

---

HOUSE BILL 2993

---

State of Washington

57th Legislature

2002 Regular Session

By Representatives Linville and Kirby

Read first time 02/27/2002. Referred to Committee on Agriculture & Ecology.

1 AN ACT Relating to water policy; amending RCW 90.54.020, 90.22.010,  
2 90.03.386, 90.03.383, 90.48.495, 90.48.112, 90.46.010, 90.46.030,  
3 90.46.050, 90.46.130, 90.03.380, 90.44.100, 43.21B.110, 90.38.020,  
4 90.42.080, and 90.03.370; reenacting and amending RCW 90.14.140; adding  
5 new sections to chapter 90.54 RCW; adding a new section to chapter  
6 90.82 RCW; adding new sections to chapter 90.03 RCW; adding new  
7 sections to chapter 70.119A RCW; adding new sections to chapter 90.46  
8 RCW; adding new sections to chapter 90.44 RCW; creating a new section;  
9 and declaring an emergency.

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

11 NEW SECTION. **Sec. 1.** The legislature finds that the importance of  
12 securing water for streams to ensure the health of the state's  
13 watersheds has long been recognized in state law. As the state's  
14 population continues to grow, and demands on our limited water supplies  
15 increase, the state's water management system needs to facilitate and  
16 ensure that adequate water is secured in streams in sufficient quantity  
17 to meet the needs of the state's fishery and related environmental  
18 resources.

1 The legislature finds that an adequate supply of potable water for  
2 domestic, commercial, and industrial use is vital to the health and  
3 well-being of the people of the state of Washington. The state's water  
4 management system should ensure the efficient and effective development  
5 of the state's public water supplies, and ensure that the public health  
6 needs of people in the state of Washington are met now and in the  
7 future.

8 The legislature finds that the state's economy has been and remains  
9 significantly dependent on the health of the state's diverse and  
10 abundant agriculture. Further, the legislature finds that agricultural  
11 lands preserve important environmental values throughout the state.  
12 The state's water management system must provide the flexibility and  
13 certainty needed to sustain the state's agriculture in a changing world  
14 economy.

15 NEW SECTION. **Sec. 2.** A new section is added to chapter 90.54 RCW  
16 to read as follows:

17 (1) The purpose of this section is to specify the objectives and  
18 priorities to be used for setting instream flows under chapters 90.22  
19 and 90.82 RCW and RCW 90.54.020.

20 (2) Instream flow rules are to be established to meet base flows in  
21 accordance with RCW 90.54.020. For purposes of this chapter, base  
22 flows are defined by and must meet the following requirements:

23 (a) Be achievable by taking into account the natural hydrology of  
24 a stream, including variations in conditions throughout the length of  
25 the stream and variations between seasons and years;

26 (b) Be sufficient to support the varying life stages of fish in  
27 those stream segments at the time of year the fish are or were present,  
28 with a priority for providing for healthy populations of salmonids; and

29 (c) Be developed using scientifically based methods that are  
30 generally accepted within the scientific community and have undergone  
31 peer review.

32 (3) Priority shall be given to establishing instream flow rules in:

33 (a) Water resource inventory areas numbers 1, 5, 7, 8, 9, 10, 12,  
34 17, 18, 32, 35, 37, 38, 39, 45, 48, and 49 as those areas are  
35 established in chapter 173-500 WAC as it exists on the effective date  
36 of this section; and

37 (b) Water resource inventory areas that are conducting planning  
38 under chapter 90.82 RCW as of the effective date of this section.

1 (4) Instream flow rules shall be established in the water resource  
2 inventory areas identified in subsection (3)(a) and (b) of this section  
3 by December 31, 2010. Instream flow rules shall be established in all  
4 other water resource inventory areas as funding becomes available.

5 (5) By December 2002, the department, in consultation with the  
6 department of fish and wildlife and with affected tribal governments,  
7 planning units under chapter 90.82 RCW, and local governments, shall  
8 publish a work plan that identifies where and when instream flows will  
9 be developed and adopted by rule in order to achieve the goals in this  
10 section. The work plan will also define tributary areas where flows  
11 should be addressed and provide a schedule for prioritizing,  
12 recommending, and setting flows in these areas, as appropriate. This  
13 work plan will be updated annually.

14 The department, in consultation with the department of fish and  
15 wildlife and with affected tribal governments, planning units under  
16 chapter 90.82 RCW, and local governments, shall develop and publish  
17 strategies for achieving flows that satisfy the flow requirements of  
18 the instream flow rules including, but not limited to, an  
19 identification of priorities for the use of state resources to achieve  
20 the flows. The strategies shall identify means of measuring whether  
21 progress toward achieving instream flow requirements and overcoming  
22 other limiting factors identified for streams is being made, and the  
23 actions that will be taken if such progress is not being made for a  
24 stream. For a water resource inventory area in which watershed  
25 planning is conducted under chapter 90.82 RCW, the strategies shall be  
26 those contained in the plan developed under chapter 90.82 RCW.

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

29 The strategies developed under RCW 90.82.070(2) shall include, but  
30 shall not be limited to, the identification of means for measuring how  
31 making progress in achieving minimum instream flows in the WRIA is to  
32 be measured and the actions that will be taken if such progress is not  
33 being made for a stream.

34 If planning contains a habitat component under RCW 90.82.100, that  
35 component of the plan shall identify means of measuring how making  
36 progress in overcoming limiting factors for fish other than instream  
37 flows is to be measured and the actions that will be taken if such  
38 progress is not being made for the stream. If planning contains an

1 instream flow component under RCW 90.82.080, any minimum instream flows  
2 established under that component shall satisfy the requirements of  
3 section 2(2) of this act.

4 NEW SECTION. **Sec. 4.** A new section is added to chapter 90.54 RCW  
5 to read as follows:

6 (1) Instream flow rules required by section 2 of this act must be  
7 established in accordance with the process described in this section.

8 (2) Where instream flow recommendations are being developed under  
9 chapter 90.82 RCW, instream flow rules must be developed according to  
10 the process established in chapter 90.82 RCW. Where instream flow  
11 recommendations are not being developed under chapter 90.82 RCW,  
12 instream flow rules must be developed as required in RCW 90.22.010(3).

13 (3) Where consistent with the requirements of section 2(2) of this  
14 act, instream flow rules must incorporate an instream flow component  
15 established by:

16 (a) The conditions for a license issued by the federal energy  
17 regulatory commission after May 1994 for a hydroelectric power  
18 generating facility, where the department of ecology has approved or  
19 otherwise formally acknowledged the instream flow component on behalf  
20 of the state;

21 (b) The conditions established under a habitat conservation plan  
22 approved under the federal endangered species act, where the department  
23 of ecology has approved or otherwise formally acknowledged the instream  
24 flow component on behalf of the state;

25 (c) A comprehensive irrigation district management plan that meets  
26 the requirements in the plan manual approved by the agriculture, fish,  
27 and water executive committee in May 2001; and

28 (d) The federal Yakima river basin water enhancement project  
29 pursuant to P.L. 103-434.

30 **Sec. 5.** RCW 90.54.020 and 1997 c 442 s 201 are each amended to  
31 read as follows:

32 Utilization and management of the waters of the state shall be  
33 guided by the following general declaration of fundamentals:

34 (1) Uses of water for domestic, stock watering, industrial,  
35 commercial, agricultural, irrigation, hydroelectric power production,  
36 mining, fish and wildlife maintenance and enhancement, recreational,  
37 and thermal power production purposes, and preservation of

1 environmental and aesthetic values, and all other uses compatible with  
2 the enjoyment of the public waters of the state, are declared to be  
3 beneficial.

4 (2) Allocation of waters among potential uses and users shall be  
5 based generally on the securing of the maximum net benefits for the  
6 people of the state; however, this allocation principle does not apply  
7 to establishing instream flows under section 2 of this act. Maximum  
8 net benefits shall constitute total benefits less costs including  
9 opportunities lost.

