
SUBSTITUTE HOUSE BILL 1832

State of Washington

57th Legislature

2001 Regular Session

By House Committee on Appropriations (originally sponsored by Representatives Linville and G. Chandler; by request of Governor Locke)

Read first time . Referred to Committee on .

1 AN ACT Relating to water resources management; amending RCW
2 90.82.040, 90.82.130, 90.03.380, 90.80.005, 90.80.010, 90.80.050,
3 90.80.070, 90.80.080, 90.80.090, 90.80.100, 90.80.120, 90.80.130,
4 90.80.140, 90.80.150, 90.66.040, 90.66.060, 90.14.140, 90.38.020,
5 90.38.040, 90.42.040, and 90.42.080; adding a new section to chapter
6 90.82 RCW; adding new sections to chapter 90.80 RCW; adding a new
7 section to chapter 90.66 RCW; adding a new section to chapter 82.16
8 RCW; creating new sections; prescribing penalties; providing an
9 expiration date; and declaring an emergency.

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

11 NEW SECTION. **Sec. 1.** The legislature is committed to meeting the
12 needs of a growing population and a healthy economy statewide; to
13 meeting the needs of fish and healthy watersheds statewide; and to
14 advancing these two principles together, in increments over time.

15 The legislature finds that improved management of the state's water
16 resources, clarifying the authorities, requirements, and timelines for
17 establishing instream flows, providing timely decisions on water
18 transfers, clarifying the authority of water conservancy boards, and
19 enhancing the flexibility of our water management system to meet both

1 environmental and economic goals are important steps to providing a
2 better future for our state.

3 The need for these improvements is particularly urgent as we are
4 faced with drought conditions. The failure to act now will only
5 increase the potential negative effects on both the economy and the
6 environment, including fisheries resources.

7 Deliberative action over several legislative sessions and interim
8 periods between sessions will be required to address the long-term goal
9 of improving the responsiveness of the state water code to meet the
10 diverse water needs of the state's citizenry. It is the intent of the
11 legislature to begin this work now by providing tools to enable the
12 state to respond to imminent drought conditions and other immediate
13 problems relating to water resources management. It is also the
14 legislature's intent to lay the groundwork for future legislation for
15 addressing the state's long-term water problems.

16 **Sec. 2.** RCW 90.82.040 and 1998 c 247 s 1 are each amended to read
17 as follows:

18 (1) Once a WRIA planning unit has been initiated under RCW
19 90.82.060 and a lead agency has been designated, it shall notify the
20 department and may apply to the department for funding assistance for
21 conducting the planning. Funds shall be provided from and to the
22 extent of appropriations made by the legislature to the department
23 expressly for this purpose.

24 (2)(a) Each planning unit that has complied with subsection (1) of
25 this section is eligible to receive watershed planning grants in the
26 following amounts for three phases of watershed planning:

27 ~~((a))~~ (i) Initiating governments may apply for an initial
28 organizing grant of up to fifty thousand dollars for a single WRIA or
29 up to seventy-five thousand dollars for a multi-WRIA management area in
30 accordance with RCW 90.82.060(4);

31 ~~((b))~~ (ii)(A) A planning unit may apply for up to two hundred
32 thousand dollars for each WRIA in the management area for conducting
33 watershed assessments in accordance with RCW 90.82.070, except that a
34 planning unit that chooses to conduct a detailed assessment or studies
35 under (a)(ii)(B) of this subsection or whose initiating governments
36 choose or have chosen to include an instream flow or water quality
37 component in accordance with RCW 90.82.080 or 90.82.090 may apply for
38 up to one hundred thousand additional dollars for each instream flow

1 and up to one hundred thousand additional dollars for each water
2 quality component included for each WRIA to conduct an assessment on
3 that optional component and for each WRIA in which the assessments or
4 studies under (a)(ii)(B) of this subsection are conducted.

5 (B) A planning unit may elect to apply for up to one hundred
6 thousand additional dollars to conduct a detailed assessment of
7 multipurpose water storage opportunities or for studies of specific
8 multipurpose storage projects which opportunities or projects are
9 consistent with and support the other elements of the planning unit's
10 watershed plan developed under this chapter; and

11 ((e)) (iii) A planning unit may apply for up to two hundred fifty
12 thousand dollars for each WRIA in the management area for developing a
13 watershed plan and making recommendations for actions by local, state,
14 and federal agencies, tribes, private property owners, private
15 organizations, and individual citizens, including a recommended list of
16 strategies and projects that would further the purpose of the plan in
17 accordance with RCW 90.82.060 through 90.82.100.

18 (b) A planning unit may request a different amount for phase two or
19 phase three of watershed planning than is specified in (a) of this
20 subsection, provided that the total amount of funds awarded do not
21 exceed the maximum amount the planning unit is eligible for under (a)
22 of this subsection. The department shall approve such an alternative
23 allocation of funds if the planning unit identifies how the proposed
24 alternative will meet the goals of this chapter and provides a proposed
25 timeline for the completion of planning. However, the up to one
26 hundred thousand additional dollars in funding for instream flow and
27 water quality components and for water storage assessments or studies
28 that a planning unit may apply for under (a)(ii)(A) of this subsection
29 may be used only for those instream flow, water quality, and water
30 storage purposes.

31 (c) By December 1, 2001, or within one year of initiating phase one
32 of watershed planning, whichever occurs later, the initiating
33 governments for each planning unit must inform the department whether
34 they intend to have the planning unit establish or amend instream flows
35 as part of its planning process. If they elect to have the planning
36 unit establish or amend instream flows, the planning unit is eligible
37 to receive one hundred thousand dollars for that purpose in accordance
38 with (a)(ii) of this subsection. If the initiating governments for a
39 planning unit elect not to establish or amend instream flows as part of

1 the unit's planning process, the department shall retain one hundred
2 thousand dollars to carry out an assessment to support establishment of
3 instream flows and to establish such flows in accordance with RCW
4 90.54.020(3)(a) and chapter 90.22 RCW. The department shall not use
5 these funds to amend an existing instream flow unless requested to do
6 so by the initiating governments for a planning unit.

7 (d) In administering funds appropriated for supplemental funding
8 for optional plan components under (a)(ii) of this subsection, the
9 department shall give priority in granting the available funds to
10 proposals for setting or amending instream flows.

11 (3)(a) The department shall use the eligibility criteria in this
12 subsection (3) instead of rules, policies, or guidelines when
13 evaluating grant applications at each stage of the grants program.

14 (b) In reviewing grant applications under this subsection (3), the
15 department shall evaluate whether:

16 (i) The planning unit meets all of the requirements of this
17 chapter;

18 (ii) The application demonstrates a need for state planning funds
19 to accomplish the objectives of the planning process; and

20 (iii) The application and supporting information evidences a
21 readiness to proceed.

22 (c) In ranking grant applications submitted at each stage of the
23 grants program, the department shall give preference to applications in
24 the following order of priority:

25 (i) Applications from existing planning groups that have been in
26 existence for at least one year;

27 (ii) Applications that address protection and enhancement of fish
28 habitat in watersheds that have aquatic fish species listed or proposed
29 to be listed as endangered or threatened under the federal endangered
30 species act, 16 U.S.C. Sec. 1531 et seq. and for which there is
31 evidence of an inability to supply adequate water for population and
32 economic growth from:

33 (A) First, multi-WRIA planning; and

34 (B) Second, single WRIA planning;

35 (iii) Applications that address protection and enhancement of fish
36 habitat in watersheds or for which there is evidence of an inability to
37 supply adequate water for population and economic growth from:

38 (A) First, multi-WRIA planning; and

39 (B) Second, single WRIA planning.

