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SECOND SUBSTITUTE HOUSE BILL 1580

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State of Washington

61st Legislature

2009 Regular Session

**By** House General Government Appropriations (originally sponsored by Representatives Kessler, Walsh, Santos, Morris, Blake, Takko, Chandler, McCoy, Newhouse, Kretz, Linville, Jacks, Ormsby, Van De Wege, Hurst, Warnick, Nelson, Hinkle, Springer, and Kenney)

READ FIRST TIME 03/02/09.

1 AN ACT Relating to establishing a pilot local water management  
2 program in one qualified jurisdiction; amending RCW 90.03.380,  
3 90.44.100, 43.21B.110, and 90.82.060; reenacting and amending RCW  
4 90.14.140; adding a new chapter to Title 90 RCW; and providing an  
5 expiration date.

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

7 NEW SECTION. **Sec. 1.** The legislature finds that the Walla Walla  
8 watershed community faces substantial challenges in planning for future  
9 water use and meeting the needs of fish, farms, and people. The  
10 legislature further finds that the participants in the Walla Walla  
11 watershed planning group have demonstrated exceptional cooperation in  
12 developing an innovative water management concept that enhances  
13 flexibility in water use while protecting ecological functions. The  
14 legislature also recognizes the significant contribution of  
15 representative William Grant's leadership in the creation of a Walla  
16 Walla pilot design to authorize local water management activity.

17 NEW SECTION. **Sec. 2.** The definitions in this section apply  
18 throughout this chapter unless the context clearly requires otherwise.

- 1 (1) "Basin" means the WRIA where the planning area is located.
- 2 (2) "Board" means a water management board created under this  
3 chapter.
- 4 (3) "Department" means the department of ecology.
- 5 (4) "Director" means the director of the department of ecology.
- 6 (5) "Initiating entities" means the county boards of commissioners  
7 within the planning area, the city council of the largest Washington  
8 city in the planning area, the largest water user in the planning area,  
9 and all affected federally recognized tribes within the planning area.
- 10 (6) "Instream flow" means a minimum flow under chapter 90.03 or  
11 90.22 RCW or a base flow under chapter 90.54 RCW that has been set by  
12 rule.
- 13 (7) "Local water management program" means the water banking  
14 mechanism, any local water plans authorized by the board, and any other  
15 activities authorized by section 5 of this act.
- 16 (8) "Local water plan" means a voluntary water management plan  
17 developed by local water rights holders within the planning area to  
18 manage their water use in a manner that enhances stream flows in  
19 exchange for greater flexibility in exercising the water rights.
- 20 (9) "Planning area" means the entirety or a subsection of a single  
21 or multiple WRIA as identified in the creation of a board under this  
22 chapter.
- 23 (10) "Trust water right" means any water right acquired by the  
24 state under chapter 90.42 RCW for management in the state's water  
25 rights program.
- 26 (11) "Watershed plan" means a plan adopted under chapter 90.82 RCW.
- 27 (12) "WRIA" means a water resource inventory area established in  
28 chapter 173-500 WAC as it existed on January 1, 1997.

29 NEW SECTION. **Sec. 3.** (1) Initiating entities may collectively  
30 petition the department in order to establish a water management board.

31 (2) The department, in consultation with the initiating entities,  
32 may create a board if:

33 (a) The initiating entities demonstrate to the department that the  
34 following criteria are satisfied:

35 (i) Community support for the development of a local watershed  
36 management plan, including the affected federally recognized tribes,  
37 local governments, and general community support;

1 (ii) There is commitment on the part of the initiating entities and  
2 the affected community to enhance instream flows for fish; and

3 (iii) An adequate monitoring network is in place, as determined by  
4 the department;

5 (b) The department determines the following:

6 (i) An instream flow rule for the WRIA or WRIs in the planning  
7 area has been adopted since 1998;

8 (ii) The planning area is located within one of the sixteen fish-  
9 critical basins designated by the department in its March 2003  
10 "Washington Water Acquisition Program" report and demonstrates a  
11 significant history of severely impaired flows; and

12 (iii) The watershed planning unit has completed a watershed  
13 implementation plan adopted under chapter 90.82 RCW and salmon recovery  
14 implementation plan adopted under chapter 77.85 RCW.

15 (3) The department, in determining whether to create a board, must  
16 give strong consideration to basins that have completed a judicial  
17 proceeding to adjudicate water rights under chapter 90.03 RCW.