10 (3) The quality of the natural environment shall be protected and,  
11 where possible, enhanced as follows:

12 (a) Perennial rivers and streams of the state shall be retained  
13 with base flows necessary to provide for preservation of wildlife,  
14 fish, scenic, aesthetic and other environmental values, and  
15 navigational values. The criteria for establishing such base flows for  
16 fish are the criteria established in section 2 of this act. Base flows  
17 established for any other purpose for any particular time of year in  
18 any particular stream segment shall not be less than those established  
19 for fish. Lakes and ponds shall be retained substantially in their  
20 natural condition. Withdrawals of water which would conflict therewith  
21 shall be authorized only in those situations where it is clear that  
22 overriding considerations of the public interest will be served.

23 (b) Waters of the state shall be of high quality. Regardless of  
24 the quality of the waters of the state, all wastes and other materials  
25 and substances proposed for entry into said waters shall be provided  
26 with all known, available, and reasonable methods of treatment prior to  
27 entry. Notwithstanding that standards of quality established for the  
28 waters of the state would not be violated, wastes and other materials  
29 and substances shall not be allowed to enter such waters which will  
30 reduce the existing quality thereof, except in those situations where  
31 it is clear that overriding considerations of the public interest will  
32 be served. Technology-based effluent limitations or standards for  
33 discharges for municipal water treatment plants located on the  
34 Chehalis, Columbia, Cowlitz, Lewis, or Skagit river shall be adjusted  
35 to reflect credit for substances removed from the plant intake water  
36 if:

37 (i) The municipality demonstrates that the intake water is drawn  
38 from the same body of water into which the discharge is made; and

1 (ii) The municipality demonstrates that no violation of receiving  
2 water quality standards or appreciable environmental degradation will  
3 result.

4 (4) The development of multipurpose water storage facilities shall  
5 be a high priority for programs of water allocation, planning,  
6 management, and efficiency. The department, other state agencies, and  
7 local governments(~~(, and planning units formed under section 107 or 108~~  
8 ~~of this act)~~) shall evaluate the potential for the development of new  
9 storage projects and the benefits and effects of storage in reducing  
10 damage to stream banks and property, increasing the use of land,  
11 providing water for municipal, industrial, agricultural, power  
12 generation, and other beneficial uses, and improving stream flow  
13 regimes for fisheries and other instream uses.

14 (5) Adequate and safe supplies of water shall be preserved and  
15 protected in potable condition to satisfy human domestic needs.

16 (6) Multiple-purpose impoundment structures are to be preferred  
17 over single-purpose structures. Due regard shall be given to means and  
18 methods for protection of fishery resources in the planning for and  
19 construction of water impoundment structures and other artificial  
20 obstructions.

21 (7) Federal, state, and local governments, individuals,  
22 corporations, groups and other entities shall be encouraged to carry  
23 out practices of conservation as they relate to the use of the waters  
24 of the state. In addition to traditional development approaches,  
25 improved water use efficiency and conservation shall be emphasized in  
26 the management of the state's water resources and in some cases will be  
27 a potential new source of water with which to meet future needs  
28 throughout the state.

29 (8) Development of water supply systems, whether publicly or  
30 privately owned, which provide water to the public generally in  
31 regional areas within the state shall be encouraged. Development of  
32 water supply systems for multiple domestic use which will not serve the  
33 public generally shall be discouraged where water supplies are  
34 available from water systems serving the public.

35 (9) Full recognition shall be given in the administration of water  
36 allocation and use programs to the natural interrelationships of  
37 surface and ground waters.

38 (10) Expressions of the public interest will be sought at all  
39 stages of water planning and allocation discussions.

1 (11) Water management programs, including but not limited to, water  
2 quality, flood control, drainage, erosion control and storm runoff are  
3 deemed to be in the public interest.

4 **Sec. 6.** RCW 90.22.010 and 1997 c 32 s 4 are each amended to read  
5 as follows:

6 (1) The department of ecology may establish minimum water flows or  
7 levels for streams, lakes or other public waters for the purposes of  
8 protecting fish, game, birds or other wildlife resources, or  
9 recreational or aesthetic values of said public waters whenever it  
10 appears to be in the public interest to establish the same. In  
11 addition, the department of ecology shall, when requested by the  
12 department of fish and wildlife to protect fish, game or other wildlife  
13 resources under the jurisdiction of the requesting state agency, or if  
14 the department of ecology finds it necessary to preserve water quality,  
15 establish such minimum flows or levels as are required to protect the  
16 resource or preserve the water quality described in the request or  
17 determination. Any request submitted by the department of fish and  
18 wildlife shall include a statement setting forth the need for  
19 establishing a minimum flow or level. When the department acts to  
20 preserve water quality, it shall include a similar statement with the  
21 proposed rule filed with the code reviser.

22 (2) The criteria for establishing flows for fish under this chapter  
23 are the criteria established in section 2 of this act. Flows  
24 established for any other purpose for any particular time of year in  
25 any particular stream segment shall not be less than those established  
26 for fish.

27 (3) When the department of ecology develops proposals for  
28 establishing minimum flows for a stream for which the procedures  
29 provided in RCW 90.82.080 do not apply, the department shall ensure  
30 that it conducts its analysis of stream flow data and develops any  
31 proposals for minimum flows in close consultation with the appropriate  
32 local governments, any affected tribal governments, and with  
33 representatives of other affected parties.

34 (4) This section shall not apply to waters artificially stored in  
35 reservoirs, provided that in the granting of storage permits by the  
36 department of ecology in the future, full recognition shall be given to  
37 downstream minimum flows, if any there may be, which have theretofore  
38 been established hereunder.

1        NEW SECTION.    **Sec. 7.**    A new section is added to chapter 90.03 RCW  
2 to read as follows:

3        (1) The department shall, through a network of water masters  
4 appointed under this chapter, stream patrollers appointed under chapter  
5 90.08 RCW, and other assigned compliance staff, achieve compliance with  
6 the water laws and rules of the state of Washington in the following  
7 sequence:

8        (a) The department shall prepare and distribute technical and  
9 educational information to assist water users in complying with the  
10 requirements of their water rights and applicable water laws;

11        (b) When the department determines that a violation has occurred or  
12 is about to occur, it shall first attempt to achieve voluntary  
13 compliance by informing and educating the responsible person or persons  
14 regarding the law, the reason that the action or incipient action is  
15 not allowed under the law, and the potential penalties and sanctions  
16 that may be brought if compliance is not achieved. As part of this  
17 first response, the department shall offer technical information and  
18 assistance to the person in identifying alternative means to accomplish  
19 the person's purposes within the framework of the law; and

20        (c) If education and technical assistance do not achieve compliance  
21 the department shall issue a notice of violation, a formal  
22 administrative order under RCW 43.27A.190, or assess penalties under  
23 RCW 90.03.600 unless the noncompliance is corrected expeditiously or  
24 the department determines no impairment or harm.

25        (2) Nothing in the section is intended to prevent the department of  
26 ecology from taking immediate action to cause a violation to be ceased  
27 immediately if in the opinion of the department the nature of the  
28 violation is causing or is likely to cause immediate harm to other  
29 water rights or to public resources.

30        (3) The department of ecology shall to the extent practicable  
31 station its compliance personnel within the watershed communities they  
32 serve.

33        **Sec. 8.**    RCW 90.03.386 and 1991 c 350 s 2 are each amended to read  
34 as follows:

35        (1) Within service areas established pursuant to chapters 43.20 and  
36 70.116 RCW, the department of ecology and the department of health  
37 shall coordinate approval procedures to ensure compliance and  
38 consistency with the approved water system plan.



1       (2) For a public water system, the maximum number of service  
2 connections or maximum population to be served specified on a water  
3 right application, permit, certificate, or claim shall not be an  
4 attribute limiting exercise of the water right. However, if a water  
5 system plan is required to be approved for the public water system  
6 under chapter 43.20 RCW or as part of a coordinated water system plan  
7 under chapter 70.116 RCW, the number of service connections or  
8 population served under the water right may be expanded only during  
9 such time as the public water system is in compliance with the  
10 requirements of its approved water system plan and any conservation  
11 required of the system under sections 10 and 11 of this act.

12       (3) In amending this section and RCW 90.03.380(4), the legislature  
13 does not intend to alter any judicial interpretation of the law of  
14 municipal water rights that is not expressly addressed.

