec. 14.** A new section is added to chapter 42.56  
29 RCW to read as follows:

30 Consistent with section 13 of this act, annual consumptive water  
31 use data submitted under RCW 90.03.380 is exempt from disclosure  
32 under this chapter.

33 NEW SECTION. **Sec. 15.** Section 9 of this act expires June 30,  
34 2019.

1        NEW SECTION.    **Sec. 16.**    Section 10 of this act takes effect June  
2    30, 2019.

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