18 NEW SECTION. **Sec. 4.** (1)(a) Each board must be composed of the  
19 following members:

20 (i) All affected federally recognized tribes within the planning  
21 area will be invited to participate and may appoint one member each;

22 (ii) The following entities must each appoint one member:

23 (A) Each county board of commissioners within the planning area;

24 (B) The city council of the largest Washington city in the planning  
25 area; and

26 (C) The board of directors of the entity or the person who uses the  
27 greatest quantity of water in the planning area;

28 (iii) The conservation districts' board of supervisors in the  
29 planning area must jointly appoint one member; and

30 (iv) The members under (a)(i) through (iii) of this subsection must  
31 appoint the remaining three members of the board. These three members  
32 must be residents of the planning area. One member must be a planning  
33 area water rights holder. One member must represent environmental  
34 interests in the planning area. One member must be a citizen at large.

35 (b) If for any reason one of the required governments or entities  
36 to be represented on the board declines to participate, the remaining

1 board members may invite another local government within the planning  
2 area to join the board.

3 (2) Each member of the board serves a two-year term and may be  
4 reappointed for an additional term. Members may continue to serve on  
5 the board until a new appointment is made.

6 (3) The board must create a policy advisory group and a water  
7 resource panel.

8 (a) For the policy advisory group, the board must invite  
9 participation from the department and the department of fish and  
10 wildlife, other affected state agencies, and other interests as  
11 appropriate. The board may also appoint members from local government  
12 agencies, academia, watershed and salmon recovery entities, businesses,  
13 and agricultural and environmental organizations as the board deems  
14 appropriate.

15 (b) The policy advisory group must assist and advise the board in  
16 coordinating and developing water resource-related programs, planning,  
17 and activities within the planning area, including the coordination of  
18 efforts with all jurisdictions of the planning area and development of  
19 the board's strategic actions.

20 (c) For the water resource panel, the board must appoint members to  
21 the water resource panel who have expertise and understanding regarding  
22 surface water and groundwater monitoring and hydrological analysis,  
23 irrigation management and engineering, water rights, and fisheries  
24 habitat and economic development. The board must invite participation  
25 from the department and the department of fish and wildlife.

26 (d) The water resource panel must provide technical assistance for  
27 the development of the local water plans and provide advice to the  
28 board on the criteria for establishment of local water plans and the  
29 approval, denial, or modification of the local water plans.

30 (4) A board member, employee, or contractor may not engage in any  
31 act that is in conflict with the proper discharge of their official  
32 duties. Such conflicts of interest include, but are not limited to,  
33 holding a financial interest in a matter before the board.

34 NEW SECTION. **Sec. 5.** (1) The board has the following authority,  
35 duties, and responsibilities:

36 (a) Assume the duties, responsibilities, and all current activities

1 of the watershed planning unit and the initiating governments  
2 authorized in RCW 90.82.040;

3 (b) Develop strategic actions for the planning area by building on  
4 the watershed plan;

5 (c) Adopt and revise criteria, guidance, and processes to  
6 effectuate the purpose of this chapter;

7 (d) Administer the local water plan process;

8 (e) Oversee local water plan implementation;

9 (f) Manage banked water as authorized under this chapter;

10 (g) Acquire water rights by donation, purchase, or lease;

11 (h) Participate in local, state, tribal, federal, and multistate  
12 basin water planning initiatives and programs; and

13 (i) Enter into agreements with water rights holders to not divert  
14 water that becomes available as a result of local water plans, water  
15 banking activities, or other programs and projects endorsed by the  
16 board and the department.

17 (2) The board may acquire, purchase, hold, lease, manage, occupy,  
18 and sell real and personal property, including water rights, or any  
19 interest in water rights, enter into and perform all necessary  
20 contracts, appoint and employ necessary agents and employees, including  
21 an executive director and fix their compensation, employ contractors  
22 including contracts for professional services, and do all lawful acts  
23 required and expedient to carry out the purposes of this chapter.

24 (3) The board constitutes an independently funded entity, and may  
25 provide for its own funding as determined by the board. The board may  
26 solicit and accept grants, loans, and donations and may adopt fees for  
27 services it provides. The board may not impose taxes or acquire  
28 property, including water rights, by the exercise of eminent domain.  
29 The board may distribute available funds as grants or loans to local  
30 water plans or other water initiatives and projects that will further  
31 the goals of the board.

32 (4) The ability of the board to fully meet its duties under this  
33 chapter is dependent on the level of funding available to the board.  
34 If sufficient funding is not available to the board to carry out its  
35 duties, the board may, in consultation with the department, establish  
36 a plan that determines and sets priorities for implementation of the  
37 board's duties.

1 (5) The board, and its members and staff, acting in their official  
2 capacities, are immune from liability and are not subject to any cause  
3 of action or claim for damages arising from acts or omissions engaged  
4 in under this chapter.