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

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

35       (2) For the purposes of this section, the following definitions  
36 shall apply:

37       (a) "Interties" are interconnections between public water systems  
38 permitting exchange or delivery of water between those systems for

1 other than emergency supply purposes, where such exchange or delivery  
2 is within established instantaneous and annual withdrawal rates  
3 specified in the systems' existing water right permits or certificates,  
4 or contained in claims filed pursuant to chapter 90.14 RCW, and which  
5 results in better management of public water supply consistent with  
6 existing rights and obligations. Interties include interconnections  
7 between public water systems permitting exchange or delivery of water  
8 to serve as primary or secondary sources of supply or to provide water  
9 to benefit environmental resources, but do not include development of  
10 new sources of supply to meet future demand.

11 (b) "Service area" is the area designated in a water system plan or  
12 a coordinated water system plan pursuant to chapter 43.20 or 70.116 RCW  
13 respectively that includes the existing area served by the public water  
14 system and the future area planned to be served by the public water  
15 system. When a public water system does not have a designated service  
16 area subject to the approval process of those chapters, the service  
17 area shall be the designated place of use contained in the water right  
18 permit or certificate, or contained in the claim filed pursuant to  
19 chapter 90.14 RCW.

20 (3) Public water systems with interties existing and in use as of  
21 January 1, 1991, or that have received written approval from the  
22 department of health prior to that date, shall file written notice of  
23 those interties with the department of health and the department of  
24 ecology. The notice may be incorporated into the public water system's  
25 five-year update of its water system plan, but shall be filed no later  
26 than June 30, 1996. The notice shall identify the location of the  
27 intertie; the dates of its first use; the purpose, capacity, and  
28 current use; the intertie agreement of the parties and the service  
29 areas assigned; and other information reasonably necessary to modify  
30 the water right permit. Notwithstanding the provisions of RCW  
31 90.03.380 and 90.44.100, for public water systems with interties  
32 existing and in use as of January 1, 1991, the department of ecology,  
33 upon receipt of notice meeting the requirements of this subsection,  
34 shall, as soon as practicable, modify the place of use descriptions in  
35 the water right permits, certificates, or claims to reflect the actual  
36 use through such interties, provided that the place of use is within  
37 service area designations established in a water system plan approved  
38 pursuant to chapter 43.20 RCW, or a coordinated water system plan  
39 approved pursuant to chapter 70.116 RCW, and further provided that the

1 water used is within the instantaneous and annual withdrawal rates  
2 specified in the water right permit and that no outstanding complaints  
3 of impairment to existing water rights have been filed with the  
4 department of ecology prior to September 1, 1991. Where such  
5 complaints of impairment have been received, the department of ecology  
6 shall make all reasonable efforts to resolve them in a timely manner  
7 through agreement of the parties or through available administrative  
8 remedies.

9 (4) Notwithstanding the provisions of RCW 90.03.380 and 90.44.100,  
10 exchange or delivery of water through interties commencing use after  
11 January 1, 1991, shall be permitted when the intertie improves overall  
12 system reliability, enhances the manageability of the systems, provides  
13 opportunities for conjunctive use, ~~((or))~~ delays or avoids the need to  
14 develop new water sources, or benefits environmental resources, and  
15 otherwise meets the requirements of this section, provided that each  
16 public water system's water use shall not exceed the instantaneous or  
17 annual withdrawal rate specified in its water right authorization,  
18 shall not ~~((adversely affect))~~ impair existing water rights or lower  
19 stream flows below the flows necessary to adequately support food fish  
20 and game fish populations, and shall not be inconsistent with state-  
21 approved plans such as water system plans or other plans which include  
22 specific proposals for construction of interties. Interties commencing  
23 use after January 1, 1991, shall not be inconsistent with regional  
24 water resource plans developed pursuant to chapter 90.54 RCW.

25 (5) For public water systems subject to the approval process of  
26 chapter 43.20 RCW or chapter 70.116 RCW, proposals for interties  
27 commencing use after January 1, 1991, shall be incorporated into water  
28 system plans pursuant to chapter 43.20 RCW or coordinated water system  
29 plans pursuant to chapter 70.116 RCW and submitted to the department of  
30 health and the department of ecology for review and approval as  
31 provided for in subsections (5) through (9) of this section. The plan  
32 shall state how the proposed intertie will improve overall system  
33 reliability, enhance the manageability of the systems, provide  
34 opportunities for conjunctive use, ~~((or))~~ delay or avoid the need to  
35 develop new water sources, or benefit environmental resources.

36 (6) The department of health shall be responsible for review and  
37 approval of proposals for new interties. In its review the department  
38 of health shall determine whether the intertie satisfies the criteria  
39 of subsection (4) of this section, with the exception of water rights

1 considerations, which are the responsibility of the department of  
2 ecology, and shall determine whether the intertie is necessary to  
3 address emergent public health or safety concerns associated with  
4 public water supply.

5 (7) If the intertie is determined by the department of health to be  
6 necessary to address emergent public health or safety concerns  
7 associated with public water supply, the public water system shall  
8 amend its water system plan as required and shall file an application  
9 with the department of ecology to change its existing water right to  
10 reflect the proposed use of the water as described in the approved  
11 water system plan. The department of ecology shall process the  
12 application for change pursuant to RCW 90.03.380 or 90.44.100 as  
13 appropriate, except that, notwithstanding the requirements of those  
14 sections regarding notice and protest periods, applicants shall be  
15 required to publish notice one time, and the comment period shall be  
16 fifteen days from the date of publication of the notice. Within sixty  
17 days of receiving the application, the department of ecology shall  
18 issue findings and advise the department of health if existing water  
19 rights are determined to be adversely affected. If no determination is  
20 provided by the department of ecology within the sixty-day period, the  
21 department of health shall proceed as if existing rights are not  
22 adversely affected by the proposed intertie. The department of ecology  
23 may obtain an extension of the sixty-day period by submitting written  
24 notice to the department of health and to the applicant indicating a  
25 definite date by which its determination will be made. No additional  
26 extensions shall be granted, and in no event shall the total review  
27 period for the department of ecology exceed one hundred eighty days.

28 (8) If the department of health determines the proposed intertie  
29 appears to meet the requirements of subsection (4) of this section but  
30 is not necessary to address emergent public health or safety concerns  
31 associated with public water supply, the department of health shall  
32 instruct the applicant to submit to the department of ecology an  
33 application for change to the underlying water right or claim as  
34 necessary to reflect the new place of use. The department of ecology  
35 shall consider the applications pursuant to the provisions of RCW  
36 90.03.380 and 90.44.100 as appropriate. If in its review of proposed  
37 interties and associated water rights the department of ecology  
38 determines that additional information is required to act on the  
39 application, the department may request applicants to provide

1 information necessary for its decision, consistent with agency rules  
2 and written guidelines. Parties disagreeing with the decision of the  
3 department of ecology on the application for change in place of use may  
4 appeal the decision to the pollution control hearings board.

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

11 NEW SECTION. **Sec. 10.** A new section is added to chapter 70.119A  
12 RCW to read as follows:

13 (1) The department shall develop comprehensive water conservation  
14 planning requirements for public water systems based upon system size,  
15 to be included in water system plans required under RCW 43.20.050. As  
16 part of these comprehensive planning requirements, water systems shall:

17 (a) Evaluate conservation measures and implement those that are  
18 cost-effective;

19 (b) Evaluate development and implementation of a leak detection and  
20 repair program;

21 (c) Evaluate whether to install service meters, if not required;

22 (d) Collect and report minimum data to project water demand and to  
23 provide a basis for the accurate evaluation of the effectiveness of  
24 conservation programs; and

25 (e) Evaluate the use of rate structures to encourage conservation.

26 (2) The department shall:

27 (a) Review and approve water conservation plans, and monitor plan  
28 implementation to ensure compliance with comprehensive conservation  
29 planning requirements under subsection (1) of this section;

30 (b) Provide advice and technical assistance upon request in the  
31 development of water use efficiency plans, including development of  
32 best management practices for water conservation programs, model  
33 landscape ordinances, assistance to public water systems and local  
34 governments regarding water conservation, and general public education  
35 on water conservation and efficiency;

36 (c) Provide advice and technical assistance on request for  
37 development of model conservation rate structures for public water  
38 systems;

1 (d) Develop and maintain a statewide water consumption data base  
2 for the purpose of maintaining state records on water system source  
3 production and water consumption; and

4 (e) Adopt rules by December 31, 2003, to implement the provisions  
5 of this section.