1 (d) The department may not impose any local matching fund
2 requirement as a condition for grant eligibility or as a preference for
3 receiving a grant.

4 (4) The department may retain up to one percent of funds allocated
5 under this section to defray administrative costs.

6 (5) Planning under this chapter should be completed as
7 expeditiously as possible, with the focus being on local stakeholders
8 cooperating to meet local needs.

9 (6) Funding provided under this section shall be considered a
10 contractual obligation against the moneys appropriated for this
11 purpose.

12 NEW SECTION. **Sec. 3.** A new section is added to chapter 90.82 RCW
13 to read as follows:

14 By October 1, 2001, the department of ecology shall complete a
15 final nonproject environmental impact statement that evaluates stream
16 flows to meet the alternative goals of maintaining, preserving, or
17 enhancing instream resources and the technically defensible
18 methodologies for determining these stream flows. Planning units and
19 state agencies assessing and setting or amending instream flows must,
20 as a minimum, consider the goals and methodologies addressed in the
21 nonproject environmental impact statement. A planning unit or state
22 agency may assess, set, or amend instream flows in a manner that varies
23 from the final nonproject environmental impact statement if consistent
24 with applicable instream flow laws.

25 **Sec. 4.** RCW 90.82.130 and 1998 c 247 s 9 are each amended to read
26 as follows:

27 (1)(a) Upon completing its proposed watershed plan, the planning
28 unit may approve the proposal by consensus of all of the members of the
29 planning unit or by consensus among the members of the planning unit
30 appointed to represent units of government and a majority vote of the
31 nongovernmental members of the planning unit.

32 (b) If the proposal is approved by the planning unit, the unit
33 shall submit the proposal to the counties with territory within the
34 management area. If the planning unit has received funding beyond the
35 initial (~~fifty thousand dollars~~) organizing grant under RCW
36 90.82.040, such a proposal approved by the planning unit shall be
37 submitted to the counties within four years of the date (~~the~~) that

1 funds beyond the initial funding ((was)) are first ((received)) drawn
2 upon by the planning unit.

3 (c) If the watershed plan is not approved by the planning unit, the
4 planning unit may submit the components of the plan for which agreement
5 is achieved using the procedure under (a) of this subsection, or the
6 planning unit may terminate the planning process.

7 (2)(a) The legislative authority of each of the counties with
8 territory in the management area shall provide public notice of and
9 conduct at least one public hearing on the proposed watershed plan
10 submitted under this section. After the public hearings, the
11 legislative authorities of these counties shall convene in joint
12 session to consider the proposal. The counties may approve or reject
13 the proposed watershed plan for the management area, but may not amend
14 it. Approval of such a proposal shall be made by a majority vote of
15 the members of each of the counties with territory in the management
16 area.

17 (b) If a proposed watershed plan is not approved, it shall be
18 returned to the planning unit with recommendations for revisions.
19 Approval of such a revised proposal by the planning unit and the
20 counties shall be made in the same manner provided for the original
21 watershed plan. If approval of the revised plan is not achieved, the
22 process shall terminate.

23 (3) The planning unit shall not add an element to its watershed
24 plan that creates an obligation unless each of the governments to be
25 obligated has at least one representative on the planning unit and the
26 respective members appointed to represent those governments agree to
27 adding the element that creates the obligation. A member's agreeing to
28 add an element shall be evidenced by a recorded vote of all members of
29 the planning unit in which the members record support for adding the
30 element. If the watershed plan is approved under subsections (1) and
31 (2) of this section and the plan creates obligations: (a) For agencies
32 of state government, the agencies shall adopt by rule the obligations
33 of both state and county governments and rules implementing the state
34 obligations, the obligations on state agencies are binding upon
35 adoption of the obligations into rule, and the agencies shall take
36 other actions to fulfill their obligations as soon as possible; or (b)
37 for counties, the obligations are binding on the counties and the
38 counties shall adopt any necessary implementing ordinances and take
39 other actions to fulfill their obligations as soon as possible.

1 (4) As used in this section, "obligation" means any action required
2 as a result of this chapter that imposes upon a tribal government,
3 county government, or state government, either: A fiscal impact; a
4 redeployment of resources; or a change of existing policy.

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

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

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

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

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

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

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

27 (c) Notwithstanding any other existing authority to process
28 applications, an application relating to an existing surface or ground
29 water right may be processed ahead of a previously filed application
30 relating to an existing right when sufficient information for a
31 decision on the previously filed application is not available and the
32 applicant for the previously filed application is sent written notice
33 that explains what information is not available and informs the
34 applicant that processing of the next application will begin. The
35 previously filed application does not lose its priority date and if the
36 information is provided by the applicant within sixty days, the
37 previously filed application shall be processed at that time. This
38 subsection (5)(c) does not affect any other existing authority to
39 process applications.

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

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

7 **Sec. 6.** RCW 90.80.005 and 1997 c 441 s 1 are each amended to read
8 as follows:

9 The legislature finds:

10 (1) Voluntary water right transfers (~~((between water users))~~) can
11 reallocate water use in a manner that will result in more efficient use
12 of water resources;

13 (2) Voluntary water right transfers can help alleviate water
14 shortages, save capital outlays, reduce development costs, and provide
15 an incentive for investment in water conservation efforts by water
16 right holders; and

17 (3) The state should expedite the administrative process for
18 (~~((noncontested))~~) water right transfers (~~((among water right holders,~~
19 ~~conveying greater operational control to water managers and water right~~
20 ~~holders))~~) by authorizing the establishment of water conservancy boards.

21 **Sec. 7.** RCW 90.80.010 and 1997 c 441 s 2 are each amended to read
22 as follows:

23 The following definitions apply throughout this chapter, unless the
24 context clearly requires otherwise.

25 (1) "Board" means a water conservancy board created under this
26 chapter.

27 (2) "Commissioner" means a member of a water conservancy board.

28 (3) "Department" means the department of ecology.

29 (4) "Director" means the director of the department of ecology.

30 (5) "Record of decision" means the conclusion reached by a water
31 conservancy board regarding an application for a transfer filed with
32 the board.

33 (6) "Transfer" means a transfer, change, amendment, or other
34 alteration of a part or all of a water right authorized under RCW
35 90.03.380, 90.03.390, or 90.44.100.

1 NEW SECTION. **Sec. 8.** A new section is added to chapter 90.80 RCW
2 to read as follows:

3 (1) If a county is the only county having lands comprising a water
4 resource inventory area as defined in chapter 173-500 WAC, the county
5 may elect to establish a water conservancy board for the water resource
6 inventory area, rather than for the entire county.

7 (2) Counties having lands within a water resource inventory area
8 may jointly petition the department for establishment of a water
9 conservancy board for the water resource inventory area. Counties may
10 jointly petition the department to establish boards serving multiple
11 counties or one or more water resource inventory areas. For any of
12 these multicounty options, the counties must reach their joint
13 determination on the decision to file the petition, on the proposed
14 bylaws, and on other matters relating to the establishment and
15 operation of the board in accordance with the provisions of this
16 chapter and chapter 39.34 RCW, the interlocal cooperation act. Each
17 county must meet the requirements of RCW 90.80.020(2). The counties
18 must jointly determine the sufficiency of a petition under RCW
19 90.80.020(3) and each county legislative authority must hold a hearing
20 in its county.

21 (3) If establishment of a multicounty water conservancy board under
22 any of the options provided in subsection (2) of this section is
23 approved by the department, the counties must jointly appoint the board
24 commissioners and jointly appoint members to fill vacancies as they
25 occur in accordance with the provisions of this chapter and chapter
26 39.34 RCW.