5 (6) Upon the creation of the board, and for the duration of the  
6 board, the existing planning unit for the planning area, established  
7 under RCW 90.82.040, is dissolved and all assets, funds, files,  
8 planning documents, pending plans and grant applications, and other  
9 current activities of the planning unit are transferred to the board.

10 NEW SECTION. **Sec. 6.** The board, in collaboration with the  
11 department, must provide a written report to the legislature by  
12 December 1, 2012, December 1, 2015, and December 1, 2018. The report  
13 must summarize the actions, funding, and accomplishments of the board  
14 in the previous three years, and submit recommendations for improvement  
15 of the local water plan process. The 2018 report must also contain  
16 recommendations on the future of the board.

17 NEW SECTION. **Sec. 7.** (1) The board may establish a mechanism to  
18 bank water for the holders of water rights within the planning area to  
19 voluntarily deposit them on a temporary or permanent basis.

20 (2) The board has the following authority regarding banked water in  
21 the planning area:

22 (a) The board may accept a surface water right or a groundwater  
23 right on a permanent or temporary basis under terms and conditions  
24 agreed upon by the water rights holder and the board.

25 (b) On a temporary or permanent basis, the board may accept a water  
26 right, or portion thereof, that will be made available under local  
27 water plans for stream flow enhancement under the terms of the local  
28 water plan, as provided in this chapter.

29 (c) Except as provided in (d) of this subsection, the board must  
30 accept a water right temporarily banked for instream flow without  
31 conducting a review of the extent and validity of the water right.  
32 Such a water right may not thereafter be authorized for any other  
33 purposes. A banked water right that has not been tentatively  
34 determined as to its extent and validity is not entitled to be  
35 protected from impairment by another water right.

1 (d) The board may manage a water right that has been banked as  
2 mitigation for impairment to instream flows and other existing water  
3 rights. However, the water right may only be available for mitigation  
4 to the extent the department determines the water right is valid and  
5 use of the water right for mitigation will not cause detriment or  
6 injury to existing water rights.

7 (3)(a) A water right banked on a temporary basis remains in the  
8 ownership of the water rights holder and not the state of Washington or  
9 the board.

10 (b) A water right banked on a permanent basis must be transferred  
11 to the state of Washington as a trust water right consistent with RCW  
12 90.42.080.

13 (4) A water right or portion of a water right banked under this  
14 chapter is not subject to loss by forfeiture under RCW 90.14.130  
15 through 90.14.200. When a temporary water right is withdrawn from  
16 banking, the time period that the water right was banked may not be  
17 calculated as time water was not used for purposes of RCW 90.14.160,  
18 90.14.170, and 90.14.180.

19 (5) When a temporarily deposited water right is withdrawn from  
20 banking, the time period that the water right was banked may not be  
21 included in the five years of prior water use for purposes of  
22 applications to add acreage or purposes of water use under RCW  
23 90.03.380(1).

24 (6) Nothing in this chapter forecloses or diminishes the rights of  
25 any person to apply to the department to transfer a water right to the  
26 state trust water rights program under the authority of chapter 90.42  
27 RCW or to apply for a change of a water right to the department or to  
28 a water conservancy board authorized under chapter 90.80 RCW.

29 NEW SECTION. **Sec. 8.** (1) The board shall adopt guidelines and  
30 criteria for filing, review, and approval of a local water plan. The  
31 board shall also develop a dispute resolution process that provides for  
32 water users, the board, and the department to resolve disputes  
33 regarding the implementation and enforcement of a local water plan.

34 (2) A water user or group of water users within the planning area,  
35 organized as provided in guidelines adopted by the board, may submit a  
36 proposed local water plan to the board.

37 (3) A local water plan must include:

1 (a) A determination by the board of the baseline water use for all  
2 water rights involved in the local water plan, based on the guidelines  
3 adopted by the board, and in consultation with the water resource  
4 panel. The baseline documents regarding water use that are submitted  
5 by the water users may not be used by the department to determine the  
6 validity of the water rights in any future administrative or regulatory  
7 actions;

8 (b) A clearly defined set of practices that provide for flexibility  
9 of water use as defined in subsection (4) of this section;

10 (c) An estimate of the amount of water that would remain instream  
11 either long term or during critical flow periods for fish;

12 (d) Performance measures and options for achieving reductions in  
13 total water use from baseline;

14 (e) Performance measures for tracking improved stream flows either  
15 long term or during critical flow periods for fish; and

16 (f) Measurement, tracking, and monitoring measures and procedures  
17 that ensure the implementation and enforcement of the measures for  
18 flexibility of water use, enhancement of the stream flows, and other  
19 elements, terms, and conditions in the local water plan.