6 NEW SECTION. **Sec. 11.** A new section is added to chapter 70.119A  
7 RCW to read as follows:

8 (1) The department shall, in consultation with the department of  
9 ecology and the office of community development, initiate negotiated  
10 rule making with interested parties to prepare draft rules that would  
11 establish water use efficiency performance measures for various water  
12 uses supplied by public water systems.

13 (2) The draft rules shall be completed by December 31, 2003, to be  
14 delivered and presented to the appropriate standing committees of the  
15 legislature during the 2004 legislative session.

16 (3) The draft rules shall:

17 (a) Describe the application of the water use efficiency  
18 performance measures to water demand forecasting, public water system  
19 planning, evaluating proposed transfers, changes, and amendments to  
20 existing water rights, and assessing whether new water rights are  
21 needed;

22 (b) Allow utilities to select best methods for achieving the  
23 measures;

24 (c) Recognize conservation programs and projects already in place;

25 (d) To the maximum extent practicable, identify measures that would  
26 vary according to size of system, expected rate of population growth,  
27 customer base demographics, scope of authority and jurisdiction of the  
28 utility, regional climate variations, and instream flow conditions in  
29 related water sources; and

30 (e) Establish criteria for identifying which measures apply to  
31 particular water systems as part of their approved water system plans.  
32 The criteria must take into consideration the level of conservation and  
33 efficiency present in the use of the system's water and the degree to  
34 which requiring additional conservation and efficiency remains  
35 cost-effective. The criteria shall be sufficiently detailed to ensure  
36 that their application is reasonably predictable.

1       **Sec. 12.** RCW 90.48.495 and 1989 c 348 s 10 are each amended to  
2 read as follows:

3       The department of ecology shall require sewer plans that propose  
4 new or expanded treatment capacity to include ~~((a discussion))~~ an  
5 analysis of water conservation measures considered or underway and  
6 their anticipated impact on public sewer service. The plans shall  
7 evaluate the cost-effectiveness of funding water conservation programs  
8 as an alternative to increased sewage treatment capacity or to reduce  
9 the need for increased sewage treatment capacity.

10       **Sec. 13.** RCW 90.48.112 and 1997 c 444 s 9 are each amended to read  
11 as follows:

12       The evaluation of any plans submitted under RCW 90.48.110 must  
13 include consideration of opportunities for the use of reclaimed water  
14 as defined in RCW 90.46.010. Wastewater plans adopted under RCW  
15 90.48.110 shall include a statement of certification by the responsible  
16 utility official that reclamation and reuse elements in applicable  
17 regional water supply plans and water system plans have been fully  
18 considered and accounted for with regard to the need for future  
19 distribution of reclaimed water.

20       NEW SECTION. **Sec. 14.** A new section is added to chapter 90.46 RCW  
21 to read as follows:

22       Water system plans and coordinated water system plans adopted under  
23 chapters 43.20 and 70.116 RCW shall be developed and coordinated to  
24 ensure that opportunities for reclaimed water are evaluated and that  
25 proposals for construction in public rights of way delineated within  
26 the plan consider infrastructure needed to distribute reclaimed water.  
27 The requirements of this section do not apply to water system plans  
28 developed pursuant to chapter 43.20 RCW for utilities serving less than  
29 one thousand service connections.

30       **Sec. 15.** RCW 90.46.010 and 2001 c 69 s 2 are each amended to read  
31 as follows:

32       The definitions in this section apply throughout this chapter  
33 unless the context clearly requires otherwise.

34       (1) "Greywater" means wastewater having the consistency and  
35 strength of residential domestic type wastewater. Greywater includes

1 wastewater from sinks, showers, and laundry fixtures, but does not  
2 include toilet or urinal waters.

3 (2) "Land application" means application of treated effluent for  
4 purposes of irrigation or landscape enhancement for residential,  
5 business, and governmental purposes.

6 (3) "Person" means any state, individual, public or private  
7 corporation, political subdivision, governmental subdivision,  
8 governmental agency, municipality, copartnership, association, firm,  
9 trust estate, or any other legal entity whatever.

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

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

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

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

22 (8) "Beneficial use" means the use of reclaimed water, that has  
23 been transported from the point of production to the point of use  
24 without an intervening discharge to the waters of the state, for a  
25 beneficial purpose.

26 (9) "Direct recharge" means the controlled subsurface addition of  
27 water directly to the ground water basin that results in the  
28 replenishment of ground water.

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

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

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



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

4 (14) "Surface percolation" means the controlled application of  
5 water to the ground surface for the purpose of replenishing ground  
6 water.

7 (15) "Wetland or wetlands" means areas that are inundated or  
8 saturated by surface water or ground water at a frequency and duration  
9 sufficient to support, and that under normal circumstances do support,  
10 a prevalence of vegetation typically adapted to life in saturated soil  
11 conditions. Wetlands generally include swamps, marshes, bogs, and  
12 similar areas. Wetlands regulated under this chapter shall be  
13 delineated in accordance with the manual adopted by the department of  
14 ecology pursuant to RCW 90.58.380.

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

19 (17) "Constructed treatment wetlands" means those wetlands  
20 intentionally constructed on nonwetland sites and managed for the  
21 primary purpose of wastewater or storm water treatment. Constructed  
22 treatment wetlands are considered part of the collection and treatment  
23 system and are not considered "waters of the state."

24 (18) "Agricultural industrial process water" means water that has  
25 been used for the purpose of (~~agriculture~~—[agricultural])  
26 agricultural processing and has been adequately and reliably treated,  
27 so that as a result of that treatment, it is suitable for other  
28 agricultural water use.

29 (19) "Agricultural processing" means the processing of crops or  
30 milk to produce a product primarily for wholesale or retail sale for  
31 human or animal consumption, including but not limited to potato,  
32 fruit, vegetable, and grain processing.

33 (20) "Agricultural water use" means the use of water for irrigation  
34 and other uses related to the production of agricultural products.  
35 These uses include, but are not limited to, construction, operation,  
36 and maintenance of agricultural facilities and livestock operations at  
37 farms, ranches, dairies, and nurseries. Examples of these uses  
38 include, but are not limited to, dust control, temperature control, and  
39 fire control.

1       (21) "Industrial reuse water" means water that has been used for  
2 the purpose of industrial processing and has been adequately and  
3 reliably treated so that, as a result of that treatment, it is suitable  
4 for other uses.

5       **Sec. 16.** RCW 90.46.030 and 1992 c 204 s 4 are each amended to read  
6 as follows:

7       (1) The department of health shall, in coordination with the  
8 department of ecology, adopt a single set of standards, procedures, and  
9 guidelines on or before August 1, 1993, for the industrial and  
10 commercial use of reclaimed water.

11       (2) The department of health may issue a reclaimed water permit for  
12 industrial and commercial uses of reclaimed water to the generator of  
13 reclaimed water who may then distribute the water, subject to  
14 provisions in the permit governing the location, rate, water quality,  
15 and purposes of use.

16       (3) The department of health in consultation with the advisory  
17 committee established in RCW 90.46.050, shall develop recommendations  
18 for a fee structure for permits issued under subsection (2) of this  
19 section. Fees shall be established in amounts to fully recover, and  
20 not exceed, expenses incurred by the department of health in processing  
21 permit applications and modifications, monitoring and evaluating  
22 compliance with permits, and conducting inspections and supporting the  
23 reasonable overhead expenses that are directly related to these  
24 activities. Permit fees may not be used for research or enforcement  
25 activities. The department of health shall not issue permits under  
26 this section until a fee structure has been established.

27       (4) A permit under this section for use of reclaimed water may be  
28 issued only to a municipal, quasi-municipal, or other governmental  
29 entity or to the holder of a waste discharge permit issued under  
30 chapter 90.48 RCW.

31       (5) The authority and duties created in this section are in  
32 addition to any authority and duties already provided in law with  
33 regard to sewage and wastewater collection, treatment, and disposal for  
34 the protection of health and safety of the state's waters. Nothing in  
35 this section limits the powers of the state or any political  
36 subdivision to exercise such authority.

