
HOUSE BILL 2134

State of Washington

56th Legislature

1999 Regular Session

By Representatives Linville, Kessler, Wood and Santos

Read first time 02/16/1999. Referred to Committee on Agriculture & Ecology.

1 AN ACT Relating to water resources; amending RCW 90.03.330,
2 90.03.380, 90.44.100, 43.62.035, 90.03.383, 90.03.345, 90.14.140,
3 90.38.020, 90.42.080, 90.46.010, 90.46.080, 90.46.090, and 90.03.060;
4 adding new sections to chapter 90.03 RCW; adding a new section to
5 chapter 82.16 RCW; adding a new section to chapter 82.08 RCW; and
6 adding a new section to chapter 39.34 RCW.

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

8 **Sec. 1.** RCW 90.03.330 and 1987 c 109 s 89 are each amended to read
9 as follows:

10 (1) Upon a showing satisfactory to the department that any
11 appropriation has been perfected in accordance with the provisions of
12 this chapter, it shall be the duty of the department to issue to the
13 applicant a certificate stating such facts in a form to be prescribed
14 by ~~((him))~~ the department, and such certificate shall thereupon be
15 recorded with the department. Any original water right certificate
16 issued, as provided by this chapter, shall be recorded with the
17 department and thereafter, at the expense of the party receiving the
18 same, be by the department transmitted to the county auditor of the
19 county or counties where the distributing system or any part thereof is

1 located, and be recorded in the office of such county auditor, and
2 thereafter be transmitted to the owner thereof.

3 (2) Each water right documented by a certificate issued under this
4 chapter or chapter 90.44 RCW or by a claim filed in the state's water
5 rights claims registry under chapter 90.14 RCW is composed of two
6 fundamental parts. One part is the portion of the right that has been
7 beneficially used. The second is the inchoate portion of the right.
8 The inchoate portion of the right may be exercised only as provided in
9 section 2 of this act for water rights held by public water systems for
10 the purposes of public water systems or as provided in section 3 of
11 this act for water rights held by any other person or entity or for any
12 other purpose or use. The sum of these parts for any water right shall
13 not exceed instantaneously or annually the extent of the right stated
14 on the certificate or the extent of the right stated on the statement
15 of claim filed for the right under chapter 90.14 RCW. The priority
16 date for the beneficially used portion of a water right developed by
17 exercising an inchoate portion of the water right under section 2 or 3
18 of this act is the priority date of the original water right.

19 NEW SECTION. Sec. 2. A new section is added to chapter 90.03 RCW
20 to read as follows:

21 The inchoate portion of a water right held by a public water system
22 for public water system purposes as described in RCW 90.03.330(2) may
23 be exercised only as provided in this section.

24 (1) The amount of water diverted or withdrawn for beneficial use
25 under the water right shall not exceed the amount represented by the
26 capacity of the water diversion, withdrawal, or distribution facilities
27 constructed for using the right on the effective date of this section
28 or on the date a certificate is issued for a new right under this
29 chapter or chapter 90.44 RCW, whichever date is later.

30 (2) The population served by the right, the number of service
31 connections, and the amount of water beneficially used under the right
32 may be expanded through the conversion of an inchoate portion of the
33 right to a beneficially used portion of the right within the place of
34 use listed on the certificate or in the statement of claim if the
35 conditions listed in subsection (3) of this section are satisfied.

36 (3) If the place of use of the public water system's water right
37 includes an area that is:

1 (a) Within the boundaries of a critical water supply service area
2 designated under chapter 70.116 RCW for which a coordinated water
3 system plan has been adopted, the public water system shall satisfy
4 requests for service within the area dedicated to service by the system
5 under the plan before use of water under the inchoate portion of the
6 system's water right may be expanded for use elsewhere; or

7 (b) Within the corporate limits of a city or town or within the
8 boundaries of an urban growth area as designated under chapter 36.70A
9 RCW, the first priority for expanding use of water under the inchoate
10 portion of the system's water right shall be, except as provided in (a)
11 of this subsection, use within those limits or boundaries and this
12 priority shall be clearly documented in any water system plan submitted
13 by the public water system for review by the department of health or
14 the plan shall not be approved by the department of health.

15 (4) If a portion of the area governed by a coordinated water system
16 plan or area within a city or town or urban growth area is within the
17 place of use for a public system's water right as described in
18 subsection (3) of this section, any part of the inchoate portion of the
19 system's right may be transferred or changed to use for public water
20 system purposes within any other part of the critical water supply
21 service area or any other area within the corporate boundaries of the
22 city or town or within the urban growth area if all conservation
23 measures in guidelines of the department of health that apply to the
24 distribution systems of public water systems are incorporated into the
25 distribution of the water within such an expanded place of use.