20 (4) The local water plan may have elements and provide rights to  
21 the use and application of water that are not otherwise authorized in  
22 the water rights, including:

23 (a) The ability to use the quantity of water defined as baseline in  
24 section 12(1)(a) of this act on new or additional places of use, from  
25 new or additional points of diversion or withdrawal, and at different  
26 times of the year;

27 (b) The ability to change or add a source of water supply including  
28 the use of groundwater to supplement surface water rights and the  
29 ability to implement the conjunctive use of the groundwater and surface  
30 water; and

31 (c) The storage of water and infiltration of the water to the  
32 groundwater to supplement shallow groundwater withdrawals or for the  
33 purpose of replenishing the aquifer.

34 (5) To participate in a local water plan, water rights holders  
35 must: (a) Agree to allow a portion or all of their baseline water use  
36 to remain instream, as specified in the approved local water plan; (b)  
37 have existing operable water conveyance infrastructure in place and  
38 available for use; (c) agree that any water made available for stream



1 flow enhancement may not be diverted from the water source and used  
2 during the term of the local water plan, but instead must be deposited  
3 into the water bank or, upon request by the water rights holder,  
4 transferred to the trust water rights program consistent with chapter  
5 90.42 RCW; (d) measure and monitor their water use, stream flows  
6 upstream and downstream of the boundaries of the plan, and groundwater  
7 levels within the boundaries of the plan; and (e) commit to staying in  
8 the program consistent with criteria established by the board.

9 (6) Unless agreed upon by the water rights holder, nothing in this  
10 chapter diminishes or changes existing water rights.

11 (7) The water users must submit annual reports to the department  
12 and the board regarding contract performance, consistent with the  
13 guidelines adopted by the board.

14 (8) A local water plan may be effective for a term of one to ten  
15 years.

16 NEW SECTION. **Sec. 9.** (1) The board must provide a thirty-day  
17 public notice period for the proposal for a local water plan and accept  
18 comments from all interested persons during that period.

19 (2) To become effective, the local water plan must be approved by  
20 both the board and the department. A proposed local water plan must  
21 not be approved if the board and the department determine the local  
22 water plan will not substantially enhance instream flow conditions.

23 (3) The approved local water plan must be signed by the executive  
24 director of the board, by the director, and by all water users  
25 participating in the local water plan. The local water plan is a  
26 contract among the board, the department, and the water users in which  
27 all parties agree to abide by all terms and conditions of the local  
28 water plan.

29 (4) If an approved local water plan is not in compliance with its  
30 terms and conditions, the board shall, consistent with the dispute  
31 resolution process adopted by the board, seek compliance. If the board  
32 revokes a local water plan due to noncompliance, the water users in the  
33 local water plan must thereafter exercise the water rights only as the  
34 water rights were authorized and conditioned prior to the approval of  
35 the local water plan, and all rights and duties that were terms in the  
36 local water plan lapse and are not valid or enforceable.

1        NEW SECTION.    **Sec. 10.**    (1) Any person not party to the local water  
2 plan and aggrieved by the director's decision may appeal the decision  
3 to the pollution control hearings board as provided under RCW  
4 43.21B.230.

5        (2) A water rights holder who believes the holder's water right has  
6 been impaired by any action under this chapter may request that the  
7 department review the impairment claim. If the department determines  
8 that some action under this chapter is impairing existing rights, the  
9 department, the board, and the water users must amend the local water  
10 plan to eliminate the impairment. Any decision of the department to  
11 alter or not alter a local water plan is appealable to the pollution  
12 control hearings board under RCW 43.21B.230.

13        NEW SECTION.    **Sec. 11.**    (1) A local water plan expires by its  
14 terms, by withdrawal of one or more water users to the local water  
15 plan, or upon agreement by all parties to the contact. Upon the  
16 expiration of a local water plan that has been operating for five or  
17 more years, the water users may request that the board and the  
18 department make the elements of the local water plan, including water  
19 deposited to the water bank for placement in the trust water rights  
20 program, permanent authorizations and conditions for use of the water  
21 rights.

22        (2) The request under subsection (1) of this section must be  
23 evaluated based on whether:

24        (a) The determination of the baseline water use adequately analyzed  
25 the extent and validity of the donated water right; and

26        (b)(i) Whether there is injury or detriment to other existing water  
27 rights; or

28        (ii) The written approval obtained from the holder of an impaired  
29 water right is continued or renewed.

30        (3) If the board and the department approve the request under  
31 subsection (1) of this section, the department shall issue superseding  
32 water rights consistent with the management and uses of the water under  
33 the local water plan. That portion of the water rights deposited in  
34 the water bank for placement in the trust water rights program must be  
35 made permanent and transferred in accordance with chapter 90.42 RCW.

