
SENATE BILL 6039

State of Washington

57th Legislature

2001 Regular Session

By Senators Honeyford, Hale, Deccio, Parlette, Morton, Hochstatter, Hewitt and Stevens

Read first time 02/15/2001. Referred to Committee on Environment, Energy & Water.

1 AN ACT Relating to water resources; amending RCW 77.85.050,
2 90.82.040, 90.82.130, 90.80.100, 90.80.130, 90.80.010, 90.80.070,
3 90.80.120, 90.80.140, 90.80.050, 90.03.380, 90.66.040, 90.66.060,
4 90.14.140, 90.38.020, 90.38.040, 90.42.040, 90.42.080, 90.03.330,
5 90.44.100, 90.03.390, 90.14.043, 90.14.160, 90.14.170, 90.14.180,
6 90.46.005, 90.46.010, 90.03.252, and 90.44.062; adding a new section to
7 chapter 90.80 RCW; adding new sections to chapter 90.03 RCW; adding a
8 new section to chapter 90.66 RCW; adding a new section to chapter 90.46
9 RCW; creating new sections; and declaring an emergency.

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

11 **Sec. 1.** RCW 77.85.050 and 1999 sp.s. c 13 s 11 are each amended to
12 read as follows:

13 (1)(a) Counties, cities, and tribal governments must jointly
14 designate, by resolution or by letters of support, the area for which
15 a habitat project list is to be developed and the lead entity that is
16 to be responsible for submitting the habitat project list. No project
17 included on a habitat project list shall be considered mandatory in
18 nature and no private landowner may be forced or coerced into
19 participation in any respect. The lead entity may be a county, city,

1 conservation district, special district, tribal government, or other
2 entity.

3 (b) In lieu of the requirements of (a) of this subsection, a lead
4 agency under chapter 90.82 RCW may serve as the lead entity under the
5 provisions of this chapter and be responsible for submitting the
6 habitat project list for the geographical planning area within the
7 jurisdiction of the planning unit if (i) a habitat component is
8 selected under RCW 90.82.100; (ii) a watershed assessment has been
9 completed under RCW 90.82.040(2)(a)(ii); and (iii) a ranked list of
10 projects and activities has been prepared that warrant immediate
11 financial assistance consistent with RCW 90.82.110.

12 (c) The lead entity shall establish a committee that consists of
13 representative interests of counties, cities, conservation districts,
14 tribes, environmental groups, business interests, landowners, citizens,
15 volunteer groups, regional fish enhancement groups, and other habitat
16 interests. The purpose of the committee is to provide a citizen-based
17 evaluation of the projects proposed to promote salmon habitat. The
18 technical review team may provide the lead entity with organizational
19 models that may be used in establishing the committees.

20 ~~((e))~~ (d) The committee shall compile a list of habitat projects,
21 establish priorities for individual projects, define the sequence for
22 project implementation, and submit these activities as the habitat
23 project list. The committee shall also identify potential federal,
24 state, local, and private funding sources.

25 (2) The area covered by the habitat project list must be based, at
26 a minimum, on a WRIA, combination of WRIsAs, or any other area as agreed
27 to by the counties, cities, and tribes in resolutions or in letters of
28 support meeting the requirements of this subsection. Preference will
29 be given to projects in an area that contain a salmon species that is
30 listed or proposed for listing under the federal endangered species
31 act.

32 (3) The lead entity shall submit the habitat project list to the
33 technical review team in accordance with procedures adopted by the
34 board.

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

37 (1) Once a WRIA planning unit has been initiated under RCW
38 90.82.060 and a lead agency has been designated, it shall notify the

1 department and may apply to the department for funding assistance for
2 conducting the planning. Funds shall be provided from and to the
3 extent of appropriations made by the legislature to the department
4 expressly for this purpose.