27 (4) A board established for more than one county or for one or more
28 water resource inventory areas has the same powers as other boards
29 established under this chapter. The board has no jurisdiction outside
30 the boundaries of the water resource inventory area or areas or the
31 county or counties, as applicable, for which it has been established,
32 except as provided in this chapter.

33 (5) The counties establishing a board for a multiple county area
34 must designate a lead county for purposes of providing a single point
35 of contact for communications with the department. The lead county
36 shall forward the information required in RCW 90.80.030(1) for each
37 county.

1 NEW SECTION. **Sec. 9.** A new section is added to chapter 90.80 RCW
2 to read as follows:

3 (1) Except as provided in subsection (2) of this section, a board
4 shall operate on a countywide basis or on an areawide basis in the case
5 of a board with jurisdiction in more than one county or water resource
6 inventory area, and have the following powers, in addition to any other
7 powers granted in this chapter:

8 (a) Except as provided in subsection (2) of this section, a board
9 may act upon applications for the same kinds of transfers that the
10 department itself is authorized to act upon, including an application
11 to establish a trust water right under chapter 90.38 or 90.42 RCW. A
12 board may not act upon an application for the type of transfer within
13 an irrigation district as described in RCW 90.03.380(3). If a board
14 receives an application for a transfer between two irrigation districts
15 as described in RCW 90.03.380(2), the board must, before publication of
16 notice of the application, receive the concurrence specified in that
17 section.

18 (b) A board may act upon an application to transfer a water right
19 claim filed under chapter 90.14 RCW. In acting upon such an
20 application, the board must make a tentative determination as to the
21 validity and extent of the right, if any, embodied in the claim and may
22 only issue a record of decision regarding a transfer of such a claim to
23 the extent it is tentatively determined to be valid. Neither the
24 board's tentative determination, nor the director's acceptance of such
25 a tentative determination, constitutes an adjudication of the right
26 under RCW 90.03.110 through 90.03.240 or 90.44.220, and such a
27 determination does not preclude or prejudice a subsequent challenge to
28 the validity, priority, or quantity of the right in a general
29 adjudication under those sections.

30 (c) A board may establish a water right transfer information
31 exchange through which all or part of a water right may be listed for
32 sale or lease. The board may also accept and post notices in the
33 exchange from persons interested in acquiring or leasing water rights
34 from willing sellers.

35 (d) The director shall assign a representative of the department to
36 provide technical assistance to each board. If requested by the board,
37 the representative shall work with the board as it reviews applications
38 for formal acceptance, prepares draft records of decision, and
39 considers other technical or legal factors affecting the board's

1 development of a final record of decision. A board may request and
2 accept additional technical assistance from the department. A board
3 may also request and accept assistance and support from the county
4 government or governments of the county or counties in which it
5 operates.

6 (2) The jurisdiction of a board shall not apply within the
7 boundaries of a federal Indian reservation or to lands held in trust
8 for an Indian band, tribe, or nation by the federal government.

9 **Sec. 10.** RCW 90.80.050 and 1997 c 441 s 6 are each amended to read
10 as follows:

11 (1) A water conservancy board constitutes a public body corporate
12 and politic and a separate unit of local government in the state. Each
13 board shall consist of three commissioners appointed by the county
14 legislative authority or authorities as applicable for six-year terms.
15 The county legislative authority or authorities shall stagger the
16 initial appointment of commissioners so that the first commissioners
17 who are appointed shall serve terms of two, four, and six years,
18 respectively, from the date of their appointment. The county
19 legislative authority or authorities may appoint two additional
20 commissioners, for a total of five. If the county or counties elect to
21 appoint five commissioners, the initial terms of the additional
22 commissioners shall be for three and five-year terms respectively. All
23 vacancies shall be filled for the unexpired term.

24 (2) The county legislative authority or authorities shall consider,
25 but ~~((is))~~ are not limited in appointing, nominations to the board by
26 people or entities petitioning or requesting the creation of the board.
27 ~~((However,))~~ The county legislative authority or authorities shall
28 ensure that at least one commissioner is an individual water right
29 holder~~((s))~~ who diverts or withdraws water for use within the
30 ~~((county are represented on))~~ area served by the board. The county legislative
31 authority or authorities must appoint one person who is not a water
32 right holder. If the county legislative authority or authorities
33 choose not to appoint five commissioners, and as of the effective date
34 of this section there is no commissioner on an existing board who is
35 not a water right holder, the county or counties are not required to
36 appoint a new commissioner until the first vacancy occurs. In making
37 appointments to the board, the county legislative authority or
38 authorities shall choose from among persons who are residents of the

1 county or counties or a county that is contiguous to the county that
2 the water conservancy board is to serve.

3 (3) No commissioner may participate in a record of decision of a
4 board (~~decisions~~) until he or she has successfully completed the
5 necessary training required under RCW 90.80.040. Commissioners shall
6 serve without compensation, but are entitled to reimbursement for
7 necessary travel expenses in accordance with RCW 43.03.050 and
8 43.03.060 and costs incident to receiving training.

9 **Sec. 11.** RCW 90.80.070 and 1997 c 441 s 9 are each amended to read
10 as follows:

11 (1) A person proposing a transfer of a water right may elect to
12 file an application with a water conservancy board, if a board has been
13 established for the geographic area where the water is or would be
14 diverted, withdrawn, or used. If the person has already filed an
15 application with the department, the person may request that the
16 department convey the application to the conservancy board with
17 jurisdiction and the department must promptly forward the application.
18 A board is not required to process an application filed with the board.
19 If a board decides that it will not process an application, it must
20 return the application to the applicant and must inform the applicant
21 that the application may be filed with the department. An
22 application(~~s~~) to the board for a transfer(~~s~~) shall be made on a
23 form provided by the department(~~, and shall contain such~~). A board
24 may require an applicant to submit within a reasonable time additional
25 information as may be required by the board in order to review and act
26 upon the application. At a minimum, the application shall include
27 information sufficient to establish to the board's satisfaction (~~of~~
28 ~~the transferor's~~) that a right to the quantity of water being
29 transferred exists, and a description of any applicable limitations on
30 the right to use water, including the point of diversion or withdrawal,
31 place of use, source of supply, purpose of use, quantity of use
32 permitted, time of use, period of use, and the place of storage.

33 (2) The (~~transferor and the transferee of~~) applicant for any
34 proposed water right transfer may apply to a board for (~~approval of~~
35 the) a record of decision on a transfer if the water proposed to be
36 transferred is currently diverted, withdrawn, or used within the
37 geographic (~~boundaries of the county~~) area in which the board has
38 jurisdiction, or would be diverted, withdrawn, or used within the

1 geographic (~~boundaries of the county~~) area in which the board has
2 jurisdiction if the transfer is approved. In the case of a proposed
3 water right transfer in which the water is currently diverted or
4 withdrawn or would be diverted or withdrawn outside the geographic
5 boundaries of the county or the water resource inventory area where the
6 use is proposed to be made, the board shall hold a public hearing in
7 the county of the diversion or withdrawal or proposed diversion or
8 withdrawal. The board shall provide for prominent publication of
9 notice of (~~such~~) the hearing in a newspaper of general circulation
10 published in the county in which the hearing is to be held for the
11 purpose of affording an opportunity for interested persons to comment
12 upon the application. If an application is for a transfer of water out
13 of the water resource inventory area that is the source of the water,
14 the board shall consult with the department regarding the application.