36        (4) If the local water plan expires and the water management and  
37 uses under the local water plan are not granted approval to be

1 permanent, the water users in the local water plan must thereafter  
2 exercise the water rights only as the water rights were authorized and  
3 conditioned prior to the local water plan, and all rights and duties  
4 that were terms in the local water plan lapse and are not valid or  
5 enforceable.

6 NEW SECTION. **Sec. 12.** (1) The water rights in the local water  
7 plan as authorized for the uses described in section 8(4) of this act  
8 are:

9 (a) Not subject to either the approval of the department under RCW  
10 90.03.380 through 90.03.390, 90.44.100, and 90.44.105, or a tentative  
11 determination of the validity and extent of the water rights;

12 (b) Not subject to loss by forfeiture under RCW 90.14.130 through  
13 90.14.200 during the period of time from when the local water plan is  
14 approved to the expiration or nullification of the local water plan as  
15 provided in section 11 of this act; and

16 (c) Not to be exercised in a manner that would result in injury or  
17 detriment to other existing water rights unless express written  
18 approval is obtained from the holder of the impaired water right. To  
19 allow impacts to existing instream flow rights, the board and the  
20 department must agree that the flow benefits provided by a local water  
21 plan outweigh the impacts on existing instream flow rights.

22 (2) The years during the period of time when the local water plan  
23 is operational may not be considered or calculated as a period of time  
24 that the water was not applied to use for purposes of RCW 90.14.130  
25 through 90.14.200. Further, the years during this period of time may  
26 not be considered or calculated as a period of time that the water was  
27 not applied to use and for purposes of future applications to change  
28 the water right for additional purposes or acreage under RCW 90.03.380.

29 NEW SECTION. **Sec. 13.** The local water management program  
30 authorized by this chapter must be piloted in WRIA 32, as defined in  
31 chapter 173-500 WAC as it existed on January 1, 1997.

32 **Sec. 14.** RCW 90.14.140 and 2001 c 240 s 1, 2001 c 237 s 27, and  
33 2001 c 69 s 5 are each reenacted and amended to read as follows:

34 (1) For the purposes of RCW 90.14.130 through 90.14.180,

1 "sufficient cause" shall be defined as the nonuse of all or a portion  
2 of the water by the owner of a water right for a period of five or more  
3 consecutive years where such nonuse occurs as a result of:

4 (a) Drought, or other unavailability of water;

5 (b) Active service in the armed forces of the United States during  
6 military crisis;

7 (c) Nonvoluntary service in the armed forces of the United States;

8 (d) The operation of legal proceedings;

9 (e) Federal or state agency leases of or options to purchase lands  
10 or water rights which preclude or reduce the use of the right by the  
11 owner of the water right;

12 (f) Federal laws imposing land or water use restrictions either  
13 directly or through the voluntary enrollment of a landowner in a  
14 federal program implementing those laws, or acreage limitations, or  
15 production quotas;

16 (g) Temporarily reduced water need for irrigation use where such  
17 reduction is due to varying weather conditions, including but not  
18 limited to precipitation and temperature, that warranted the reduction  
19 in water use, so long as the water user's diversion and delivery  
20 facilities are maintained in good operating condition consistent with  
21 beneficial use of the full amount of the water right;

22 (h) Temporarily reduced diversions or withdrawals of irrigation  
23 water directly resulting from the provisions of a contract or similar  
24 agreement in which a supplier of electricity buys back electricity from  
25 the water right holder and the electricity is needed for the diversion  
26 or withdrawal or for the use of the water diverted or withdrawn for  
27 irrigation purposes;

28 (i) Water conservation measures implemented under the Yakima river  
29 basin water enhancement project, so long as the conserved water is  
30 reallocated in accordance with the provisions of P.L. 103-434;

31 (j) Reliance by an irrigation water user on the transitory presence  
32 of return flows in lieu of diversion or withdrawal of water from the  
33 primary source of supply, if such return flows are measured or reliably  
34 estimated using a scientific methodology generally accepted as reliable  
35 within the scientific community; or

36 (k) The reduced use of irrigation water resulting from crop  
37 rotation. For purposes of this subsection, crop rotation means the  
38 temporary change in the type of crops grown resulting from the exercise

1 of generally recognized sound farming practices. Unused water  
2 resulting from crop rotation will not be relinquished if the remaining  
3 portion of the water continues to be beneficially used.