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

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

12 ~~((b))~~ (ii) A planning unit may apply for up to two hundred
13 thousand dollars for each WRIA in the management area for conducting
14 watershed assessments in accordance with RCW 90.82.070, except that a
15 planning unit whose initiating governments choose to include an
16 instream flow, water quality, or habitat component in accordance with
17 RCW 90.82.080 through 90.82.100 may apply for additional funds to
18 conduct assessments of up to one hundred thousand dollars for each
19 component included; and

20 ~~((c))~~ (iii) A planning unit may apply for up to two hundred fifty
21 thousand dollars for each WRIA in the management area for developing a
22 watershed plan and making recommendations for actions by local, state,
23 and federal agencies, tribes, private property owners, private
24 organizations, and individual citizens, including a recommended list of
25 strategies and projects that would further the purpose of the plan in
26 accordance with RCW 90.82.060 through 90.82.100.

27 (b) A planning unit may request a different amount for phase two or
28 phase three of watershed planning than is specified in (a) of this
29 subsection, provided that the total amount of funds awarded do not
30 exceed the maximum amount the planning unit is eligible for under (a)
31 of this subsection. The department shall not approve an alternate
32 allocation of funds unless the planning unit demonstrates that an
33 alternate allocation will not impair the unit's ability to complete a
34 plan in accordance with this chapter.

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

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

1 (i) The planning unit meets all of the requirements of this
2 chapter;

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

5 (iii) The application and supporting information evidences a
6 readiness to proceed.

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

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

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

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

19 (B) Second, single WRIA planning;

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

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

24 (B) Second, single WRIA planning.

25 (d) The department may not impose any local matching fund
26 requirement as a condition for grant eligibility or as a preference for
27 receiving a grant.

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

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

33 (6) Funding provided under this section shall be considered a
34 contractual obligation against the moneys appropriated for this
35 purpose.

36 **Sec. 3.** RCW 90.82.130 and 1998 c 247 s 9 are each amended to read
37 as follows:

1 (1)(a) Upon completing its proposed watershed plan, the planning
2 unit may approve the proposal by consensus of all of the members of the
3 planning unit or by consensus among the members of the planning unit
4 appointed to represent units of government and a majority vote of the
5 nongovernmental members of the planning unit.

6 (b) If the proposal is approved by the planning unit, the unit
7 shall submit the proposal to the counties with territory within the
8 management area. If the planning unit has received funding beyond the
9 initial fifty thousand dollars under RCW 90.82.040, such a proposal
10 approved by the planning unit shall be submitted to the counties within
11 four years of the date ~~((the))~~ that funds beyond the initial funding
12 ~~((was))~~ were first ~~((received))~~ expended by the planning unit.

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

17 (2)(a) The legislative authority of each of the counties with
18 territory in the management area shall provide public notice of and
19 conduct at least one public hearing on the proposed watershed plan
20 submitted under this section. After the public hearings, the
21 legislative authorities of these counties shall convene in joint
22 session to consider the proposal. The counties may approve or reject
23 the proposed watershed plan for the management area, but may not amend
24 it. Approval of such a proposal shall be made by a majority vote of
25 the members of each of the counties with territory in the management
26 area.

27 (b) If a proposed watershed plan is not approved, it shall be
28 returned to the planning unit with recommendations for revisions.
29 Approval of such a revised proposal by the planning unit and the
30 counties shall be made in the same manner provided for the original
31 watershed plan. If approval of the revised plan is not achieved, the
32 process shall terminate.

33 (3) The planning unit shall not add an element to its watershed
34 plan that creates an obligation unless each of the governments to be
35 obligated has at least one representative on the planning unit and the
36 respective members appointed to represent those governments agree to
37 adding the element that creates the obligation. A member's agreeing to
38 add an element shall be evidenced by a recorded vote of all members of
39 the planning unit in which the members record support for adding the

1 element. If the watershed plan is approved under subsections (1) and
2 (2) of this section and the plan creates obligations: (a) For agencies
3 of state government, the agencies shall adopt by rule the obligations
4 of both state and county governments and rules implementing the state
5 obligations, the obligations on state agencies are binding upon
6 adoption of the obligations into rule, and the agencies shall take
7 other actions to fulfill their obligations as soon as possible; or (b)
8 for counties, the obligations are binding on the counties and the
9 counties shall adopt any necessary implementing ordinances and take
10 other actions to fulfill their obligations as soon as possible.

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

15 **Sec. 4.** RCW 90.80.100 and 1997 c 441 s 13 are each amended to read
16 as follows:

17 Neither the county (~~nor~~), the department, a conservancy board, or
18 its employees, nor individual conservancy board commissioners shall be
19 subject to any cause of action or claim for damages arising out of
20 proposed decisions on transfers ((approved)) made by a board under this
21 chapter.