15 (3) After an application for a transfer is filed with the board,
16 the board shall publish notice of the application (~~in accordance with~~
17 ~~the publication requirements~~) and send notice to state agencies (~~as~~
18 ~~provided in~~) in accordance with the requirements of RCW 90.03.280. In
19 addition, the board shall send notice of the application to any Indian
20 tribe with reservation lands that would be, but for section 9(2) of
21 this act, within the area in which the board has jurisdiction. The
22 board shall also provide notice of the application to any Indian tribe
23 that has requested that it be notified of applications. Any person may
24 submit comments and other information to the board regarding the
25 application. (~~Any water right holder claiming detriment or injury to~~
26 ~~an existing water right may intervene in the application before the~~
27 ~~board pursuant to subsection (4) of this section. If a majority of the~~
28 ~~board determines that the application is complete, in accordance with~~
29 ~~the law and the transfer can be made without injury or detriment to~~
30 ~~existing water rights in accordance with RCW 90.03.380, the board shall~~
31 ~~issue the applicant a certificate conditionally approving the transfer,~~
32 ~~subject to review by the director.~~

33 (4) ~~If a water right holder claims a proposed transfer will cause~~
34 ~~an impairment to that right, the water right holder is entitled to a~~
35 ~~hearing before the board. The board shall receive such evidence as it~~
36 ~~deems material and necessary to determine the validity of the claim of~~
37 ~~impairment. If the party claiming the impairment establishes by a~~
38 ~~preponderance of the evidence that his or her water right will be~~
39 ~~impaired by the proposed transfer, the board may not approve the~~

1 ~~transfer unless the applicant and the impaired party agree upon~~
2 ~~compensation for the impairment.))~~ The comments and information may be
3 submitted in writing or verbally at any public meeting of the board to
4 discuss or decide on the application. The comments must be considered
5 by the board in making its record of decision.

6 (4) If a majority of the board determines that the application is
7 complete, and that the transfer is in accordance with RCW 90.03.380,
8 90.03.390, or 90.44.100, the board must issue a record of decision
9 approving the transfer, subject to review by the director. In making
10 its record of decision, the board must consider among other things
11 whether the proposed transfer can be made without detriment or injury
12 to existing water rights, including rights established for instream
13 flows. The board must include in its record of decision any conditions
14 that are deemed necessary for the transfer to qualify for approval
15 under the applicable laws of the state. The basis for the record of
16 decision of the board must be documented in a report of examination.
17 The board's proposed approval must clearly state that the applicant is
18 not permitted to proceed to effect the proposed transfer until a final
19 decision is made by the director. In making its record of decision,
20 the board must consider among other things whether the proposed
21 transfer can be made without detriment or injury to existing water
22 rights, including rights established for instream flows.

23 (5) If a majority of the board determines that the application
24 cannot be approved under the applicable laws of the state of
25 Washington, the board must make a record of decision denying the
26 application together with its report of examination documenting its
27 record of decision. The board's record of decision is subject to
28 review by the director under RCW 90.80.080.

29 **Sec. 12.** RCW 90.80.080 and 1997 c 441 s 11 are each amended to
30 read as follows:

31 (1) ((If a transfer is approved by the board,)) The board must
32 provide a copy of its record of decision to the applicant. The board
33 shall submit ((a copy of the proposed certificate conditionally
34 approving)) its record of decision on the transfer application to the
35 department for review. The board shall also submit ((a)) its report of
36 examination to the department summarizing ((any)) factual findings on
37 which the board relied in ((deciding to approve the proposed transfer))
38 reaching its record of decision and a copy of the files and records

1 upon which the board's record of decision is based. The board shall
2 also promptly transmit notice by mail to any person who objected to the
3 transfer or who requested notice of the board's record of decision.

4 (2) The director shall review each ~~((proposed transfer~~
5 ~~conditionally approved))~~ record of decision made by a board for
6 compliance with applicable state water ~~((transfer laws including RCW~~
7 ~~90.03.380, 90.03.390, and 90.44.100, rules and guidelines adopted by~~
8 ~~the department, and other applicable))~~ law.

9 (3) Any party to a transfer ~~((or a)),~~ a third party who alleges his
10 or her water right will be impaired by the proposed transfer, or other
11 person may file ~~((objections))~~ a letter of concern or support with the
12 department and the department may consider the concern or support
13 expressed in the letter. ~~((If objections to the transfer are filed~~
14 ~~with the department, the board shall forward the files and records upon~~
15 ~~which it based its decision to the department.))~~ Such letters must be
16 received by the department within thirty days of the board's record of
17 decision.

18 (4) The director shall review the ~~((action))~~ record of decision of
19 the board and affirm, reverse, or modify the action of the board within
20 forty-five days of receipt. The forty-five day time period may be
21 extended for an additional thirty days by the director~~((, upon the~~
22 ~~consent of the parties to the transfer))~~ or at the request of the board
23 or applicant. If the director fails to act within ~~((this))~~ the
24 prescribed time period, the board's ~~((action is))~~ record of decision
25 becomes final~~((. Upon approval of a water transfer by the action or~~
26 ~~nonaction of the director, the conditional certificate issued by the~~
27 ~~board is final and valid))~~ and becomes the decision of the department.
28 If the director acts within the prescribed time period, the director's
29 decision to affirm, modify, reverse, or remand is final.

30 **Sec. 13.** RCW 90.80.090 and 1997 c 441 s 12 are each amended to
31 read as follows:

32 The decision of the director to approve or deny an action to create
33 a board, or to approve, deny, or modify a water right transfer either
34 by action or ~~((nonaction shall be))~~ inaction is appealable in the same
35 manner as other water right decisions made pursuant to chapters 90.03
36 and 90.44 RCW.

1 **Sec. 14.** RCW 90.80.100 and 1997 c 441 s 13 are each amended to
2 read as follows:

3 Neither the county ~~((not))~~ or counties, the department, a
4 conservancy board, or its employees, nor individual conservancy board
5 commissioners shall be subject to any cause of action or claim for
6 damages arising out of records of decisions on transfers ~~((approved))~~
7 made by a board under this chapter.

8 **Sec. 15.** RCW 90.80.120 and 1997 c 441 s 16 are each amended to
9 read as follows:

10 (1) A commissioner of a water conservancy board ~~((who has an~~
11 ~~ownership interest in a water right subject to an application for~~
12 ~~approval of a transfer or change by the board, shall not participate in~~
13 ~~the board's review or decision upon the application))~~ shall not engage
14 in any act which is in conflict with the proper discharge of the
15 official duties of a commissioner. A commissioner is deemed to have a
16 conflict of interest if he or she:

17 (a) Has an ownership interest in a water right subject to an
18 application for approval before the board;

19 (b) Receives or has a financial interest in an application
20 submitted to the board or a project, development, or venture related to
21 the approval of the application; or

22 (c) Solicits, accepts, or seeks anything of economic value as a
23 gift, gratuity, or favor from any person, firm, or corporation involved
24 in the application.

25 (2) ~~((A commissioner of a water conservancy board who also serves~~
26 ~~as an employee or upon the governing body of a municipally owned water~~
27 ~~system, shall not participate in the board's review or decision upon an~~
28 ~~application for the transfer or change of a water right in which that~~
29 ~~water system has or is proposed to have an ownership interest.))~~ The
30 department shall return a record of decision to a conservancy board
31 without action where the department determines that any member of a
32 board has violated subsection (1) of this section.

33 (a) If a person seeking to rely on this section to disqualify a
34 commissioner knows of the basis for disqualification before the time
35 the board issues a record of decision, the person must request the
36 board to have the commissioner recuse himself or herself from further
37 involvement in processing the application, or be barred from later
38 raising that challenge.