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

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

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

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

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

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

20 (f) If such right or portion of the right is leased to another  
21 person for use on land other than the land to which the right is  
22 appurtenant as long as the lessee makes beneficial use of the right in  
23 accordance with this chapter and a transfer or change of the right has  
24 been approved by the department in accordance with RCW 90.03.380,  
25 90.03.383, 90.03.390, or 90.44.100;

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

29 (h) If such right is a trust water right under chapter 90.38 or  
30 90.42 RCW;

31 (i) If such a right is involved in an approved local water plan  
32 created under section 9 of this act, provided the right is subject to  
33 an agreement not to divert under section 5 of this act, or provided the  
34 right is banked under section 7 of this act.

35 (3) In adding provisions to this section by chapter 237, Laws of  
36 2001, the legislature does not intend to imply legislative approval or  
37 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 **Sec. 15.** RCW 90.03.380 and 2003 c 329 s 2 are each amended to read  
4 as follows:

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

1 created under section 9 of this act, or the water right was subject to  
2 an agreement to not divert under section 5 of this act will not be  
3 included in the most recent five-year period of continuous beneficial  
4 use for the purpose of determining the annual consumptive quantity  
5 under this section. If the water right has not been used during the  
6 previous five years but the nonuse of which qualifies for one or more  
7 of the statutory good causes or exceptions to relinquishment in RCW  
8 90.14.140 and 90.44.520, the period of nonuse is not included in the  
9 most recent five-year period of continuous beneficial use for purposes  
10 of determining the annual consumptive quantity of water under this  
11 section.

12 (2) If an application for change proposes to transfer water rights  
13 from one irrigation district to another, the department shall, before  
14 publication of notice, receive concurrence from each of the irrigation  
15 districts that such transfer or change will not adversely affect the  
16 ability to deliver water to other landowners or impair the financial  
17 integrity of either of the districts.

18 (3) A change in place of use by an individual water user or users  
19 of water provided by an irrigation district need only receive approval  
20 for the change from the board of directors of the district if the use  
21 of water continues within the irrigation district, and when water is  
22 provided by an irrigation entity that is a member of a board of joint  
23 control created under chapter 87.80 RCW, approval need only be received  
24 from the board of joint control if the use of water continues within  
25 the area of jurisdiction of the joint board and the change can be made  
26 without detriment or injury to existing rights.

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

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

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

1 (c) Notwithstanding any other existing authority to process  
2 applications, including but not limited to the authority to process  
3 applications under WAC 173-152-050 as it existed on January 1, 2001, an  
4 application relating to an existing surface or ground water right may  
5 be processed ahead of a previously filed application relating to an  
6 existing right when sufficient information for a decision on the  
7 previously filed application is not available and the applicant for the  
8 previously filed application is sent written notice that explains what  
9 information is not available and informs the applicant that processing  
10 of the next application will begin. The previously filed application  
11 does not lose its priority date and if the information is provided by  
12 the applicant within sixty days, the previously filed application shall  
13 be processed at that time. This subsection (5)(c) does not affect any  
14 other existing authority to process applications.

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

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

21 (7) In revising the provisions of this section and adding  
22 provisions to this section by chapter 237, Laws of 2001, the  
23 legislature does not intend to imply legislative approval or  
24 disapproval of any existing administrative policy regarding, or any  
25 existing administrative or judicial interpretation of, the provisions  
26 of this section not expressly added or revised.

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

33 (9) This section does not apply to a water right involved in an  
34 approved local water plan created under section 9 of this act, a water  
35 right that is subject to an agreement not to divert under section 5 of  
36 this act, or a banked water right under section 7 of this act.



1           **Sec. 16.** RCW 90.44.100 and 2003 c 329 s 3 are each amended to read  
2 as follows:

3           (1) After an application to, and upon the issuance by the  
4 department of an amendment to the appropriate permit or certificate of  
5 groundwater right, the holder of a valid right to withdraw public  
6 groundwaters may, without losing the holder's priority of right,  
7 construct wells or other means of withdrawal at a new location in  
8 substitution for or in addition to those at the original location, or  
9 the holder may change the manner or the place of use of the water.

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

29           (3) The construction of a replacement or new additional well or  
30 wells at the location of the original well or wells shall be allowed  
31 without application to the department for an amendment. However, the  
32 following apply to such a replacement or new additional well: (a) The  
33 well shall tap the same body of public groundwater as the original well  
34 or wells; (b) if a replacement well is constructed, the use of the  
35 original well or wells shall be discontinued and the original well or  
36 wells shall be properly decommissioned as required under chapter 18.104  
37 RCW; (c) if a new additional well is constructed, the original well or  
38 wells may continue to be used, but the combined total withdrawal from

1 the original and additional well or wells shall not enlarge the right  
2 conveyed by the original water use permit or certificate; (d) the  
3 construction and use of the well shall not interfere with or impair  
4 water rights with an earlier date of priority than the water right or  
5 rights for the original well or wells; (e) the replacement or  
6 additional well shall be located no closer than the original well to a  
7 well it might interfere with; (f) the department may specify an  
8 approved manner of construction of the well; and (g) the department  
9 shall require a showing of compliance with the conditions of this  
10 subsection (3).