37       (6) The department of health may implement the requirements of this  
38 section through the department of ecology by execution of a formal

1 agreement between the departments. Upon execution of such an  
2 agreement, the department of ecology may issue reclaimed water permits  
3 for industrial and commercial uses of reclaimed water by issuance of  
4 permits under chapter 90.48 RCW, and may establish and collect fees as  
5 required for permits issued under chapter 90.48 RCW.

6 **Sec. 17.** RCW 90.46.050 and 1995 c 342 s 9 are each amended to read  
7 as follows:

8 (1) The department of health shall, before July 1, 1995, form an  
9 advisory committee, in coordination with the department of ecology and  
10 the department of agriculture, which will provide technical assistance  
11 in the development of standards, procedures, and guidelines required by  
12 this chapter. Such committee shall be composed of individuals from the  
13 public water and wastewater utilities, landscaping enhancement  
14 industry, commercial and industrial application community, and any  
15 other persons deemed technically helpful by the department of health.

16 (2) Before July 1, 2003, the department of health shall reconvene  
17 an advisory committee, in coordination with the public works board and  
18 the department of ecology, to:

19 (a) Provide technical assistance in a review and update of the 1997  
20 water reclamation and reuse standards, procedures, and guidelines  
21 required by this chapter, including a review of the need for the level  
22 of redundancy required;

23 (b) Identify obstacles to reclaimed water program development  
24 related to service area obligations, service area conflicts, rights to  
25 access and use waste streams, local versus state requirements, water  
26 rights, economics, and program funding, and make recommendations to the  
27 legislature on ways to remove those barriers; and

28 (c) Assist state agencies in developing public information,  
29 communication and outreach, and marketing information for water  
30 reclamation and reuse.

31 **Sec. 18.** RCW 90.46.130 and 2001 c 69 s 4 are each amended to read  
32 as follows:

33 (1) Except as provided in subsection (2) of this section,  
34 facilities that reclaim water under this chapter shall not impair any  
35 existing water right downstream from any freshwater discharge points of  
36 such facilities unless compensation or mitigation for such impairment  
37 is agreed to by the holder of the affected water right.

1 (2) Agricultural water use of agricultural industrial process water  
2 and use of industrial reuse water under this chapter shall not impair  
3 existing water rights within the water source that is the source of  
4 supply for the agricultural processing plant or the industrial  
5 processing and, if the water source is surface water, the existing  
6 water rights are downstream from the agricultural processing plant's  
7 discharge points existing on July 22, 2001, or from the industrial  
8 processing's discharge points existing on the effective date of this  
9 section.

10 NEW SECTION. **Sec. 19.** A new section is added to chapter 90.46 RCW  
11 to read as follows:

12 (1) The permit to use industrial reuse water shall be the permit  
13 issued under chapter 90.48 RCW to the owner of the plant that is the  
14 source of the industrial process water, who may then distribute the  
15 water according to provisions in the permit governing the location,  
16 rate, water quality, and purpose. In cases where the department of  
17 ecology determines that a proposed use may pose a significant risk to  
18 public health, the department shall refer the permit application to the  
19 department of health for review and consultation.

20 (2) The owner of the industrial plant who obtains a permit under  
21 this section has the exclusive right to the use of any industrial reuse  
22 water generated from the plant and to the distribution of such water.  
23 Use and distribution of the water by the owner is exempt from the  
24 permit requirements of RCW 90.03.250, 90.03.380, 90.44.060, and  
25 90.44.100.

26 (3) Nothing in this section affects any right to reuse industrial  
27 process water in existence on or before the effective date of this  
28 section.

29 **Sec. 20.** RCW 90.03.380 and 2001 c 237 s 5 are each amended to read  
30 as follows:

31 (1) The right to the use of water which has been applied to a  
32 beneficial use in the state shall be and remain appurtenant to the land  
33 or place upon which the same is used: PROVIDED, HOWEVER, That the  
34 right may be transferred to another or to others and become appurtenant  
35 to any other land or place of use without loss of priority of right  
36 theretofore established if such change can be made without detriment or  
37 injury to existing rights. The point of diversion of water for

1 beneficial use or the purpose of use may be changed, if such change can  
2 be made without detriment or injury to existing rights. A change in  
3 the place of use, point of diversion, and/or purpose of use of a water  
4 right to enable irrigation of additional acreage or the addition of new  
5 uses may be permitted if such change results in no increase in the  
6 annual consumptive quantity of water used under the water right. For  
7 purposes of this section, "annual consumptive quantity" means the  
8 estimated or actual annual amount of water diverted pursuant to the  
9 water right, reduced by the estimated annual amount of return flows,  
10 averaged over the two years of greatest use within the most recent  
11 five-year period of continuous beneficial use of the water right. Such  
12 an "annual consumptive quantity" applies only to changes or transfers  
13 that add additional irrigated acres or add additional purposes to the  
14 right, and does not apply to other changes or transfers that do not add  
15 new acres or new purposes to the right, and does not define the extent  
16 of the right. Before any transfer of such right to use water or change  
17 of the point of diversion of water or change of purpose of use can be  
18 made, any person having an interest in the transfer or change, shall  
19 file a written application therefor with the department, and the  
20 application shall not be granted until notice of the application is  
21 published as provided in RCW 90.03.280. If it shall appear that such  
22 transfer or such change may be made without injury or detriment to  
23 existing rights, the department shall issue to the applicant a  
24 certificate in duplicate granting the right for such transfer or for  
25 such change of point of diversion or of use. The certificate so issued  
26 shall be filed and be made a record with the department and the  
27 duplicate certificate issued to the applicant may be filed with the  
28 county auditor in like manner and with the same effect as provided in  
29 the original certificate or permit to divert water.

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

36 (3) A change in place of use by an individual water user or users  
37 of water provided by an irrigation district need only receive approval  
38 for the change from the board of directors of the district if the use  
39 of water continues within the irrigation district, and when water is

1 provided by an irrigation entity that is a member of a board of joint  
2 control created under chapter 87.80 RCW, approval need only be received  
3 from the board of joint control if the use of water continues within  
4 the area of jurisdiction of the joint board and the change can be made  
5 without detriment or injury to existing rights.

6 (4)(a) For a water right held by a public water system, a change in  
7 the place of use of the water right shall not require the department's  
8 approval for the use of water within the water service areas in the  
9 public water system's water system plan approved under chapter 43.20  
10 RCW or coordinated water system plan approved under chapter 70.116 RCW,  
11 as either plan may be amended from time to time.

12 (b) Development of any inchoate water right for use in an area  
13 outside of the place of use that would apply to the use of water under  
14 the right if not for this subsection (4) shall be accomplished only  
15 through the approval of a change or transfer of the inchoate right or  
16 a portion of the inchoate right that is needed to resolve or alleviate  
17 a public health or safety emergency caused by a failing public water  
18 supply system currently providing potable water to existing users or to  
19 benefit environmental resources. Inadequate water rights for a public  
20 water system to serve existing hookups or to accommodate future  
21 population growth or other future uses do not constitute a public  
22 health or safety emergency. The application for change or transfer of  
23 the inchoate water right must be filed specifically to correct the  
24 actual or anticipated cause of the public water system failure. To be  
25 considered a failing public water system, the department of health, in  
26 consultation with the department of ecology and the local health  
27 authority, must make a determination that the system meets one or more  
28 of the following conditions:

29 (i) A public water system has failed, or is in danger of failing  
30 within two years, to meet state board of health requirements for the  
31 delivery of potable water to existing users in adequate quantity or  
32 quality to meet basic human drinking, cooking, and sanitation needs;

33 (ii) The current water source has failed or will fail so that the  
34 public water system is or will become incapable of exercising its  
35 existing water right to meet existing needs for drinking, cooking, and  
36 sanitation purposes after all reasonable conservation efforts have been  
37 implemented; or

38 (iii) A change in source is required to meet drinking water quality  
39 standards and avoid unreasonable treatment costs, or the state

1 department of health determines that the existing source of supply is  
2 unacceptable for human use.

3 The provisions of this subsection (4)(b) apply to the extent that  
4 such an inchoate right exists under the law applying before the  
5 effective date of this subsection (4)(b).