22 **Sec. 5.** RCW 90.80.130 and 1997 c 441 s 17 are each amended to read
23 as follows:

24 Water conservancy board activities are subject to the open public
25 meetings act, chapter 42.30 RCW and to chapter 42.32 RCW.

26 NEW SECTION. **Sec. 6.** A new section is added to chapter 90.80 RCW
27 to read as follows:

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

33 (2) Upon the conclusion of its business involving a water right
34 transfer application, a board must promptly send the original copies of
35 all records relating to that application to the department for
36 recordkeeping. A board may keep a copy of the original documents.

1 After the records are transferred to the department, the responsibility
2 for making the records available under chapter 42.17 RCW is transferred
3 to the department.

4 NEW SECTION. **Sec. 7.** It is the intent of the legislature, through
5 the provisions of this act, to clarify existing law. Namely, the
6 legislature intends to clarify the existing law and the authority of
7 the department of ecology and water conservancy boards.

8 **Sec. 8.** RCW 90.80.010 and 1997 c 441 s 2 are each amended to read
9 as follows:

10 The following definitions apply throughout this chapter, unless the
11 context clearly requires otherwise.

12 (1) "Board" means a water conservancy board created under this
13 chapter.

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

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

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

17 (5) "Transfer" means a transfer, change, or amendment to a water
18 right referred to in RCW 90.03.380, 90.03.390, or 90.44.100.

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

21 (1) Applications to the board for transfers shall be made on a form
22 provided by the department, and shall contain such additional
23 information as may be required by the board in order to review and act
24 upon the application. At a minimum, the application shall include
25 information sufficient to establish to the board's satisfaction of the
26 transferor's right to the quantity of water being transferred, and a
27 description of any applicable limitations on the right to use water,
28 including the point of diversion or withdrawal, place of use, source of
29 supply, purpose of use, quantity of use permitted, time of use, period
30 of use, and the place of storage.

31 (2) The transferor and the transferee of any proposed water
32 transfer may apply to a board for approval of the transfer if the water
33 proposed to be transferred is currently diverted, withdrawn, or used
34 within the geographic boundaries of the county, or would be diverted,
35 withdrawn, or used within the geographic boundaries of the county if
36 the transfer is approved. In the case of a proposed water transfer in

1 which the water is currently diverted or withdrawn or would be diverted
2 or withdrawn outside the geographic boundaries of the county, the board
3 shall hold a public hearing in the county of the diversion or
4 withdrawal or proposed diversion or withdrawal. The board shall
5 provide for prominent publication of notice of such hearing in a
6 newspaper of general circulation published in the county in which the
7 hearing is to be held for the purpose of affording an opportunity for
8 interested persons to comment upon the application.

9 (3) After an application for a transfer is filed with the board,
10 the board shall publish notice of the application in accordance with
11 the publication requirements and send notice to state agencies as
12 provided in RCW 90.03.280. Any person may submit comments to the board
13 regarding the application. Any water right holder claiming detriment
14 or injury to an existing water right may intervene in the application
15 before the board pursuant to subsection (4) of this section. If a
16 majority of the board determines that the application is complete, in
17 accordance with the law and the transfer can be made without injury or
18 detriment to existing water rights in accordance with RCW 90.03.380,
19 90.03.390, or 90.44.100, the board shall issue the applicant a
20 certificate conditionally approving the transfer, subject to review by
21 the director.

22 (4) If a water right holder claims a proposed transfer will cause
23 an impairment to that right, the water right holder is entitled to a
24 hearing before the board. The board shall receive such evidence as it
25 deems material and necessary to determine the validity of the claim of
26 impairment. If the party claiming the impairment establishes by a
27 preponderance of the evidence that his or her water right will be
28 impaired by the proposed transfer, the board may not approve the
29 transfer unless the applicant and the impaired party agree upon
30 compensation for the impairment.