11 (4) As used in this section, the "location of the original well or  
12 wells" is the area described as the point of withdrawal in the original  
13 public notice published for the application for the water right for the  
14 well.

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

21 (6) This section does not apply to a water right involved in an  
22 approved local water plan created under section 9 of this act or a  
23 banked water right under section 7 of this act.

24 **Sec. 17.** RCW 43.21B.110 and 2003 c 393 s 19 are each amended to  
25 read as follows:

26 (1) The hearings board shall only have jurisdiction to hear and  
27 decide appeals from the following decisions of the department, the  
28 director, local conservation districts, and the air pollution control  
29 boards or authorities as established pursuant to chapter 70.94 RCW, or  
30 local health departments:

31 (a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431,  
32 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.48.144, 90.56.310, and  
33 90.56.330.

34 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,  
35 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,  
36 90.14.130, 90.48.120, and 90.56.330.

1 (c) A final decision by the department or director made under this  
2 act.

3 (d) Except as provided in RCW 90.03.210(2), the issuance,  
4 modification, or termination of any permit, certificate, or license by  
5 the department or any air authority in the exercise of its  
6 jurisdiction, including the issuance or termination of a waste disposal  
7 permit, the denial of an application for a waste disposal permit, the  
8 modification of the conditions or the terms of a waste disposal permit,  
9 or a decision to approve or deny an application for a solid waste  
10 permit exemption under RCW 70.95.300.

11 (~~(d)~~) (e) Decisions of local health departments regarding the  
12 grant or denial of solid waste permits pursuant to chapter 70.95 RCW.

13 (~~(e)~~) (f) Decisions of local health departments regarding the  
14 issuance and enforcement of permits to use or dispose of biosolids  
15 under RCW 70.95J.080.

16 (~~(f)~~) (g) Decisions of the department regarding waste-derived  
17 fertilizer or micronutrient fertilizer under RCW 15.54.820, and  
18 decisions of the department regarding waste-derived soil amendments  
19 under RCW 70.95.205.

20 (~~(g)~~) (h) Decisions of local conservation districts related to  
21 the denial of approval or denial of certification of a dairy nutrient  
22 management plan; conditions contained in a plan; application of any  
23 dairy nutrient management practices, standards, methods, and  
24 technologies to a particular dairy farm; and failure to adhere to the  
25 plan review and approval timelines in RCW 90.64.026.

26 (~~(h)~~) (i) Any other decision by the department or an air  
27 authority which pursuant to law must be decided as an adjudicative  
28 proceeding under chapter 34.05 RCW.

29 (2) The following hearings shall not be conducted by the hearings  
30 board:

31 (a) Hearings required by law to be conducted by the shorelines  
32 hearings board pursuant to chapter 90.58 RCW.

33 (b) Hearings conducted by the department pursuant to RCW 70.94.332,  
34 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

35 (c) Proceedings conducted by the department, or the department's  
36 designee, under RCW 90.03.160 through 90.03.210 or 90.44.220.

37 (d) Hearings conducted by the department to adopt, modify, or  
38 repeal rules.

1 (e) Appeals of decisions by the department as provided in chapter  
2 43.21L RCW.

3 (3) Review of rules and regulations adopted by the hearings board  
4 shall be subject to review in accordance with the provisions of the  
5 administrative procedure act, chapter 34.05 RCW.

6 **Sec. 18.** RCW 90.82.060 and 2008 c 210 s 1 are each amended to read  
7 as follows:

8 (1) Planning conducted under this chapter must provide for a  
9 process to allow the local citizens within a WRIA or multi-WRIA area to  
10 join together in an effort to: (a) Assess the status of the water  
11 resources of their WRIA or multi-WRIA area; and (b) determine how best  
12 to manage the water resources of the WRIA or multi-WRIA area to balance  
13 the competing resource demands for that area within the parameters  
14 under RCW 90.82.120.

15 (2)(a) Watershed planning under this chapter may be initiated for  
16 a WRIA only with the concurrence of: (i) All counties within the WRIA;  
17 (ii) the largest city or town within the WRIA unless the WRIA does not  
18 contain a city or town; and (iii) the water supply utility obtaining  
19 the largest quantity of water from the WRIA or, for a WRIA with lands  
20 within the Columbia Basin project, the water supply utility obtaining  
21 from the Columbia Basin project the largest quantity of water for the  
22 WRIA. To apply for a grant for organizing the planning unit as  
23 provided for under RCW 90.82.040(2)(a), these entities shall designate  
24 the entity that will serve as the lead agency for the planning effort  
25 and indicate how the planning unit will be staffed.