1 (b) If the commissioner does not recuse himself or herself or if
2 the person becomes aware of the basis for disqualification after the
3 board issues a record of decision but within the time period under RCW
4 90.80.080(3) for filing objections with the department, the person must
5 raise the challenge with the department. If the department determines
6 that the commissioner should be disqualified under this section, the
7 director must remand the record of decision to the board for
8 reconsideration and resubmission of a record of decision. The
9 disqualified commissioner shall not participate in any further board
10 review of the application. The department's decision on whether to
11 remand a record of decision under this section may only be appealed at
12 the same time and in the same manner as an appeal of the department's
13 decision to affirm, modify, or reverse the record of decision after
14 remand.

15 (c) If the person becomes aware of the basis for disqualification
16 after the time for filing objections with the department, the person
17 may raise the challenge in an appeal of the department's final decision
18 under RCW 90.80.090.

19 NEW SECTION. Sec. 16. A new section is added to chapter 90.80 RCW
20 to read as follows:

21 A water conservancy board may be formally dissolved by the county
22 or jointly by the counties as applicable in which it operates by
23 adoption of a resolution of the county legislative authority or
24 authorities. Notice of the dissolution must be provided to the
25 director. The department may petition the county legislative authority
26 of the county or the lead county for a board to request that the board
27 be dissolved for repeated statutory violations or demonstrated
28 inability to perform the functions for which the board was created.

29 Sec. 17. RCW 90.80.130 and 1997 c 441 s 17 are each amended to
30 read as follows:

31 Water conservancy board activities are subject to the open public
32 meetings act, chapter 42.30 RCW and to chapter 42.32 RCW. This
33 includes announcing meetings in advance.

34 NEW SECTION. Sec. 18. A new section is added to chapter 90.80 RCW
35 to read as follows:

1 (1) A board is subject to the requirements of chapter 42.17 RCW.
2 Each board must establish and maintain records of its proceedings and
3 determinations. While in the possession of the board, all such records
4 must be made available for inspection and copies must be provided to
5 the public on request under the provisions of chapter 42.17 RCW.

6 (2) Upon the conclusion of its business involving a water right
7 transfer application, a board must promptly send the original copies of
8 all records relating to that application to the department for
9 recordkeeping. A board may keep a copy of the original documents.
10 After the records are transferred to the department, the responsibility
11 for making the records available under chapter 42.17 RCW is transferred
12 to the department.

13 NEW SECTION. **Sec. 19.** A new section is added to chapter 90.80 RCW
14 to read as follows:

15 For purposes of carrying out the official business of a board, a
16 quorum consists of the physical presence of two of the three members of
17 a three-member board or three of the five members of a five-member
18 board. A board may operate with one or two vacant positions as long as
19 it meets the quorum requirement.

20 **Sec. 20.** RCW 90.80.140 and 1997 c 441 s 18 are each amended to
21 read as follows:

22 Nothing in this chapter affects transfers that may be otherwise
23 approved under chapter 90.03 or 90.44 RCW.

24 **Sec. 21.** RCW 90.80.150 and 1997 c 441 s 19 are each amended to
25 read as follows:

26 The department shall report biennially by December 31st of each
27 even-numbered year to the appropriate committees of the legislature on
28 the boards formed or sought to be formed under the authority of this
29 chapter, the transfer applications reviewed and other activities
30 conducted by the boards, and the funding of such boards. Conservancy
31 boards must provide information regarding their activities to the
32 department to assist the department in preparing the report.

33 NEW SECTION. **Sec. 22.** It is the intent of the legislature to help
34 preserve the agricultural economy of the state by allowing changes of
35 family farm water permits from agricultural irrigation to other

1 agricultural purposes. Within the urbanizing areas of the state, the
2 legislature recognizes the need to allow water from family farms to be
3 converted to other purposes as the use of the land changes consistent
4 with adopted land use plans. The legislature also intends to allow
5 farmers to benefit from water conservation projects and from temporary
6 leases of their family farm water permits. Water conservation and
7 water leases will also allow farmers to contribute to instream flows
8 and other purposes. However, outside of urbanizing areas, the
9 legislature intends to preserve farmlands by ensuring that the quantity
10 of water needed to grow the crops historically grown remains with the
11 farm. In addition, to help retain family farms within the state, the
12 legislature intends to allow family farms of a large enough size to be
13 economically viable under modern agricultural market conditions.

14 NEW SECTION. **Sec. 23.** A new section is added to chapter 90.66 RCW
15 to read as follows:

16 (1) Transfers of water rights established as family farm permits
17 under this chapter may be approved as authorized under this section and
18 under RCW 90.03.380, 90.03.390, or 90.44.100 or chapter 90.80 RCW as
19 appropriate.

20 (2) A family farm permit may be transferred:

21 (a) For use for agricultural irrigation purposes as limited by RCW
22 90.66.060 (1) and (2);

23 (b) To any purpose of use that is a beneficial use of water if the
24 transfer is made exclusively under a lease agreement, except that
25 transfers for the use of water for agricultural irrigation purposes
26 shall be limited as provided by RCW 90.66.060 (1) and (2);

27 (c) To any purpose of use that is a beneficial use of water if the
28 water right is for the use of water at a location that is, at the time
29 the transfer is approved, within the boundaries of an urban growth area
30 designated under chapter 36.70A RCW or, in counties not planning under
31 chapter 36.70A RCW, within a city or town or within areas designated
32 for urban growth in comprehensive plans prepared under chapter 36.70
33 RCW, except that transfers for the use of water for agricultural
34 irrigation purposes shall be limited as provided by RCW 90.66.060 (1)
35 and (2).

36 (3) If a portion of the water governed by a water right established
37 under the authority of a family farm permit is made surplus to the
38 beneficial uses exercised under the right through the implementation of

1 practices or technologies, including but not limited to conveyance
2 practices or technologies, that are more water-use efficient than those
3 under which the right was perfected, the right to use the surplus water
4 may be transferred to any purpose of use that is a beneficial use of
5 water. Nothing in this subsection authorizes: A transfer of the
6 portion of a water right that is necessary for the production of crops
7 historically grown under the right; or a transfer of a water right or
8 a portion of a water right that has not been perfected through
9 beneficial use before the transfer. Water right transfers approved
10 under this subsection must be consistent with the provisions of RCW
11 90.03.380(1).

12 (4) Before a change in purpose of a family farm water permit to
13 municipal supply purpose or domestic purpose may be authorized, the
14 public water system that is receiving the family farm water permit must
15 be meeting the water conservation requirements of its current water
16 system plan approved by the department of health or its small water
17 system management program.

18 (5) The place of use for a water right transferred under the
19 authority of this section shall remain within: The water resource
20 inventory area containing the place of use for the water right before
21 the transfer; or the urban growth area or contiguous urban growth areas
22 of the place of use for the water right before the transfer if the
23 urban growth area or contiguous urban growth areas cross boundaries of
24 water resource inventory areas.

25 (6) The authority granted by this section to transfer or alter the
26 purpose of use of a water right established under the authority of a
27 family farm permit shall not be construed as limiting in any manner the
28 authority granted by RCW 90.03.380, 90.03.390, or 90.44.100 to alter
29 other elements of such a water right.