31 **Sec. 10.** RCW 90.80.120 and 1997 c 441 s 16 are each amended to
32 read as follows:

33 (1) A commissioner of a water conservancy board who has an
34 ownership interest in a water right subject to an application for
35 approval of a transfer (~~or change~~) by the board, shall not
36 participate in the board's review or decision upon the application.

37 (2) A commissioner of a water conservancy board who also serves as
38 an employee or upon the governing body of a municipally owned water

1 system, shall not participate in the board's review or decision upon an
2 application for the transfer ((or change)) of a water right in which
3 that water system has or is proposed to have an ownership interest.

4 **Sec. 11.** RCW 90.80.140 and 1997 c 441 s 18 are each amended to
5 read as follows:

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

8 **Sec. 12.** RCW 90.80.050 and 1997 c 441 s 6 are each amended to read
9 as follows:

10 A water conservancy board constitutes a public body corporate and
11 politic and a separate unit of local government in the state. Each
12 board shall consist of three commissioners appointed by the county
13 legislative authority for six-year terms. The county legislative
14 authority shall stagger the initial appointment of commissioners so
15 that the first commissioners who are appointed shall serve terms of
16 two, four, and six years, respectively, from the date of their
17 appointment. In any county with a population over five hundred
18 thousand as of December 31, 2000, the county legislative authority may
19 appoint two additional commissioners, for a total of five. If the
20 county elects to appoint five commissioners, the initial terms of the
21 additional commissioners shall be for three and five-year terms
22 respectively. All vacancies shall be filled for the unexpired term.
23 The county legislative authority shall consider, but is not limited in
24 appointing, nominations to the board by people or entities petitioning
25 or requesting the creation of the board. However, the county
26 legislative authority shall ensure that individual water right holders
27 who divert water for use within the county are represented on the
28 board. In making appointments to the board, the county legislative
29 authority shall choose from among persons who are residents of the
30 county or a county that is contiguous to the county that the water
31 conservancy board is to serve. No commissioner may participate in
32 board decisions until he or she has successfully completed the
33 necessary training required under RCW 90.80.040. Commissioners shall
34 serve without compensation, but are entitled to reimbursement for
35 necessary travel expenses in accordance with RCW 43.03.050 and
36 43.03.060 and costs incident to training.

1 NEW SECTION. **Sec. 13.** The legislature finds that the current
2 backlog of pending water rights applications is unacceptable and that
3 it is essential to facilitate more expeditious processing and eliminate
4 the backlog as soon as possible. Agriculture, business, and
5 individuals are unable to carry out plans and are suffering economic
6 harm because of the delay in processing water rights applications. By
7 this act, the legislature intends to remove some of the complexity in
8 the processing of water rights applications that is the result of
9 judicial interpretations of existing law and, thereby, to make
10 processing itself more expeditious and, also, to make the law more
11 clear and, thereby, to help avoid additional delay caused by
12 litigation. The legislature intends to allow pending applications for
13 changes, transfers, or amendments of existing water rights to be
14 processed independently of pending applications for new water rights
15 and without regard to possible impairment of pending applications for
16 new water rights for the same source of supply. The legislature
17 intends to address both surface water and ground water and does not
18 intend to divert resources away from or in any other way to deter the
19 processing of applications for new water rights.

20 **Sec. 14.** RCW 90.03.380 and 1997 c 442 s 801 are each amended to
21 read as follows:

22 (1) The right to the use of water which has been applied to a
23 beneficial use in the state shall be and remain appurtenant to the land
24 or place upon which the same is used: PROVIDED, HOWEVER, That the
25 right may be transferred to another or to others and become appurtenant
26 to any other land or place of use without loss of priority of right
27 theretofore established if such change can be made without detriment or
28 injury to existing rights. The point of diversion of water for
29 beneficial use or the purpose of use may be changed, if such change can
30 be made without detriment or injury to existing rights.