6 (5) Notwithstanding any other provision of this section, a water  
7 right to use surface or ground water that has been applied to any  
8 beneficial use within the general category of an agricultural use may  
9 be changed to another agricultural use, within the other limitations of  
10 the water right, under the following conditions:

11 (a) A change in the type of crop irrigated under an agricultural  
12 irrigation water right may be made without providing notice to the  
13 department and does not constitute a change in the purpose of use of  
14 the right;

15 (b) A change from one agricultural use to another agricultural use  
16 that does not involve a change in the season of use of the water may be  
17 made after notification to, but without the approval of, the  
18 department;

19 (c) A change from one agricultural use to another agricultural use  
20 that involves a change in the season of use of water may be made after  
21 providing notice and opportunity for review to the department as  
22 described in this subsection. For these changes, the water right  
23 holder shall give written notice to the department that includes  
24 information describing the proposed change and providing evidence of  
25 beneficial use of the right. The water right holder may proceed with  
26 the change unless the department notifies the water right holder within  
27 forty-five calendar days that the proposed change raises concerns  
28 regarding potential impairment to other water rights. The director may  
29 extend the forty-five day period by an additional thirty calendar days  
30 if notice is provided to the water right holder within the forty-five  
31 day period. The department shall operate under a rebuttable  
32 presumption of no impairment of other water rights if the season of use  
33 is proposed to be changed from a period that is more critical for other  
34 water rights and stream flows to a period that is less critical. If  
35 the department determines that the proposed change raises concerns  
36 regarding potential impairment to other water rights, the proposed  
37 change may not proceed under this subsection (5);

38 (d) The department's determination under (c) of this subsection is  
39 not appealable. For a change that is not allowed under (c) of this

1 subsection, the water right holder may subsequently apply for a change  
2 in right under subsection (1) of this section or RCW 90.03.390 in which  
3 case the department shall make a full and normal determination and  
4 render an appealable decision under those statutes. In making such a  
5 decision, the department is not bound by its earlier determination and  
6 the earlier determination shall not result in a presumption of  
7 impairment of any water right; and

8 (e) The general category of an agricultural use of water under this  
9 subsection (5) is composed of, but not limited to, the beneficial uses  
10 of water for agricultural irrigation, frost protection, dust  
11 suppression, cleaning of agricultural animals, equipment, and  
12 facilities, and processing agricultural commodities.

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

16 ((+5)) (7)(a) Pending applications for new water rights are not  
17 entitled to protection from impairment, injury, or detriment when an  
18 application relating to an existing surface or ground water right is  
19 considered.

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

25 (c) Notwithstanding any other existing authority to process  
26 applications, including but not limited to the authority to process  
27 applications under WAC 173-152-050 as it existed on January 1, 2001, an  
28 application relating to an existing surface or ground water right may  
29 be processed ahead of a previously filed application relating to an  
30 existing right when sufficient information for a decision on the  
31 previously filed application is not available and the applicant for the  
32 previously filed application is sent written notice that explains what  
33 information is not available and informs the applicant that processing  
34 of the next application will begin. The previously filed application  
35 does not lose its priority date and if the information is provided by  
36 the applicant within sixty days, the previously filed application shall  
37 be processed at that time. This subsection ((+5)) (7)(c) does not  
38 affect any other existing authority to process applications.



1 (d) Nothing in this subsection (~~((5))~~) (7) is intended to stop the  
2 processing of applications for new water rights.

3 (~~((6))~~) (8) No applicant for a change, transfer, or amendment of a  
4 water right may be required to give up any part of the applicant's  
5 valid water right or claim to a state agency, the trust water rights  
6 program, or to other persons as a condition of processing the  
7 application.

8 (~~((7))~~) (9) Changes, transfers, or amendments of surface or ground  
9 water rights to facilitate the conjunctive use of two or more water  
10 rights are governed by section 21 of this act.

11 (10) The purpose of use of a water right held for municipal water  
12 supply purposes includes, but is not limited to, using the water right  
13 to assist in providing instream flows.

14 (11) In revising the provisions of this section and adding  
15 provisions to this section by chapter 237, Laws of 2001, the  
16 legislature does not intend to imply legislative approval or  
17 disapproval of any existing administrative policy regarding, or any  
18 existing administrative or judicial interpretation of, the provisions  
19 of this section not expressly added or revised.

20 NEW SECTION. Sec. 21. A new section is added to chapter 90.03 RCW  
21 to read as follows:

22 The department may provide expedited processing for an application  
23 for a ground or surface water right or for a change, transfer, or  
24 amendment of an existing surface or ground water right that facilitates  
25 the conjunctive use by a water right holder of ground and surface water  
26 rights or of two or more ground water rights or of two or more surface  
27 water rights. The expedited processing may be provided if the  
28 conjunctive use does not impair water rights existing at the time the  
29 conjunctive use is initiated and the conjunctive use would change the  
30 season that all or a portion of an existing right is used so that there  
31 would be less competing demand for water from a surface water source  
32 during a season when water supply for stream flows is more critical.  
33 Such a change, transfer, or amendment may be provided without loss of  
34 priority.

35 **Sec. 22.** RCW 90.44.100 and 1997 c 316 s 2 are each amended to read  
36 as follows:

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

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

28 (3) The construction of a replacement or new additional well or  
29 wells at the location of the original well or wells shall be allowed  
30 without application to the department for an amendment. However, the  
31 following apply to such a replacement or new additional well: (a) The  
32 well shall tap the same body of public ground water as the original  
33 well or wells; (b) if a replacement well is constructed, the use of the  
34 original well or wells shall be discontinued and the original well or  
35 wells shall be properly decommissioned as required under chapter 18.104  
36 RCW; (c) if a new additional well is constructed, the original well or  
37 wells may continue to be used, but the combined total withdrawal from  
38 the original and additional well or wells shall not enlarge the right  
39 conveyed by the original water use permit or certificate; (d) the

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

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

13 **Sec. 23.** RCW 43.21B.110 and 2001 c 220 s 2 are each amended to  
14 read as follows:

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

20 (a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431,  
21 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.48.144, 90.56.310, and  
22 90.56.330.

23 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,  
24 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,  
25 90.14.130, 90.48.120, and 90.56.330.

26 (c) Except as provided in RCW 90.03.210(2) and 90.03.380(5)(c), the  
27 issuance, modification, or termination of any permit, certificate, or  
28 license by the department or any air authority in the exercise of its  
29 jurisdiction, including the issuance or termination of a waste disposal  
30 permit, the denial of an application for a waste disposal permit, the  
31 modification of the conditions or the terms of a waste disposal permit,  
32 or a decision to approve or deny an application for a solid waste  
33 permit exemption under RCW 70.95.300.

34 (d) Decisions of local health departments regarding the grant or  
35 denial of solid waste permits pursuant to chapter 70.95 RCW.

36 (e) Decisions of local health departments regarding the issuance  
37 and enforcement of permits to use or dispose of biosolids under RCW  
38 70.95J.080.

1 (f) Decisions of the department regarding waste-derived fertilizer  
2 or micronutrient fertilizer under RCW 15.54.820, and decisions of the  
3 department regarding waste-derived soil amendments under RCW 70.95.205.

4 (g) Decisions of local conservation districts related to the denial  
5 of approval or denial of certification of a dairy nutrient management  
6 plan; conditions contained in a plan; application of any dairy nutrient  
7 management practices, standards, methods, and technologies to a  
8 particular dairy farm; and failure to adhere to the plan review and  
9 approval timelines in RCW 90.64.026.

10 (h) Any other decision by the department or an air authority which  
11 pursuant to law must be decided as an adjudicative proceeding under  
12 chapter 34.05 RCW.