30 **Sec. 24.** RCW 90.66.040 and 1979 c 3 s 4 are each amended to read
31 as follows:

32 For the purposes of this chapter, the following definitions shall
33 be applicable:

34 (1) "Family farm" means a geographic area including not more than
35 (~~two~~) six thousand acres of irrigated agricultural lands, whether
36 contiguous or noncontiguous, the controlling interest in which is held
37 by a person having a controlling interest in no more than (~~two~~) six
38 thousand acres of irrigated agricultural lands in the state of

1 Washington which are irrigated under rights acquired after December 8,
2 1977.

3 (2) "Person" means any individual, corporation, partnership,
4 limited partnership, organization, or other entity whatsoever, whether
5 public or private. The term "person" shall include as one person all
6 corporate or partnership entities with a common ownership of more than
7 one-half of the assets of each of any number of such entities.

8 (3) "Controlling interest" means a property interest that can be
9 transferred to another person, the percentage interest so transferred
10 being sufficient to effect a change in control of the landlord's rights
11 and benefits. Ownership of property held in trust shall not be deemed
12 a controlling interest where no part of the trust has been established
13 through expenditure or assignment of assets of the beneficiary of the
14 trust and where the rights of the family farm permit which is a part of
15 the trust cannot be transferred to another by the beneficiary of the
16 trust under terms of the trust. Each trust of a separate donor origin
17 shall be treated as a separate entity and the administration of
18 property under trust shall not represent a controlling interest on the
19 part of the trust officer.

20 (4) "Department" means the department of ecology of the state of
21 Washington.

22 (5) "Application", "permit" and "public waters" shall have the
23 meanings attributed to these terms in chapters 90.03 and 90.44 RCW.

24 (6) "Public water entity" means any public or governmental entity
25 with authority to administer and operate a system to supply water for
26 irrigation of agricultural lands.

27 (7) "Transfer" means a transfer, change, or amendment to part or
28 all of a water right authorized under RCW 90.03.380, 90.03.390, or
29 90.44.100 or chapter 90.80 RCW.

30 (8) "Withdraw" means to withdraw ground water or to divert surface
31 water.

32 **Sec. 25.** RCW 90.66.060 and 1979 c 3 s 6 are each amended to read
33 as follows:

34 (1) Except as provided in subsections (2) and (3) of this section,
35 the right to withdraw water for use for the irrigation of agricultural
36 lands under authority of a family farm permit shall have no time limit
37 (~~but~~) and shall be conditioned upon the land being irrigated

1 complying with the definition of a family farm as defined at the time
2 the permit is issued(~~(: PROVIDED, HOWEVER, That)~~).

3 (2) If the acquisition by any person of land and water rights by
4 gift, devise, bequest, or by way of bona fide satisfaction of a debt,
5 would otherwise cause land being irrigated pursuant to a family farm
6 permit to lose its status as a family farm, such acquisition shall be
7 deemed to have no effect upon the status of family farm water permits
8 pertaining to land held or acquired by the person acquiring such land
9 and water rights if all lands held or acquired are again in compliance
10 with the definition of a family farm within five years from the date of
11 such acquisition.

12 ~~((+2))~~ (3) For family farm permits under this chapter, if the
13 department determines that water is being withdrawn (~~(under a family~~
14 ~~farm permit)~~) for use on land not in conformity with the definition of
15 a family farm, the department shall notify the holder of such family
16 farm permit by personal service of such fact and the permit shall be
17 suspended two years from the date of receipt of notice unless the
18 person having a controlling interest in said land satisfies the
19 department that such land is again in conformity with the definition of
20 a family farm. The department may, upon a showing of good cause and
21 reasonable effort to attain compliance on the part of the person having
22 the controlling interest in such land, extend the two year period prior
23 to suspension. If conformity is not achieved prior to five years from
24 the date of notice the rights of withdrawal shall be canceled.

25 NEW SECTION. Sec. 26. A new section is added to chapter 82.16 RCW
26 to read as follows:

27 (1) The legislature intends to provide an incentive for water
28 distribution businesses to help reduce their customers' use of water
29 through measures such as: Water conservation and outreach programs,
30 distributing shower flow restrictors, toilet tank water displacement
31 devices, and leak detection dye tablets; providing water-efficient
32 fixtures at no cost, giving a rebate for customer-purchased fixtures,
33 or arranging for suppliers to provide fixtures at a reduced price;
34 providing plants for low-water demand landscaping, moisture sensors,
35 flow timers, low-volume sprinklers, and drip irrigation systems; and
36 using conservation pricing and billings that show percentage
37 increase/decrease in water use over the same period from the previous
38 year.

1 (2) In computing tax under this chapter, there shall be deducted
2 from the gross income seventy-five percent of those amounts expended to
3 improve consumers' efficiency of water use or to otherwise reduce the
4 use of water by the consumer when the expenditures are implementing
5 elements of the conservation plan within a state approved water system
6 plan or a small water system management program. Total deductions
7 taken under this subsection and the resulting tax savings shall be
8 reported to the department of revenue at the time the tax is due.

9 (3) This chapter does not apply to seventy-five percent of the
10 amounts received for water services supplied by an entity that holds a
11 permit under RCW 90.46.030 when the water supplied is reclaimed water
12 as defined in RCW 90.46.010. Total deductions taken under this
13 subsection and the resulting tax savings shall be reported to the
14 department of revenue at the time the tax is due.

15 (4)(a) There is created in the state general fund the state water
16 rights trust account. Moneys in the account may be spent only after
17 appropriation. Expenditures from the account may be used by the
18 department of ecology, in consultation with the department of fish and
19 wildlife, only to purchase or lease water rights to augment instream
20 flows in streams supporting fish stocks that are listed as threatened
21 or endangered under federal law or listed as depressed or threatened by
22 reason of inadequate stream flows under state law.

23 (b) The legislature intends that an amount equal to one-third of
24 the total tax savings resulting from this section in each state fiscal
25 year shall be appropriated from the general fund--state to the state
26 water rights trust account. The department of revenue shall calculate
27 the total amount of tax savings reported by water suppliers under this
28 section and shall report this amount to the office of financial
29 management and the appropriate committees of the legislature by October
30 1st of each calendar year.

31 (5) This section expires June 30, 2003.

32 **Sec. 27.** RCW 90.14.140 and 1998 c 258 s 1 are each amended to read
33 as follows:

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

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

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

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

4 (d) The operation of legal proceedings;

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

8 (f) Federal laws imposing land or water use restrictions either
9 directly or through the voluntary enrollment of a landowner in a
10 federal program implementing those laws, or acreage limitations, or
11 production quotas.

12 (2) Notwithstanding any other provisions of RCW 90.14.130 through
13 90.14.180, there shall be no relinquishment of any water right:

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

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

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

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

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

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

34 (g) If such right is a trust water right under chapter 90.38 or
35 90.42 RCW.

36 **Sec. 28.** RCW 90.38.020 and 1989 c 429 s 3 are each amended to read
37 as follows:

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

8 (b) If an aquatic species is listed as threatened or endangered
9 under federal law for a body of water, or is listed as depressed or
10 threatened by reason of inadequate stream flows under state law, and
11 the holder of a right to water from the body of water chooses to donate
12 all or a portion of the person's water right to the trust water system
13 to assist in providing those instream flows on a temporary or permanent
14 basis, the department shall accept the donation on such terms as the
15 person may prescribe as long as the donation satisfies the requirements
16 of subsection (4) of this section and the other applicable requirements
17 of this chapter and the terms prescribed are relevant and material to
18 protecting any interest in the water right retained by the donor. Once
19 accepted, such rights are trust water rights within the conditions
20 prescribed by the donor.