26 Although the transfer or change shall be approved by the department
27 of ecology, the conditions provided by this subsection authorizing the
28 transfer or change are the exclusive tests to be used by the department
29 in approving the transfer or change.

30 (5) Any part of an inchoate portion of a public water system's
31 water right may be converted to a beneficially used portion of the
32 right through the transfer or change of the right to another public
33 water system through the use of an intertie or otherwise and for use
34 for public water system purposes if all conservation measures in
35 guidelines of the department of health that apply to the distribution
36 systems of public water systems are incorporated into the distribution
37 of the water within such an expanded place of use. Such a transfer or
38 change shall be made as provided in RCW 90.03.380, 90.03.383,
39 90.03.390, or 90.44.100.

1 (6) This section shall not be construed as permitting any use of
2 the right in a manner otherwise expressly restricted or prohibited by
3 the provisions or conditions listed on the certificate or in the
4 statement of claim.

5 (7) If the only place of use specified in a water right certificate
6 held by a public water system is the system's service area, the place
7 of use for the certificate for the purposes of this section is the
8 service area identified in the latest water system plan approved before
9 the effective date of this section by the department of health for the
10 public water system.

11 (8) If an inchoate portion of a water right is converted to a
12 beneficially used portion of the water right after the effective date
13 of this section and the holder of the water right is a public water
14 system with one thousand or more service connections, the system and
15 the department shall study the effects of such an action on habitat for
16 fish stocks listed or proposed for listing as threatened or endangered
17 under the federal endangered species act or as critical or depressed in
18 the state's salmon and steelhead stock inventory. The study shall be
19 completed within two years of the action. If the action would
20 adversely impact such habitat, the system shall, within one year of
21 completing the study, develop a plan for mitigating the adverse impacts
22 and for monitoring the effectiveness of the mitigation effort. This
23 subsection does not apply if use of the water right is regulated under
24 a license issued by the federal energy regulatory commission.

25 NEW SECTION. **Sec. 3.** A new section is added to chapter 90.03 RCW
26 to read as follows:

27 The inchoate portion of a water right other than a right to use
28 water for public water system purposes is the portion of the right that
29 becomes available for use by the holder of the water right through the
30 implementation of water distribution and use efficiency measures. Such
31 an inchoate portion of the water right may be transferred or changed to
32 use on other lands owned by the holder of the water right if:

33 (1) The amount of water diverted or withdrawn by the water right
34 holder for beneficial use under the original certificate or statement
35 of claim is not expanded;

36 (2) The water distribution and use efficiency measures employed by
37 the water right holder at such a new place of use are at least as
38 efficient as those employed at the original place of use;

1 (3) The place of use to which the water would be transferred is
2 within one mile of any part of the perimeter of the place of use under
3 the original right.

4 A transfer or change that satisfies the conditions of subsections
5 (1) through (3) of this section is presumed to be in the public
6 interest and is presumed to be neither detrimental nor injurious to
7 existing rights. The burden is on a challenging party or the
8 department to provide evidence that overcomes this presumption.

9 NEW SECTION. **Sec. 4.** A new section is added to chapter 90.03 RCW
10 to read as follows:

11 If funding for financing water efficiency measures is provided by
12 the state and the measures result in the ability of a water right
13 holder to use the inchoate portion of the holder's water right under
14 section 3 of this act, a portion of the inchoate right made usable
15 shall be transferred to the state trust water right system under
16 chapter 90.38 or 90.42 RCW that is equal to the proportion of the total
17 cost of the measures that is financed with state funding. Any water
18 rights received by the state shall be transferred to the state trust
19 water right system under chapter 90.38 or 90.42 RCW.