13 (2) The following hearings shall not be conducted by the hearings  
14 board:

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

17 (b) Hearings conducted by the department pursuant to RCW 70.94.332,  
18 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

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

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

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

26 **Sec. 24.** RCW 90.14.140 and 2001 c 240 s 1, 2001 c 237 s 27, and  
27 2001 c 69 s 5 are each reenacted and amended to read as follows:

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

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

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

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

36 (d) The operation of legal proceedings, including but not limited  
37 to foreclosure or bankruptcy proceedings or the processing of change,  
38 transfer, or amendment applications by the department of ecology that

1 materially affect the exercise of the water right and prevent  
2 reasonable exercise of the right;

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

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

10 (g) (~~Temporarily~~) Reduced water need for irrigation use where  
11 such reduction is due to varying weather conditions, including but not  
12 limited to precipitation and temperature, that warranted the reduction  
13 in water use, so long as the water user's diversion and delivery  
14 facilities are maintained in good operating condition consistent with  
15 beneficial use of the full amount of the water right;

16 (h) Temporarily reduced diversions or withdrawals of irrigation  
17 water directly resulting from the provisions of a contract or similar  
18 agreement in which a supplier of electricity buys back electricity from  
19 the water right holder and the electricity is needed for the diversion  
20 or withdrawal or for the use of the water diverted or withdrawn for  
21 irrigation purposes;

22 (i) Water conservation measures, including but not limited to such  
23 measures implemented under the Yakima river basin water enhancement  
24 project(~~, so long as~~)). With regard to water conservation measures  
25 implemented under the Yakima river basin water enhancement project, the  
26 conserved water (~~is~~) must be reallocated in accordance with the  
27 provisions of P.L. 103-434;

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

33 (k) The reduced use of irrigation water resulting from crop  
34 rotation. For purposes of this subsection, crop rotation means the  
35 (~~temporary~~) short-term or long-term change in the type of crops grown  
36 (~~resulting from the exercise of generally recognized sound farming~~  
37 ~~practices~~)). Unused water resulting from crop rotation will not be  
38 relinquished if the remaining portion of the water continues to be  
39 beneficially used; or

1       (1) The department's processing of an application for a change or  
2 transfer under RCW 90.03.380 or of an amendment under RCW 90.44.100.

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

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

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

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

15       (d) If such right is claimed for municipal water supply purposes  
16 under chapter 90.03 RCW. For purposes of this subsection and RCW  
17 90.03.380(10), a water right is for municipal water supply purposes if  
18 the right is held by a governmental entity for the purpose of  
19 supplying, as a minimum, residential use or is held for future  
20 residential use;

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

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

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

32       (h) If such right is a trust water right under chapter 90.38 or  
33 90.42 RCW.

34       (3) In adding provisions to this section by chapter 237, Laws of  
35 2001, the legislature does not intend to imply legislative approval or  
36 disapproval of any existing administrative policy regarding, or any  
37 existing administrative or judicial interpretation of, the provisions  
38 of this section not expressly added or revised.

1       **Sec. 25.** RCW 90.38.020 and 2001 c 237 s 28 are each amended to  
2 read as follows:

3       (1)(a) The department may acquire water rights, including but not  
4 limited to storage rights, by purchase, lease, gift, or other  
5 appropriate means other than by condemnation, from any person or entity  
6 or 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       (b) If ~~((an aquatic species is listed as threatened or endangered~~  
11 ~~under federal law for a body of water, or is listed as depressed or~~  
12 ~~threatened by reason of inadequate stream flows under state law, and))~~  
13 the holder of a right to water from ~~((the))~~ a body of water chooses to  
14 donate all or a portion of the person's water right to the trust water  
15 system to assist in providing ~~((these))~~ instream flows on a temporary  
16 or permanent basis, the department shall accept the donation on such  
17 terms as the person may prescribe as long as the donation satisfies the  
18 requirements of subsection (4) of this section and the other applicable  
19 requirements of this chapter and the terms prescribed are relevant and  
20 material to protecting any interest in the water right retained by the  
21 donor. Once accepted, such rights are trust water rights within the  
22 conditions prescribed by the donor.

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

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

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

1 under subsection (1)(b) of this section is impairing existing water  
2 rights in violation of RCW 90.38.902, the trust water right shall be  
3 altered by the department to eliminate the impairment. Any decision of  
4 the department to alter or not alter a trust water right donated under  
5 subsection (1)(b) of this section is appealable to the pollution  
6 control hearings board under RCW 43.21B.230. A donated water right's  
7 status as a trust water right under this subsection is not evidence of  
8 the validity or quantity of the water right.

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

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

37 (7) For a water right donated to or acquired by the trust water  
38 rights program on a temporary basis, the full quantity of water  
39 diverted or withdrawn to exercise the right before the donation or



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

4 **Sec. 26.** RCW 90.42.080 and 2001 c 237 s 31 are each amended to  
5 read as follows:

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

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

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

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

32 (4) A water right donated under subsection (1)(b) of this section  
33 shall not exceed the extent to which the water right was exercised  
34 during the five years before the donation nor may the total of any  
35 portion of the water right remaining with the donor plus the donated  
36 portion of the water right exceed the extent to which the water right  
37 was exercised during the five years before the donation. A water right  
38 holder who believes his or her water right has been impaired by a trust

1 water right donated under subsection (1)(b) of this section may request  
2 that the department review the impairment claim. If the department  
3 determines that exercising the trust water right resulting from the  
4 donation or exercising a portion of that trust water right donated  
5 under subsection (1)(b) of this section is impairing existing water  
6 rights in violation of RCW 90.42.070, the trust water right shall be  
7 altered by the department to eliminate the impairment. Any decision of  
8 the department to alter or not to alter a trust water right donated  
9 under subsection (1)(b) of this section is appealable to the pollution  
10 control hearings board under RCW 43.21B.230. A donated water right's  
11 status as a trust water right under this subsection is not evidence of  
12 the validity or quantity of the water right.

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

17 (6) No funds may be expended for the purchase of water rights by  
18 the state pursuant to this section unless specifically appropriated for  
19 this purpose by the legislature.

20 (7) Any water right conveyed to the trust water right system as a  
21 gift that is expressly conditioned to limit its use to instream  
22 purposes shall be managed by the department for public purposes to  
23 ensure that it qualifies as a gift that is deductible for federal  
24 income taxation purposes for the person or entity conveying the water  
25 right.

26 (8) If the department acquires a trust water right by lease in an  
27 area in which a drought order has been issued under RCW 43.83B.405 and  
28 is in effect at the time the department leases the water right, the  
29 amount of the trust water right shall not exceed the extent to which  
30 the water right was exercised during the five years before the  
31 acquisition was made nor may the total of any portion of the water  
32 right remaining with the original water right holder plus the portion  
33 of the water right leased by the department exceed the extent to which  
34 the water right was exercised during the five years before the  
35 acquisition. A water right holder who believes his or her water right  
36 has been impaired by a trust water right leased under this subsection  
37 may request that the department review the impairment claim. If the  
38 department determines that exercising the trust water right resulting  
39 from the leasing or exercising (~~of~~) of a portion of that trust

1 water right leased under this subsection is impairing existing water  
2 rights in violation of RCW 90.42.070, the trust water right shall be  
3 altered by the department to eliminate the impairment. Any decision of  
4 the department to alter or not to alter a trust water right leased  
5 under this subsection is appealable to the pollution control hearings  
6 board under RCW 43.21B.230. The department's leasing of a trust water  
7 right under this subsection is not evidence of the validity or quantity  
8 of the water right.

9 (9) For a water right donated to or acquired by the trust water  
10 rights program on a temporary basis, the full quantity of water  
11 diverted or withdrawn to exercise the right before the donation or  
12 acquisition shall be placed in the trust water rights program and shall  
13 revert to the donor or person from whom it was acquired when the trust  
14 period ends.

15 **Sec. 27.** RCW 90.03.370 and 2000 c 98 s 3 are each amended to read  
16 as follows:

17 (1)(a) All applications for reservoir permits (~~(shall be)~~) are  
18 subject to the provisions of RCW 90.03.250 through 90.03.320. But the  
19 party or parties proposing to apply to a beneficial use the water  
20 stored in any such reservoir shall also file an application for a  
21 permit, to be known as the secondary permit, which shall be in  
22 compliance with the provisions of RCW 90.03.250 through 90.03.320.  
23 Such secondary application shall refer to such reservoir as its source  
24 of water supply and shall show documentary evidence that an agreement  
25 has been entered into with the owners of the reservoir for a permanent  
26 and sufficient interest in said reservoir to impound enough water for  
27 the purposes set forth in said application. When the beneficial use  
28 has been completed and perfected under the secondary permit, the  
29 department shall take the proof of the water users under such permit  
30 and the final certificate of appropriation shall refer to both the  
31 ditch and works described in the secondary permit and the reservoir  
32 described in the primary permit. The department may accept for  
33 processing a single application form covering both a proposed reservoir  
34 and a proposed secondary permit or permits for use of water from that  
35 reservoir.