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

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

27 (4) A water right donated under subsection (1)(b) of this section
28 shall not exceed the extent to which the water right was exercised
29 during the five years before the donation nor may the total of any
30 portion of the water right remaining with the donor plus the donated
31 portion of the water right exceed the extent to which the water right
32 was exercised during the five years before the donation. A water right
33 holder who believes his or her water right has been impaired by a trust
34 water right donated under subsection (1)(b) of this section may request
35 that the department review the impairment claim. If the department
36 determines that exercising the trust water right resulting from the
37 donation or exercising a portion of that trust water right donated
38 under subsection (1)(b) of this section is impairing existing water
39 rights in violation of RCW 90.38.902, the trust water right shall be

1 altered by the department to eliminate the impairment. Any decision of
2 the department to alter or not alter a trust water right donated under
3 subsection (1)(b) of this section is appealable to the pollution
4 control hearings board under RCW 43.21B.230. A donated water right's
5 status as a trust water right under this subsection is not evidence of
6 the validity or quantity of the water right.

7 (5) Any water right conveyed to the trust water right system as a
8 gift that is expressly conditioned to limit its use to instream
9 purposes shall be managed by the department for public purposes to
10 ensure that it qualifies as a gift that is deductible for federal
11 income taxation purposes for the person or entity conveying the water
12 right.

13 (6) If the department acquires a trust water right by lease in an
14 area in which a drought order has been issued under RCW 43.83B.405 and
15 is in effect at the time the department leases the water right, the
16 amount of the trust water right shall not exceed the extent to which
17 the water right was exercised during the five years before the
18 acquisition was made nor may the total of any portion of the water
19 right remaining with the original water right holder plus the portion
20 of the water right leased by the department exceed the extent to which
21 the water right was exercised during the five years before the
22 acquisition. A water right holder who believes his or her water right
23 has been impaired by a trust water right leased under this subsection
24 may request that the department review the impairment claim. If the
25 department determines that exercising the trust water right resulting
26 from the leasing or exercising a portion of that trust water right
27 leased under this subsection is impairing existing water rights in
28 violation of RCW 90.38.902, the trust water right shall be altered by
29 the department to eliminate the impairment. Any decision of the
30 department to alter or not to alter a trust water right leased under
31 this subsection is appealable to the pollution control hearings board
32 under RCW 43.21B.230. The department's leasing of a trust water right
33 under this subsection is not evidence of the validity or quantity of
34 the water right.

35 (7) For a water right donated to or acquired by the trust water
36 rights program on a temporary basis, the full quantity of water
37 diverted or withdrawn to exercise the right before the donation or
38 acquisition shall be placed in the trust water rights program and shall

1 revert to the donor or person from whom it was acquired when the trust
2 period ends.

3 **Sec. 29.** RCW 90.38.040 and 1994 c 264 s 90 are each amended to
4 read as follows:

5 (1) All trust water rights acquired by the department shall be
6 placed in the Yakima river basin trust water rights program to be
7 managed by the department. The department shall issue a water right
8 certificate in the name of the state of Washington for each trust water
9 right it acquires.

10 (2) Trust water rights shall retain the same priority date as the
11 water right from which they originated. Trust water rights may be
12 modified as to purpose or place of use or point of diversion, including
13 modification from a diversionary use to a nondiversionary instream use.

14 (3) Trust water rights may be held by the department for instream
15 flows ((and/or)), irrigation use, or other beneficial use. Trust water
16 rights may be acquired on a temporary or permanent basis. To the
17 extent practicable and subject to legislative appropriation, trust
18 water rights acquired in an area with an approved watershed plan
19 developed under chapter 90.82 RCW shall be consistent with that plan if
20 the plan calls for such acquisition.

21 (4) A schedule of the amount of net water saved as a result of
22 water conservation projects carried out in accordance with this
23 chapter, shall be developed annually to reflect the predicted
24 hydrologic and water supply conditions, as well as anticipated water
25 demands, for the upcoming irrigation season. This schedule shall serve
26 as the basis for the distribution and management of trust water rights
27 each year.

28 (5)(a) No exercise of a trust water right may be authorized unless
29 the department first determines that no existing water rights, junior
30 or senior in priority, will be impaired as to their exercise or injured
31 in any manner whatever by such authorization.

32 (b) Before any trust water right is exercised, the department shall
33 publish notice thereof in a newspaper of general circulation published
34 in the county or counties in which the storage, diversion, and use are
35 to be made, and in such other newspapers as the department determines
36 are necessary, once a week for two consecutive weeks. At the same time
37 the department may also send notice thereof containing pertinent
38 information to the director of fish and wildlife.

1 (c) Subsections (4) and (5)(b) of this section do not apply to a
2 trust water right resulting from a donation for instream flows
3 described in RCW 90.38.020(1)(b) or from the lease of a water right
4 under RCW 90.38.020(6) if the period of the lease does not exceed five
5 years. However, the department shall provide the notice described in
6 (b) of this subsection the first time the trust water right resulting
7 from the donation is exercised.

8 (6) RCW 90.03.380 and 90.14.140 through 90.14.910 shall have no
9 applicability to trust water rights held by the department under this
10 chapter or exercised under this section.

11 **Sec. 30.** RCW 90.42.040 and 1993 c 98 s 3 are each amended to read
12 as follows:

13 (1) All trust water rights acquired by the state shall be placed in
14 the state trust water rights program to be managed by the department.
15 Trust water rights acquired by the state shall be held or authorized
16 for use by the department for instream flows, irrigation, municipal, or
17 other beneficial uses consistent with applicable regional plans for
18 pilot planning areas, or to resolve critical water supply problems. To
19 the extent practicable and subject to legislative appropriation, trust
20 water rights acquired in an area with an approved watershed plan
21 developed under chapter 90.82 RCW shall be consistent with that plan if
22 the plan calls for such acquisition.

23 (2) The department shall issue a water right certificate in the
24 name of the state of Washington for each permanent trust water right
25 conveyed to the state indicating the reach or reaches of the stream,
26 the quantity, and the use or uses to which it may be applied. A
27 superseding certificate shall be issued that specifies the amount of
28 water the water right holder would continue to be entitled to as a
29 result of the water conservation project. The superseding certificate
30 shall retain the same priority date as the original right. For
31 nonpermanent conveyances, the department shall issue certificates or
32 such other instruments as are necessary to reflect the changes in
33 purpose or place of use or point of diversion or withdrawal. ~~((Water~~
34 ~~rights for which such nonpermanent conveyances are arranged shall not~~
35 ~~be subject to relinquishment for nonuse.))~~

36 (3) A trust water right retains the same priority date as the water
37 right from which it originated, but as between them the trust right
38 shall be deemed to be inferior in priority unless otherwise specified

1 by an agreement between the state and the party holding the original
2 right.

3 (4) Exercise of a trust water right may be authorized only if the
4 department first determines that neither water rights existing at the
5 time the trust water right is established, nor the public interest will
6 be impaired. If impairment becomes apparent during the time a trust
7 water right is being exercised, the department shall cease or modify
8 the use of the trust water right to eliminate the impairment.

9 (5) Before any trust water right is created or modified, the
10 department shall, at a minimum, require that a notice be published in
11 a newspaper of general circulation published in the county or counties
12 in which the storage, diversion, and use are to be made, and in other
13 newspapers as the department determines is necessary, once a week for
14 two consecutive weeks. At the same time the department shall send a
15 notice containing pertinent information to all appropriate state
16 agencies, potentially affected local governments and federally
17 recognized tribal governments, and other interested parties.

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

21 (7) RCW 90.03.380 has no applicability to trust water rights
22 acquired by the state through the funding of water conservation
23 projects.