20 **Sec. 5.** RCW 90.03.380 and 1997 c 442 s 801 are each amended to
21 read as follows:

22 (1) The right to the use of water which has been applied to a
23 beneficial use in the state shall be and remain appurtenant to the land
24 or place upon which the same is used: PROVIDED, HOWEVER, That the
25 right may be transferred to another or to others and become appurtenant
26 to any other land or place of use without loss of priority of right
27 theretofore established if such change can be made without detriment or
28 injury to existing rights. The point of diversion of water for
29 beneficial use or the purpose of use may be changed, if such change can
30 be made without detriment or injury to existing rights. Except as
31 provided in section 3 of this act, a change in the place of use, point
32 of diversion, and/or purpose of use of a water right to enable
33 irrigation of additional acreage or the addition of new uses may be
34 permitted if such change results in no increase in the annual
35 consumptive quantity of water used under the water right. For purposes
36 of this section, "annual consumptive quantity" means the estimated or
37 actual annual amount of water diverted pursuant to the water right,

1 reduced by the estimated annual amount of return flows, averaged over
2 the most recent five-year period of continuous beneficial use of the
3 water right. Before any transfer of such right to use water or change
4 of the point of diversion of water or change of purpose of use can be
5 made, any person having an interest in the transfer or change, shall
6 file a written application therefor with the department, and the
7 application shall not be granted until notice of the application is
8 published as provided in RCW 90.03.280. If it shall appear that such
9 transfer or such change may be made without injury or detriment to
10 existing rights, the department shall issue to the applicant a
11 certificate in duplicate granting the right for such transfer or for
12 such change of point of diversion or of use. The certificate so issued
13 shall be filed and be made a record with the department and the
14 duplicate certificate issued to the applicant may be filed with the
15 county auditor in like manner and with the same effect as provided in
16 the original certificate or permit to divert water.

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

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

32 (4) The tests provided by this section for determining whether a
33 transfer or change may be approved by the department are modified as
34 provided in sections 2(4) and 3 of this act for the circumstances
35 governed by sections 2(4) and 3 of this act.

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

1 **Sec. 6.** RCW 90.44.100 and 1997 c 316 s 2 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 ground water right, the holder of a valid right to withdraw public
6 ground waters 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 ground water 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 ground water as the original
34 well 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
39 the original and additional well or wells shall not enlarge the right

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

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

14 (5) The tests provided by this section for determining whether a
15 change or amendment may be approved by the department are modified as
16 provided in sections 2(4) and 3 of this act for the circumstances
17 governed by sections 2(4) and 3 of this act.

18 NEW SECTION. Sec. 7. A new section is added to chapter 90.03 RCW
19 to read as follows:

20 The department shall process and render decisions on applications
21 for changes or transfers under this chapter and amendments of ground
22 water rights under chapter 90.44 RCW as a matter of higher priority
23 than processing and rendering decisions on applications for new water
24 rights. Any application for a new water right for which a permit
25 decision has not been made by the department at the time a transfer,
26 change, or amendment is approved shall not be considered an existing
27 water right subject to analysis as to whether the application may be
28 injured, impaired, or detrimentally affected by the transfer or change.

29 **Sec. 8.** RCW 43.62.035 and 1997 c 429 s 26 are each amended to read
30 as follows:

31 (1) The office of financial management shall determine the
32 population of each county of the state annually as of April 1st of each
33 year and on or before July 1st of each year shall file a certificate
34 with the secretary of state showing its determination of the population
35 for each county. The office of financial management also shall
36 determine the percentage increase in population for each county over
37 the preceding ten-year period, as of April 1st, and shall file a

1 certificate with the secretary of state by July 1st showing its
2 determination. At least once every five years or upon the availability
3 of decennial census data, whichever is later, the office of financial
4 management shall prepare twenty-year growth management planning
5 population projections required by RCW 36.70A.110 for each county that
6 adopts a comprehensive plan under RCW 36.70A.040 and shall review these
7 projections with such counties and the cities in those counties before
8 final adoption. The office shall use the procedures in subsection (2)
9 of this section in preparing these growth management planning
10 population projections.

11 The county and its cities may provide to the office such
12 information as they deem relevant to the office's projection, and the
13 office shall consider and comment on such information before adoption.
14 Each projection shall be expressed as a reasonable range developed
15 within the standard state high and low projection. The middle range
16 shall represent the office's estimate of the most likely population
17 projection for the county. If any city or county believes that a
18 projection will not accurately reflect actual population growth in a
19 county, it may petition the office to revise the projection
20 accordingly. The office shall complete the first set of ranges for
21 every county by December 31, 1995.

22 (2) In preparing growth management planning population projections
23 under subsection (1) of this section, the office of financial
24 management shall first submit a rough draft of its projections to the
25 departments of ecology, health, and community, trade, and economic
26 development for their review and comment. The department of health
27 shall review the draft projections and identify the extent to which the
28 growth projected can be supported by water delivery service through
29 water supply plans approved to date by the department of health.

