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2 **HOUSE BILL** _____
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4 **State of Washington** **60th Legislature** **2008 Regular Session**

5 **By Representatives** _____
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7 AN ACT relating to water resource management on the main stem of the Columbia and
8 Lower Snake rivers; amending RCW 90.90.005, 90.03.380, 90.14.140 and 90.90.030; and
9 declaring an emergency

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

11 NEW SECTION. **Sec. 1.** RCW 90.90.005 is reenacted and amended to read as
12 follows:

13 (1) The legislature finds that a key priority of water resource management in the
14 Columbia river basin is the development of new water supplies that includes storage and
15 conservation in order to meet the economic and community development needs of people and
16 the instream flow needs of fish.

17 (2) The legislature finds that existing law may discourage conservation water supplies
18 in the Columbia River Basin through relinquishment of conservation savings, and that
19 avoiding such relinquishment and facilitating transfer of such conservation water supplies can
20 assist in meeting the water supply needs of irrigated agriculture while protecting Columbia and
21 Snake river streamflows.

22 (3) The legislature therefore declares that a Columbia river basin water supply
23 development program is needed, and directs the department of ecology to aggressively pursue
24 the development of storage and conservation water supplies to benefit both instream and out-
25 of-stream uses.

26 NEW SECTION. **Sec. 2.** RCW 90.03.380 is reenacted and amended to read as

1 follows:

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

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

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

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

10 (4) This section shall not apply to trust water rights acquired by the state through the
11 funding of water conservation projects under chapter 90.38 RCW or RCW 90.42.010 through
12 90.42.070.

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

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

20 (c) Notwithstanding any other existing authority to process applications, including but
21 not limited to the authority to process applications under WAC 173-152-050 as it existed on
22 January 1, 2001, an application relating to an existing surface or ground water right may be
23 processed ahead of a previously filed application relating to an existing right when sufficient
24 information for a decision on the previously filed application is not available and the applicant
25 for the previously filed application is sent written notice that explains what information is not
26 available and informs the applicant that processing of the next application will begin. The

1 previously filed application does not lose its priority date and if the information is provided by
2 the applicant within sixty days, the previously filed application shall be processed at that time.
3 This subsection (5)(c) does not affect any other existing authority to process applications.

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

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

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

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

18 (9) Notwithstanding subsection (1), conservation operation and maintenance savings as
19 defined in chapter 90.90 RCW may be seasonally transferred to any other land or place of use
20 without loss of priority of right theretofore established.

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22 **NEW SECTION.** **Sec. 3.** RCW 90.14.140 is reenacted and amended to read as
23 follows:

24 (1) For the purposes of RCW 90.14.130 through 90.14.180, "sufficient cause" shall be
25 defined as the nonuse of all or a portion of the water by the owner of a water right for a period
26 of five or more consecutive years where such nonuse occurs as a result of:

- 1 (a) Drought, or other unavailability of water;
- 2 (b) Active service in the armed forces of the United States during military crisis;
- 3 (c) Nonvoluntary service in the armed forces of the United States;
- 4 (d) The operation of legal proceedings;
- 5 (e) Federal or state agency leases of or options to purchase lands or water rights which
6 preclude or reduce the use of the right by the owner of the water right;
- 7 (f) Federal laws imposing land or water use restrictions either directly or through the
8 voluntary enrollment of a landowner in a federal program implementing those laws, or acreage
9 limitations, or production quotas;
- 10 (g) Temporarily reduced water need for irrigation use where such reduction is due to
11 varying weather conditions, including but not limited to precipitation and temperature, that
12 warranted the reduction in water use, so long as the water user's diversion and delivery
13 facilities are maintained in good operating condition consistent with beneficial use of the full
14 amount of the water right;
- 15 (h) Temporarily reduced diversions or withdrawals of irrigation water directly resulting
16 from the provisions of a contract or similar agreement in which a supplier of electricity buys
17 back electricity from the water right holder and the electricity is needed for the diversion or
18 withdrawal or for the use of the water diverted or withdrawn for irrigation purposes;
- 19 (i) Water conservation measures implemented under the Yakima river basin water
20 enhancement project, so long as the conserved water is reallocated in accordance with the
21 provisions of P.L. 103-434;
- 22 (j) Reliance by an irrigation water user on the transitory presence of return flows in lieu of
23 diversion or withdrawal of water from the primary source of supply, if such return flows are
24 measured or reliably estimated using a scientific methodology generally accepted as reliable
25 within the scientific community; or
- 26 (k) The reduced use of irrigation water resulting from crop rotation. For purposes of this

1 subsection, crop rotation means the temporary change in the type of crops grown resulting
2 from the exercise of generally recognized sound farming practices. Unused water resulting
3 from crop rotation will not be relinquished if the remaining portion of the water continues to be
4 beneficially used.

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

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

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

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

15 (d) If such right is claimed for municipal water supply purposes under chapter 90.03 RCW;

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

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

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

24 (h) If such a right or portion of the right constitutes conservation operation and maintenance
25 savings, as defined in chapter 90.90 RCW; or

26 (i) If such right is a trust water right under chapter 90.38 or 90.42 RCW.

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

5 NEW SECTION. **Sec. 4.** RCW 90.90.030 is reenacted and amended to read as
6 follows:

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

10 (2) Such agreements shall ensure that:

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

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

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

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

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

26 (a) Provide a sixty-day period for consultation with county legislative authorities and
watershed planning groups with jurisdiction over the area where the water rights included in

1 the agreement are located, the department of fish and wildlife, and affected tribal governments,
2 and federal agencies. The department of fish and wildlife shall provide written comments
3 within that time period. The consultation process for voluntary regional agreements developed
4 under the provisions of this section is deemed adequate for the issuance of new water rights
5 provided for in this section and satisfies all consultation requirements under state law related to
6 the issuance of new water rights; and

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

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

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

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

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

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

1 (10) If the department of ecology executes a voluntary agreement under this section
2 that includes water rights appropriated from the lower Snake river mainstem, the department
3 shall develop aggregate data in accordance with the provisions of RCW 90.90.050 for the
4 lower Snake river mainstem.

5 (11) Any agreement entered into under this section shall remain in full force and effect
6 through the term of the agreement regardless of the expiration of this section.

7 (12) The definitions in this subsection apply to this section and RCW 90.90.050, and
8 may only be used for purposes of implementing these sections.

9 (a) "Columbia river mainstem" means all water in the Columbia river within the
10 ordinary high water mark of the main channel of the Columbia river between the border of the
11 United States and Canada and the Bonneville dam, and all groundwater within one mile of the
12 high water mark.

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

17 (13) “Conservation operation and maintenance savings” shall include any past, present,
18 or future water savings, with respect to water rights issued from bodies of water set forth in
19 subsection (12), including those achieved under voluntary regional agreements, arising from
20 use of soil moisture and monitoring probes, weather forecast and crop use data, irrigation
21 scheduling, and other seasonal water management practices. Conservation operation and
22 maintenance savings shall not include savings achieved through fixed capital investments such
23 as higher efficiency irrigation systems, canal linings, and pipe conversions or modifications.
24 Savings shall be measured by the real-time reduction in water withdrawals. (14) This section
25 expires June 30, 2012.
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