24 (8) Subsections (4) and (5) of this section do not apply to a trust
25 water right resulting from a donation for instream flows described in
26 RCW 90.42.080(1)(b) or to a trust water right leased under RCW
27 90.42.080(8) if the period of the lease does not exceed five years.
28 However, the department shall provide the notice described in
29 subsection (5) of this section the first time the trust water right
30 resulting from the donation is exercised.

31 **Sec. 31.** RCW 90.42.080 and 1993 c 98 s 4 are each amended to read
32 as follows:

33 (1)(a) The state may acquire all or portions of existing water
34 rights, by purchase, gift, or other appropriate means other than by
35 condemnation, from any person or entity or combination of persons or
36 entities. Once acquired, such rights are trust water rights. A water
37 right acquired by the state that is expressly conditioned to limit its

1 use to instream purposes shall be administered as a trust water right
2 in compliance with that condition.

3 (b) If an aquatic species is listed as threatened or endangered
4 under federal law for a body of water, or is listed as depressed or
5 threatened by reason of inadequate stream flow under state law, and the
6 holder of a right to water from the body of water chooses to donate all
7 or a portion of the person's water right to the trust water system to
8 assist in providing those instream flows on a temporary or permanent
9 basis, the department shall accept the donation on such terms as the
10 person may prescribe as long as the donation satisfies the requirements
11 of subsection (4) of this section and the other applicable requirements
12 of this chapter and the terms prescribed are relevant and material to
13 protecting any interest in the water right retained by the donor. Once
14 accepted, such rights are trust water rights within the conditions
15 prescribed by the donor.

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

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

22 (4) A water right donated under subsection (1)(b) of this section
23 shall not exceed the extent to which the water right was exercised
24 during the five years before the donation nor may the total of any
25 portion of the water right remaining with the donor plus the donated
26 portion of the water right exceed the extent to which the water right
27 was exercised during the five years before the donation. A water right
28 holder who believes his or her water right has been impaired by a trust
29 water right donated under subsection (1)(b) of this section may request
30 that the department review the impairment claim. If the department
31 determines that exercising the trust water right resulting from the
32 donation or exercising a portion of that trust water right donated
33 under subsection (1)(b) of this section is impairing existing water
34 rights in violation of RCW 90.42.070, the trust water right shall be
35 altered by the department to eliminate the impairment. Any decision of
36 the department to alter or not to alter a trust water right donated
37 under subsection (1)(b) of this section is appealable to the pollution
38 control hearings board under RCW 43.21B.230. A donated water right's

1 status as a trust water right under this subsection is not evidence of
2 the validity or quantity of the water right.

3 (5) The provisions of RCW 90.03.380 and 90.03.390 do not apply to
4 donations for instream flows described in subsection (1)(b) of this
5 section, but do apply to other transfers of water rights under this
6 section.

7 ((+5)) (6) No funds may be expended for the purchase of water
8 rights by the state pursuant to this section unless specifically
9 appropriated for this purpose by the legislature.

10 (7) Any water right conveyed to the trust water right system as a
11 gift that is expressly conditioned to limit its use to instream
12 purposes shall be managed by the department for public purposes to
13 ensure that it qualifies as a gift that is deductible for federal
14 income taxation purposes for the person or entity conveying the water
15 right.

16 (8) If the department acquires a trust water right by lease in an
17 area in which a drought order has been issued under RCW 43.83B.405 and
18 is in effect at the time the department leases the water right, the
19 amount of the trust water right shall not exceed the extent to which
20 the water right was exercised during the five years before the
21 acquisition was made nor may the total of any portion of the water
22 right remaining with the original water right holder plus the portion
23 of the water right leased by the department exceed the extent to which
24 the water right was exercised during the five years before the
25 acquisition. A water right holder who believes his or her water right
26 has been impaired by a trust water right leased under this subsection
27 may request that the department review the impairment claim. If the
28 department determines that exercising the trust water right resulting
29 from the leasing or exercising a portion of that trust water right
30 leased under this subsection is impairing existing water rights in
31 violation of RCW 90.42.070, the trust water right shall be altered by
32 the department to eliminate the impairment. Any decision of the
33 department to alter or not to alter a trust water right leased under
34 this subsection is appealable to the pollution control hearings board
35 under RCW 43.21B.230. The department's leasing of a trust water right
36 under this subsection is not evidence of the validity or quantity of
37 the water right.

38 (9) For a water right donated to or acquired by the trust water
39 rights program on a temporary basis, the full quantity of water

1 diverted or withdrawn to exercise the right before the donation or
2 acquisition shall be placed in the trust water rights program and shall
3 revert to the donor or person from whom it was acquired when the trust
4 period ends.

5 NEW SECTION. Sec. 32. (1) By December 31, 2004, the department of
6 ecology must report to the appropriate legislative committees the
7 pertinent experience acquired in implementing the various components of
8 this act that are under its jurisdiction.

9 (2) Beginning December 31, 2001, and ending on December 31, 2004,
10 the department of ecology shall report to the legislature by January
11 1st of each year on the results of processing applications under RCW
12 90.03.380(5) and processing applications through water conservancy
13 boards under chapter 90.80 RCW. In the report due on December 31,
14 2004, the department of ecology shall provide an evaluation and make
15 recommendations regarding modification of any of the provisions of RCW
16 90.03.380(5).

17 (3) By October 1, 2001, the office of financial management must
18 complete an assessment of watershed planning, including evaluation of
19 the performance of both watershed planning units and state agencies
20 involved in watershed planning. The office's assessment must address
21 the progress of planning units toward completion of watershed plans and
22 the use of funds provided by the state of Washington to planning units
23 and state agencies for developing those plans. The assessment must
24 include an assessment of the progress of planning units and the
25 department of ecology in setting instream flows. The office must
26 report the results of the assessment to the appropriate committees of
27 the legislature, and the governor.

28 (4) Beginning December 31, 2001, and ending on December 31, 2004,
29 the office of financial management shall review and report to the
30 legislature by January 1st of each year on whether the department of
31 ecology has adequate funding for fulfilling the department's
32 responsibilities for processing applications through water conservancy
33 boards under chapter 90.80 RCW.

34 (5) The office of financial management, in consultation with the
35 departments of revenue, health, and ecology, must evaluate the long-
36 term revenue impacts and the costs and benefits of the deductions and
37 exclusions authorized by section 26 of this act. The office of
38 financial management must also evaluate the costs and benefits and

1 revenue impacts of other potential water conservation tax incentives,
2 including but not limited to those that may involve the sales, use,
3 property, utility, and business and occupations taxes. The office of
4 financial management must report its findings regarding tax incentives
5 by December 31, 2001, to the legislature's standing committees with
6 jurisdiction over water resources and the legislative fiscal
7 committees.

8 (6) The office of financial management, in consultation with the
9 departments of health and ecology, must evaluate the level of water
10 savings occurring from water suppliers' use of the tax incentive
11 provisions in section 26 of this act and must report its findings to
12 the legislature by December 31, 2002.

13 NEW SECTION. **Sec. 33.** Nothing in this act is intended to give
14 legislative acquiescence to any policy or interpretation of law
15 regarding limits on place of use of a municipal purpose water right.

16 NEW SECTION. **Sec. 34.** If any provision of this act or its
17 application to any person or circumstance is held invalid, the
18 remainder of the act or the application of the provision to other
19 persons or circumstances is not affected.

20 NEW SECTION. **Sec. 35.** This act is necessary for the immediate
21 preservation of the public peace, health, or safety, or support of the
22 state government and its existing public institutions, and takes effect
23 immediately.

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