30 The department of ecology shall review the draft projections and
31 the analysis provided by the department of health and, in consultation
32 with the department of health and the department of community, trade,
33 and economic development, shall provide a general estimate to the
34 office of financial management based on the records of the department,
35 including any analyses developed under chapter 90.82 RCW, of the
36 availability of water to support the projections of the office. The
37 office shall adjust its projections such that they do not project
38 growth that clearly cannot be supported by the estimates of available
39 water provided by the department of ecology under this subsection.

1 (3) A comprehensive plan adopted or amended before December 31,
2 1995, shall not be considered to be in noncompliance with the twenty-
3 year growth management planning population projection if the projection
4 used in the comprehensive plan is in compliance with the range later
5 adopted under this section.

6 **Sec. 9.** RCW 90.03.383 and 1991 c 350 s 1 are each amended to read
7 as follows:

8 (1) The legislature recognizes the value of interties for improving
9 the reliability of public water systems, enhancing their management,
10 and more efficiently utilizing the increasingly limited resource.
11 Given the continued growth in the most populous areas of the state, the
12 increased complexity of public water supply management, and the trend
13 toward regional planning and regional solutions to resource issues,
14 interconnections of public water systems through interties provide a
15 valuable tool to ensure reliable public water supplies for the citizens
16 of the state. Public water systems have been encouraged in the past to
17 utilize interties to achieve public health and resource management
18 objectives. The legislature finds that it is in the public interest to
19 recognize interties existing and in use as of January 1, 1991, and to
20 have associated water rights modified by the department of ecology to
21 reflect current use of water through those interties, pursuant to
22 subsection (3) of this section. The legislature further finds it in
23 the public interest to develop a coordinated process to review
24 proposals for interties commencing use after January 1, 1991.

25 (2) For the purposes of this section, the following definitions
26 shall apply:

27 (a) "Interties" are interconnections between public water systems
28 permitting exchange, acquisition, or delivery of water between those
29 systems for other than emergency supply purposes, where such exchange
30 or delivery is within established instantaneous and annual withdrawal
31 rates specified in the systems' existing water right permits or
32 certificates, or contained in claims filed pursuant to chapter 90.14
33 RCW, and which results in better management of public water supply
34 consistent with existing rights and obligations. Interties include
35 interconnections between public water systems permitting exchange,
36 acquisition, or delivery of water to serve as primary or secondary
37 sources of supply(~~(, but do not include development of new sources of~~
38 ~~supply to meet future demand))~~).

1 (b) "Service area" is the area designated in a water system plan or
2 a coordinated water system plan pursuant to chapter 43.20 or 70.116 RCW
3 respectively. When a public water system does not have a designated
4 service area subject to the approval process of those chapters, the
5 service area shall be the designated place of use contained in the
6 water right permit or certificate, or contained in the claim filed
7 pursuant to chapter 90.14 RCW.

8 (3) Public water systems with interties existing and in use as of
9 January 1, 1991, or that have received written approval from the
10 department of health prior to that date, shall file written notice of
11 those interties with the department of health and the department of
12 ecology. The notice may be incorporated into the public water system's
13 five-year update of its water system plan, but shall be filed no later
14 than June 30, 1996. The notice shall identify the location of the
15 intertie; the dates of its first use; the purpose, capacity, and
16 current use; the intertie agreement of the parties and the service
17 areas assigned; and other information reasonably necessary to modify
18 the water right permit. Notwithstanding the provisions of RCW
19 90.03.380 and 90.44.100, for public water systems with interties
20 existing and in use as of January 1, 1991, the department of ecology,
21 upon receipt of notice meeting the requirements of this subsection,
22 shall, as soon as practicable, modify the place of use descriptions in
23 the water right permits, certificates, or claims to reflect the actual
24 use through such interties, provided that the place of use is within
25 service area designations established in a water system plan approved
26 pursuant to chapter 43.20 RCW, or a coordinated water system plan
27 approved pursuant to chapter 70.116 RCW, and further provided that the
28 water used is within the instantaneous and annual withdrawal rates
29 specified in the water right permit and that no outstanding complaints
30 of impairment to existing water rights have been filed with the
31 department of ecology prior to September 1, 1991. Where such
32 complaints of impairment have been received, the department of ecology
33 shall make all reasonable efforts to resolve them in a timely manner
34 through agreement of the parties or through available administrative
35 remedies.