26 (b) For purposes of this chapter, WRIA 40 shall be divided such  
27 that the portion of the WRIA located entirely within the Stemilt and  
28 Squilchuck subbasins shall be considered WRIA 40a and the remaining  
29 portion shall be considered WRIA 40b. Planning may be conducted  
30 separately for WRIA 40a and 40b. WRIA 40a shall be eligible for one-  
31 fourth of the funding available for a single WRIA, and WRIA 40b shall  
32 be eligible for three-fourths of the funding available for a single  
33 WRIA.

34 (c) For purposes of this chapter, WRIA 29 shall be divided such  
35 that the portion of the WRIA located entirely within the White Salmon  
36 subbasin and the subbasins east thereof shall be considered WRIA 29b  
37 and the remaining portion shall be considered WRIA 29a. Planning may

1 be conducted separately for WRIA 29a and 29b. WRIA 29a shall be  
2 eligible for one-half of the funding available for a single WRIA and  
3 WRIA 29b shall be eligible for one-half of the funding available for a  
4 single WRIA.

5 (d) For purposes of this chapter, WRIA 14 shall be divided such  
6 that the portion of the WRIA where surface waters drain into Hood Canal  
7 shall be considered WRIA 14b, and the remaining portion shall be  
8 considered WRIA 14a. Planning for WRIA 14b under this chapter shall be  
9 conducted by the WRIA 16 planning unit. WRIA 14b shall be eligible for  
10 one-half of the funding available for a single WRIA, and WRIA 14a shall  
11 be eligible for one-half of the funding available for a single WRIA.

12 (3) Watershed planning under this chapter may be initiated for a  
13 multi-WRIA area only with the concurrence of: (a) All counties within  
14 the multi-WRIA area; (b) the largest city or town in each WRIA unless  
15 the WRIA does not contain a city or town; and (c) the water supply  
16 utility obtaining the largest quantity of water in each WRIA.

17 (4) If entities in subsection (2) or (3) of this section decide  
18 jointly and unanimously to proceed, they shall invite all tribes with  
19 reservation lands within the management area.

20 (5) The entities in subsection (2) or (3) of this section,  
21 including the tribes if they affirmatively accept the invitation,  
22 constitute the initiating governments for the purposes of this section.

23 (6) The organizing grant shall be used to organize the planning  
24 unit and to determine the scope of the planning to be conducted. In  
25 determining the scope of the planning activities, consideration shall  
26 be given to all existing plans and related planning activities. The  
27 scope of planning must include water quantity elements as provided in  
28 RCW 90.82.070, and may include water quality elements as contained in  
29 RCW 90.82.090, habitat elements as contained in RCW 90.82.100, and  
30 instream flow elements as contained in RCW 90.82.080. The initiating  
31 governments shall work with state government, other local governments  
32 within the management area, and affected tribal governments, in  
33 developing a planning process. The initiating governments may hold  
34 public meetings as deemed necessary to develop a proposed scope of work  
35 and a proposed composition of the planning unit. In developing a  
36 proposed composition of the planning unit, the initiating governments  
37 shall provide for representation of a wide range of water resource  
38 interests.

1 (7) Each state agency with regulatory or other interests in the  
2 WRIA or multi-WRIA area to be planned shall assist the local citizens  
3 in the planning effort to the greatest extent practicable, recognizing  
4 any fiscal limitations. In providing such technical assistance and to  
5 facilitate representation on the planning unit, state agencies may  
6 organize and agree upon their representation on the planning unit.  
7 Such technical assistance must only be at the request of and to the  
8 extent desired by the planning unit conducting such planning. The  
9 number of state agency representatives on the planning unit shall be  
10 determined by the initiating governments in consultation with the  
11 governor's office.

12 (8) As used in this section, "lead agency" means the entity that  
13 coordinates staff support of its own or of other local governments and  
14 receives grants for developing a watershed plan.

15 (9) A planning unit is dissolved when the department approves a  
16 water management board, as authorized in section 3 of this act, and all  
17 assets, funds, files, planning documents, pending plans and grant  
18 applications, and other current activities of the planning unit are  
19 transferred to the approved water management board. The approved water  
20 management board must assume the duties, responsibilities, and  
21 activities of the planning unit and the initiating governments, as  
22 required in this chapter.

23 NEW SECTION. Sec. 19. Sections 1 through 13 of this act  
24 constitute a new chapter in Title 90 RCW.

25 NEW SECTION. Sec. 20. This act expires June 30, 2019.

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