36 (b) The department shall expedite processing applications for the  
37 following types of storage proposals:

1       (i) Development of storage facilities that will not require a new  
2 water right for diversion or withdrawal of the water to be stored;

3       (ii) Adding or changing one or more purposes of use of stored  
4 water;

5       (iii) Adding to the storage capacity of an existing storage  
6 facility; and

7       (iv) Applications for secondary permits to secure use from existing  
8 storage facilities.

9       (c) The following types of storage facilities do not require a  
10 reservoir or secondary permit from the department for the storage and  
11 use of stored water:

12       (i) Rain barrels, cisterns, and other facilities for capturing  
13 runoff from roofs, paved areas, and other hard surfaces on a single  
14 residential, commercial, or industrial property or public facility when  
15 the total amount of storage does not exceed ten thousand gallons and  
16 the water stored is intended to be put to beneficial use;

17       (ii) Facilities to recapture and reuse return flow from irrigation  
18 operations when serving a single farm operation provided that the  
19 acreage irrigated is not increased beyond the acreage allowed to be  
20 irrigated under the water right that applies to the property;

21       (iii) Off-stream ponds filled from a separate source not exceeding  
22 ten acre-feet in capacity;

23       (iv) Excavated ponds not filled from a separate source, but rather  
24 from interception of the water table, and not exceeding ten acre-feet  
25 in capacity. However, if any consumptive use of water will be made  
26 other than direct stock drinking, a secondary permit is required;

27       (v) Storm water management facilities; and

28       (vi) Excavated municipal water reservoirs, water towers and other  
29 similar facilities that are integral to a water supply system's  
30 distribution system.

31       (d) The storage and use of water from facilities described in (c)  
32 of this subsection must not impair any water right or diminish stream  
33 flows.

34       (2)(a) For the purposes of this section, "reservoir" includes, in  
35 addition to any surface reservoir, any naturally occurring underground  
36 geological formation where water is collected and stored for subsequent  
37 use as part of an underground artificial storage and recovery project.  
38 To qualify for issuance of a reservoir permit an underground geological

1 formation must meet standards for review and mitigation of adverse  
2 impacts identified, for the following issues:

3 (i) Aquifer vulnerability and hydraulic continuity;

4 (ii) Potential impairment of existing water rights;

5 (iii) Geotechnical impacts and aquifer boundaries and  
6 characteristics;

7 (iv) Chemical compatibility of surface waters and ground water;

8 (v) Recharge and recovery treatment requirements;

9 (vi) System operation;

10 (vii) Water rights and ownership of water stored for recovery; and

11 (viii) Environmental impacts.

12 (b) Standards for review and standards for mitigation of adverse  
13 impacts for an underground artificial storage and recovery project  
14 shall be established by the department by rule. Notwithstanding the  
15 provisions of RCW 90.03.250 through 90.03.320, analysis of each  
16 underground artificial storage and recovery project and each  
17 underground geological formation for which an applicant seeks the  
18 status of a reservoir shall be through applicant-initiated studies  
19 reviewed by the department.

20 (3) For the purposes of this section, "underground artificial  
21 storage and recovery project" means any project in which it is intended  
22 to artificially store water in the ground through injection, surface  
23 spreading and infiltration, or other department-approved method, and to  
24 make subsequent use of the stored water. However, (a) this subsection  
25 does not apply to irrigation return flow, or to operational and seepage  
26 losses that occur during the irrigation of land, or to water that is  
27 artificially stored due to the construction, operation, or maintenance  
28 of an irrigation district project, or to projects involving water  
29 reclaimed in accordance with chapter 90.46 RCW; and (b) RCW 90.44.130  
30 applies to those instances of claimed artificial recharge occurring due  
31 to the construction, operation, or maintenance of an irrigation  
32 district project or operational and seepage losses that occur during  
33 the irrigation of land, as well as other forms of claimed artificial  
34 recharge already existing at the time a ground water subarea is  
35 established.

36 (4) Nothing in chapter 98, Laws of 2000 changes the requirements of  
37 existing law governing issuance of permits to appropriate or withdraw  
38 the waters of the state.

1 (5) The department shall report to the legislature by December 31,  
2 2001, on the standards for review and standards for mitigation  
3 developed under subsection (3) of this section and on the status of any  
4 applications that have been filed with the department for underground  
5 artificial storage and recovery projects by that date.

6 (6) Where needed to ensure that existing storage capacity is  
7 effectively and efficiently used to meet multiple purposes, the  
8 department may authorize reservoirs to be filled more than once per  
9 year or more than once per season of use.

10 NEW SECTION. Sec. 28. A new section is added to chapter 90.44 RCW  
11 to read as follows:

12 The first choice of water supply for a new residential use of water  
13 is water service from a public water system serving fifteen or more  
14 residential hookups. To be the first choice, however, the water  
15 service must be available in a timely and cost-effective manner. The  
16 operator of a public water system is able to provide service in a  
17 timely manner if the water can be provided within one hundred twenty  
18 days unless the requesting party asks for a longer period. An operator  
19 of a public water system is able to provide the service in a cost-  
20 effective manner if the total cost to obtain the water from the public  
21 water system, including but not limited to construction and engineering  
22 costs, connection fees, and operating costs, does not exceed one  
23 hundred twenty percent of the total cost of providing water service  
24 from a well under the permit exemption of RCW 90.44.050. If the water  
25 is provided by the public water system:

26 (1) The system shall notify the department and the department shall  
27 enlarge the place of use of the water right for the system by adding  
28 the place of the residential use;

29 (2) And if the source of water for one or more of the public water  
30 system's water rights is the ground water that would be a source of  
31 supply for the residence if water were supplied from a well under the  
32 exemption provided by RCW 90.44.050, the service by the public water  
33 system constitutes a consolidation of the water right of the system  
34 with the undeveloped right otherwise available under RCW 90.44.050. In  
35 such a case, the public water system shall notify the department and  
36 the department shall enlarge the water right for the system from that  
37 water source by eight hundred gallons of water per day with the

1 priority date for the added portion of the consolidated right being the  
2 date water service was first provided for the residential use; and  
3 (3) The exemption from permitting provided by RCW 90.44.050 is not  
4 available for that residential use.

5 NEW SECTION. **Sec. 29.** A new section is added to chapter 90.44 RCW  
6 to read as follows:

7 (1) It is the intent of the legislature to clarify the nature of  
8 the water rights for stock watering that may be established without a  
9 permit under RCW 90.44.050 before the effective date of this section  
10 and that may be established without a permit under RCW 90.44.050 on and  
11 after the effective date of this section.

12 (2) The legislature acknowledges that the exemption from permitting  
13 provided by RCW 90.44.050 before the effective date of this section for  
14 stock watering was not limited to five thousand gallons of water per  
15 day. This acknowledgment applies to the use of ground water provided  
16 directly or indirectly by the United States bureau of reclamation as  
17 part of a federal reclamation project only if the use of the water is  
18 also authorized by the bureau through a permit or license issued by the  
19 bureau or by the department through an agreement with the bureau.

20 On and after the effective date of this section, the exemption from  
21 permitting provided by RCW 90.44.050 for a new water right for stock  
22 watering is limited to five thousand gallons of water per day. On and  
23 after the effective date of this section, the quantity of water  
24 withdrawn under an existing water right established without a permit  
25 under the authority of RCW 90.44.050 for stock watering and established  
26 before the effective date of this section shall not be increased,  
27 unless the effect of the increase is to withdraw a total quantity of  
28 water under the right that is no greater than five thousand gallons a  
29 day.

30 NEW SECTION. **Sec. 30.** A new section is added to chapter 90.03 RCW  
31 to read as follows:

32 In considering an application for a water right permit or for a  
33 transfer, change, or amendment of an existing water right, the  
34 department must consider any instream flow requirements that have been  
35 established by rule for the source of water for the right or for water  
36 that is in hydraulic continuity with that source. However, the  
37 department may approve the application if, in addition to other

1 requirements of law, water would be available at times of the year and  
2 over several years to satisfy the purpose or purposes of water use  
3 under the application.

4 NEW SECTION. **Sec. 31.** Section 29 of this act is necessary for the  
5 immediate preservation of the public peace, health, or safety, or  
6 support of the state government and its existing public institutions,  
7 and takes effect immediately.

--- END ---