36 (4) Notwithstanding the provisions of RCW 90.03.380 and 90.44.100,
37 exchange or delivery of water through interties commencing use after
38 January 1, 1991, shall be permitted when the intertie improves overall
39 system reliability, enhances the manageability of the systems, provides

1 opportunities for conjunctive use, or delays or avoids the need to
2 develop new water sources, and otherwise meets the requirements of this
3 section, provided that each public water system's water use shall not
4 exceed the instantaneous or annual withdrawal rate specified in its
5 water right authorization, shall not adversely affect existing water
6 rights, and shall not be inconsistent with state-approved plans such as
7 water system plans or other plans which include specific proposals for
8 construction of interties. Interties commencing use after January 1,
9 1991, shall not be inconsistent with regional water resource plans
10 developed pursuant to chapter 90.54 RCW.

11 (5) For public water systems subject to the approval process of
12 chapter 43.20 RCW or chapter 70.116 RCW, proposals for interties
13 commencing use after January 1, 1991, shall be incorporated into water
14 system plans pursuant to chapter 43.20 RCW or coordinated water system
15 plans pursuant to chapter 70.116 RCW and submitted to the department of
16 health and the department of ecology for review and approval as
17 provided for in subsections (5) through (9) of this section. The plan
18 shall state how the proposed intertie will improve overall system
19 reliability, enhance the manageability of the systems, provide
20 opportunities for conjunctive use, or delay or avoid the need to
21 develop new water sources.

22 (6) The department of health shall be responsible for review and
23 approval of proposals for new interties. In its review the department
24 of health shall determine whether the intertie satisfies the criteria
25 of subsection (4) of this section, with the exception of water rights
26 considerations, which are the responsibility of the department of
27 ecology, and shall determine whether the intertie is necessary to
28 address emergent public health or safety concerns associated with
29 public water supply.

30 (7) If the intertie is determined by the department of health to be
31 necessary to address emergent public health or safety concerns
32 associated with public water supply, the public water system shall
33 amend its water system plan as required and shall file an application
34 with the department of ecology to change its existing water right to
35 reflect the proposed use of the water as described in the approved
36 water system plan. The department of ecology shall process the
37 application for change pursuant to RCW 90.03.380 or 90.44.100 as
38 appropriate, except that, notwithstanding the requirements of those
39 sections regarding notice and protest periods, applicants shall be

1 required to publish notice one time, and the comment period shall be
2 fifteen days from the date of publication of the notice. Within sixty
3 days of receiving the application, the department of ecology shall
4 issue findings and advise the department of health if existing water
5 rights are determined to be adversely affected. If no determination is
6 provided by the department of ecology within the sixty-day period, the
7 department of health shall proceed as if existing rights are not
8 adversely affected by the proposed intertie. The department of ecology
9 may obtain an extension of the sixty-day period by submitting written
10 notice to the department of health and to the applicant indicating a
11 definite date by which its determination will be made. No additional
12 extensions shall be granted, and in no event shall the total review
13 period for the department of ecology exceed one hundred eighty days.

14 (8) If the department of health determines the proposed intertie
15 appears to meet the requirements of subsection (4) of this section but
16 is not necessary to address emergent public health or safety concerns
17 associated with public water supply, the department of health shall
18 instruct the applicant to submit to the department of ecology an
19 application for change to the underlying water right or claim as
20 necessary to reflect the new place of use. The department of ecology
21 shall consider the applications pursuant to the provisions of RCW
22 90.03.380 and 90.44.100 as appropriate. If in its review of proposed
23 interties and associated water rights the department of ecology
24 determines that additional information is required to act on the
25 application, the department may request applicants to provide
26 information necessary for its decision, consistent with agency rules
27 and written guidelines. Parties disagreeing with the decision of the
28 department of ecology on the application for change in place of use may
29 appeal the decision to the pollution control hearings board.

30 (9) The department of health may approve plans containing intertie
31 proposals prior to the department of ecology's decision on the water
32 right application for change in place of use. However, notwithstanding
33 such approval, construction work on the intertie shall not begin until
34 the department of ecology issues the appropriate water right document
35 to the applicant consistent with the approved plan.

36 (10) An intertie shall not be used to deliver a primary or
37 secondary supply of water to a receiving system on a temporary basis
38 unless the terms of the intertie agreement specify the source of the
39 water that will be used by the receiving system to replace the water

1 delivered on the temporary basis and provide that replacement water
2 will be available for delivery to or use by the receiving system before
3 delivery by the supplying system under the agreement is terminated.
4 However, if a primary or secondary supply of water is delivered to a
5 receiving system on a temporary basis by means of an intertie on the
6 effective date of this section and the agreement between the supplying
7 system and receiving system does not contain such provision for such a
8 replacement supply of water for the receiving system, the delivery of
9 the water by the supplying system to the receiving system shall not be
10 terminated until the agreement is modified to establish such provisions
11 and such replacement water is available for delivery to or use by the
12 receiving system.

13 **Sec. 10.** RCW 90.03.345 and 1979 ex.s. c 216 s 7 are each amended
14 to read as follows:

15 (1) The establishment of reservations of water for agriculture,
16 hydroelectric energy, municipal, industrial, and other beneficial uses
17 under RCW 90.54.050(1) or minimum flows or levels under RCW 90.22.010
18 or 90.54.040 shall constitute appropriations within the meaning of this
19 chapter with priority dates as of the effective dates of their
20 establishment. Whenever an application for a permit to make beneficial
21 use of public waters embodied in a reservation, established after
22 September 1, 1979, is filed with the department of ecology after the
23 effective date of such reservation, the priority date for a permit
24 issued pursuant to an approval by the department of ecology of the
25 application shall be the effective date of the reservation.

26 (2) A water right for instream use may be held by the state through
27 the establishment of a reservation or minimum flow or level as
28 described in subsection (1) of this section or may be held by the state
29 as a trust water right under chapter 90.38 or 90.42 RCW. A water right
30 for instream use may also be established through the approval of a
31 change, transfer, or amendment of an existing water right under this
32 chapter or chapter 90.44 RCW in the manner prescribed for a water right
33 for any other use. A water right for an instream use established
34 through such a change, transfer, or amendment may be held as an
35 appropriative right by any person or entity.

36 **Sec. 11.** RCW 90.14.140 and 1998 c 258 s 1 are each amended to read
37 as follows:

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

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

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

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

9 (d) The operation of legal proceedings;

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

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

17 (2) Notwithstanding any other provisions of RCW 90.14.130 through
18 90.14.180, there shall be no relinquishment of any water right:

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

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

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

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

31 (e) If such waters are not subject to appropriation under the
32 applicable provisions of RCW 90.40.030; (~~or~~)

33 (f) If such right or portion of the right is leased to another
34 person for use on land other than the land to which the right is
35 appurtenant as long as the lessee makes beneficial use of the right in
36 accordance with this chapter and a transfer or change of the right has
37 been approved by the department in accordance with RCW 90.03.380,
38 90.03.383, 90.03.390, or 90.44.100; or

39 (g) If such right is held for instream use.

1 **Sec. 12.** RCW 90.38.020 and 1989 c 429 s 3 are each amended to read
2 as follows:

3 (1) The department may acquire water rights, including but not
4 limited to storage rights, by purchase, gift, or other appropriate
5 means other than by condemnation, from any person or entity or
6 combination of persons or entities. Once acquired, such rights are
7 trust water rights. A water right acquired by the state that is
8 expressly conditioned to limit its use to instream purposes shall be
9 administered as a trust water right in compliance with that condition.

10 (2) The department may make such other arrangements, including
11 entry into contracts with other persons or entities as appropriate to
12 ensure that trust water rights acquired in accordance with this chapter
13 can be exercised to the fullest possible extent.

14 (3) The trust water rights may be acquired on a temporary or
15 permanent basis.

16 (4) Any water right conveyed to the trust water right system as a
17 gift shall be managed by the department for public purposes to ensure
18 that the gift qualifies as a deduction from federal income taxation for
19 the person or entity conveying the gift.

20 **Sec. 13.** RCW 90.42.080 and 1993 c 98 s 4 are each amended to read
21 as follows:

22 (1) The state may acquire all or portions of existing water rights,
23 by purchase, gift, or other appropriate means other than by
24 condemnation, from any person or entity or combination of persons or
25 entities. Once acquired, such rights are trust water rights. A water
26 right acquired by the state that is expressly conditioned to limit its
27 use to instream purposes shall be administered as a trust water right
28 in compliance with that condition.

29 (2) The department may enter into leases, contracts, or such other
30 arrangements with other persons or entities as appropriate, to ensure
31 that trust water rights acquired in accordance with this chapter may be
32 exercised to the fullest possible extent.

33 (3) Trust water rights may be acquired by the state on a temporary
34 or permanent basis.

35 (4) The provisions of RCW 90.03.380 and 90.03.390 apply to
36 transfers of water rights under this section.

1 (5) No funds may be expended for the purchase of water rights by
2 the state pursuant to this section unless specifically appropriated for
3 this purpose by the legislature.

4 (6) Any water right conveyed to the trust water right system as a
5 gift shall be managed by the department for public purposes to ensure
6 that the gift qualifies as a deduction from federal income taxation for
7 the person or entity conveying the gift.

8 **Sec. 14.** RCW 90.46.010 and 1997 c 444 s 5 are each amended to read
9 as follows:

10 Unless the context clearly requires otherwise, the definitions in
11 this section apply throughout this chapter.

12 (1) "Greywater" means wastewater having the consistency and
13 strength of residential domestic type wastewater. Greywater includes
14 wastewater from sinks, showers, and laundry fixtures, but does not
15 include toilet or urinal waters.

16 (2) "Land application" means application of treated effluent for
17 purposes of irrigation or landscape enhancement for residential,
18 business, and governmental purposes.

19 (3) "Person" means any state, individual, public or private
20 corporation, political subdivision, governmental subdivision,
21 governmental agency, municipality, copartnership, association, firm,
22 trust estate, or any other legal entity whatever.

23 (4) "Reclaimed water" means effluent derived in any part from
24 sewage from a wastewater treatment system that has been adequately and
25 reliably treated, so that as a result of that treatment, it is suitable
26 for a beneficial use or a controlled use that would not otherwise occur
27 and is no longer considered wastewater.

28 (5) "Sewage" means water-carried human wastes from residences,
29 buildings, industrial and commercial establishments, or other places,
30 together with such ground water infiltration, surface waters, or
31 industrial wastewater as may be present.

32 (6) "User" means any person who uses reclaimed water.

33 (7) "Wastewater" means water and wastes discharged from homes,
34 businesses, and industry to the sewer system.

35 (8) "Beneficial ((use)) reuse" means the use of reclaimed water((~~that has been transported from the point of production to the point of~~
36 ~~use without an intervening discharge to the waters of the state,~~)) for
37 a beneficial purpose, including but not limited to land application,
38

1 replenishment of ground water, wetland enhancement, and streamflow
2 augmentation providing increased instream flows for fish.

3 (9) "Direct recharge" means the controlled subsurface addition of
4 water directly to the ground water basin that results in the
5 replenishment of ground water.

6 (10) "Ground water recharge criteria" means the contaminant
7 criteria found in the drinking water quality standards adopted by the
8 state board of health pursuant to chapter 43.20 RCW and the department
9 of health pursuant to chapter 70.119A RCW.

10 (11) "Planned ground water recharge project" means any reclaimed
11 water project designed for the purpose of recharging ground water, via
12 direct recharge or surface percolation.

13 (12) "Reclamation criteria" means the criteria set forth in the
14 water reclamation and reuse interim standards and subsequent revisions
15 adopted by the department of ecology and the department of health.

16 (13) "Streamflow augmentation" means the discharge of reclaimed
17 water to rivers and streams of the state or other surface water bodies,
18 but not wetlands.

19 (14) "Surface percolation" means the controlled application of
20 water to the ground surface for the purpose of replenishing ground
21 water.

22 (15) "Wetland or wetlands" means areas that are inundated or
23 saturated by surface water or ground water at a frequency and duration
24 sufficient to support, and that under normal circumstances do support,
25 a prevalence of vegetation typically adapted to life in saturated soil
26 conditions. Wetlands generally include swamps, marshes, bogs, and
27 similar areas. Wetlands regulated under this chapter shall be
28 delineated in accordance with the manual adopted by the department of
29 ecology pursuant to RCW 90.58.380.

30 (16) "Constructed beneficial use wetlands" means those wetlands
31 intentionally constructed on nonwetland sites to produce or replace
32 natural wetland functions and values. Constructed beneficial use
33 wetlands are considered "waters of the state."

34 (17) "Constructed treatment wetlands" means those wetlands
35 intentionally constructed on nonwetland sites and managed for the
36 primary purpose of wastewater or storm water treatment. Constructed
37 treatment wetlands are considered part of the collection and treatment
38 system and are not considered "waters of the state."

1 **Sec. 15.** RCW 90.46.080 and 1997 c 444 s 6 are each amended to read
2 as follows:

3 (1) Reclaimed water may be beneficially (~~(used)~~) reused for surface
4 percolation provided the reclaimed water meets the ground water
5 recharge criteria as measured in ground water beneath or down gradient
6 of the recharge project site, and has been incorporated into a sewer or
7 water comprehensive plan, as applicable, adopted by the applicable
8 local government and approved by the department of health or department
9 of ecology as applicable.

10 (2) If the state ground water recharge criteria as defined by RCW
11 90.46.010 do not contain a standard for a constituent or contaminant,
12 the department of ecology shall establish a discharge limit consistent
13 with the goals of this chapter.

14 (3) Reclaimed water that does not meet the ground water recharge
15 criteria may be beneficially (~~(used)~~) reused for surface percolation
16 where the department of ecology, in consultation with the department of
17 health, has specifically authorized such use at such lower standard.

18 **Sec. 16.** RCW 90.46.090 and 1997 c 444 s 7 are each amended to read
19 as follows:

20 (1) Reclaimed water may be beneficially (~~(used)~~) reused for
21 discharge into constructed beneficial use wetlands and constructed
22 treatment wetlands provided the reclaimed water meets the class A or B
23 reclaimed water standards as defined in the reclamation criteria, and
24 the discharge is incorporated into a sewer or water comprehensive plan,
25 as applicable, adopted by the applicable local government and approved
26 by the department of health or department of ecology as applicable.

27 (2) Reclaimed water that does not meet the class A or B reclaimed
28 water standards may be beneficially (~~(used)~~) reused for discharge into
29 constructed treatment wetlands where the department of ecology, in
30 consultation with the department of health, has specifically authorized
31 such use at such lower standards.

32 (3) The department of ecology and the department of health must
33 develop appropriate standards for discharging reclaimed water into
34 constructed beneficial use wetlands and constructed treatment wetlands.
35 These standards must be considered as part of the approval process
36 under subsections (1) and (2) of this section.

1 NEW SECTION. **Sec. 17.** A new section is added to chapter 82.16 RCW
2 to read as follows:

3 This chapter does not apply to amounts received for water services
4 supplied by an entity that holds a permit under RCW 90.46.030 when the
5 water supplied is reclaimed water as defined in RCW 90.46.010.

6 NEW SECTION. **Sec. 18.** A new section is added to chapter 82.08 RCW
7 to read as follows:

8 The tax levied by RCW 82.08.020 shall not apply to sales of
9 machinery and equipment used directly in transmitting, distributing, or
10 storing reclaimed water as defined in RCW 90.46.010, or to sales of or
11 charges made for labor and services rendered in respect to installing
12 such machinery and equipment. As used in this section, "machinery and
13 equipment" means pipelines, outfalls, conduits, pumping stations,
14 instrumentation and monitoring equipment, structures, machinery,
15 equipment, accessories, and all other construction, devices,
16 appurtenances, and facilities used for the primary purpose of
17 conducting reclaimed water from a wastewater treatment system for a
18 beneficial use, including the augmentation of streamflow for fish.

19 NEW SECTION. **Sec. 19.** A new section is added to chapter 39.34 RCW
20 to read as follows:

21 By agreement under this chapter, the director of the department of
22 ecology and the director of the department of fish and wildlife are
23 each authorized to delegate and accept monitoring and data collection
24 powers or functions to or from the other department. The directors
25 shall enter such an agreement to provide for reporting by the employees
26 of each of the departments to the other department regarding potential
27 violations of the other department's rules or of the laws it
28 administers.

29 **Sec. 20.** RCW 90.03.060 and 1987 c 109 s 69 are each amended to
30 read as follows:

31 (1) Except as provided in subsection (2) of this section:

32 (a) Water masters shall be appointed by the department whenever it
33 shall find the interests of the state or of the water users to require
34 them(~~(-)~~); and

35 (b) The districts for or in which the water masters serve shall be
36 designated water master districts, which shall be fixed from time to

1 time by the department, as required, and they shall be subject to
2 revision as to boundaries or to complete abandonment as local
3 conditions may indicate to be expedient, the spirit of this provision
4 being that no district shall be created or continued where the need for
5 the same does not exist.

6 (2) The department shall appoint a water master for each watershed
7 management area for which a plan has been adopted by a planning unit
8 and by the counties with territory in the watershed management area
9 under RCW 90.82.130.

10 (3) Water masters shall be supervised by the department, shall be
11 compensated for services from funds of the department, and shall be
12 technically qualified to the extent of understanding the elementary
13 principals of hydraulics and irrigation, and of being able to make
14 water measurements in streams and in open and closed conduits of all
15 characters, by the usual methods employed for that purpose. Counties
16 and municipal and public corporations of the state are authorized to
17 contribute moneys to the department to be used as compensation to water
18 masters in carrying out their duties. All such moneys received by the
19 department shall be used exclusively for said purpose.

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