31 (a) A change in the place of use, point of diversion, and/or
32 purpose of use of a water right to enable irrigation of additional
33 acreage or the addition of new uses may be permitted if such change
34 results in no increase in the (~~annual consumptive~~) quantity of water
35 used or previously used before implementation of water distribution and
36 use efficiency measures under the water right. (~~For purposes of this~~
37 ~~section, "annual consumptive quantity" means the estimated or actual~~
38 ~~annual amount of water diverted pursuant to the water right, reduced by~~

1 ~~the estimated annual amount of return flows, averaged over the most~~
2 ~~recent five year period of continuous beneficial use of the water~~
3 ~~right.))~~

4 (b) Before any transfer of such right to use water or change of the
5 point of diversion of water or change of purpose of use can be made,
6 any person having an interest in the transfer or change, shall file a
7 written application therefor with the department, and the application
8 shall not be granted until notice of the application is published as
9 provided in RCW 90.03.280. If it shall appear that such transfer or
10 such change may be made without injury or detriment to existing rights,
11 the department shall issue to the applicant a certificate in duplicate
12 granting the right for such transfer or for such change of point of
13 diversion or of use. The certificate so issued shall be filed and be
14 made a record with the department and the duplicate certificate issued
15 to the applicant may be filed with the county auditor in like manner
16 and with the same effect as provided in the original certificate or
17 permit to divert water.

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

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

33 (4) This section shall not apply to trust water rights acquired by
34 the state through the funding of water conservation projects under
35 chapter 90.38 RCW or RCW 90.42.010 through 90.42.070. Subsection
36 (1)(a) of this section does not apply to and shall not be construed as
37 providing any limitation to the transfers, changes, or amendments of
38 water rights established under the authority of a family farm permit
39 that are authorized under section 17 of this act.

1 (5) Until June 30, 2008, pending applications for new water rights
2 are not entitled to protection from impairment, injury, or detriment
3 when an application for a change, transfer, or amendment of an existing
4 surface or ground water right is considered.

5 (6) Until June 30, 2008, applications relating to existing surface
6 or ground water rights may be processed and decisions on them rendered
7 independently of processing and rendering decisions on pending
8 applications for new water rights within the same source of supply
9 without regard to the date of filing of the pending applications for
10 new water rights.

11 (7) Beginning January 1, 2002, and ending January 1, 2004, the
12 department shall report to the legislature by January 1st of each year
13 on the results of processing applications under subsections (5) and (6)
14 of this section and, in the report due on January 1, 2004, provide an
15 evaluation and make recommendations regarding modification of any of
16 the provisions of these subsections.

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

22 (9) The department must process all applications relating to
23 existing surface or ground water rights for the same source of supply
24 according to priority date. Additionally, the department must process
25 all applications for new water rights for the same source of supply
26 according to priority date.

27 (10) The right to use water for any beneficial use within the
28 general category of an agricultural use includes the right to use the
29 water, without applying to the department or any other governmental
30 entity for approval, for any other beneficial use within the general
31 category of an agricultural use. The general category of an
32 agricultural use of water includes, but is not limited to, the
33 beneficial use of water for stock watering, agricultural irrigation,
34 agricultural frost control, processing agricultural commodities into
35 agricultural products, and other agricultural uses.

36 NEW SECTION. Sec. 15. A new section is added to chapter 90.03 RCW
37 to read as follows:

1 After June 30, 2008, any right acquired or obligation or liability
2 incurred or any rule adopted or other order under RCW 90.03.380 (5) and
3 (6) remains valid and does not affect any proceeding instituted under
4 RCW 90.03.380 (5) or (6).

5 NEW SECTION. **Sec. 16.** A new section is added to chapter 90.03 RCW
6 to read as follows:

7 Nothing in this chapter authorizes the processing of applications
8 relating to existing water rights to stop the processing of
9 applications for new water rights. The processing of applications
10 assigned priority by rule may not stop the processing of other
11 applications, and at least half of the resources available to the
12 department must be devoted to the processing of nonpriority
13 applications.

14 NEW SECTION. **Sec. 17.** A new section is added to chapter 90.66 RCW
15 to read as follows:

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

19 (2) A water right established under the authority of a family farm
20 permit may be transferred:

21 (a) For use for agricultural irrigation purposes as limited by RCW
22 90.66.060 (1) and (2) except as provided in RCW 90.66.060(3);

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

27 (c) To any purpose of use that is a beneficial use of water if the
28 water right is for the use of water at a location that is, immediately
29 before the transfer is approved, within the boundaries of a city or
30 town or within the boundaries of an urban growth area designated under
31 chapter 36.70A RCW, except that transfers for the use of water for
32 agricultural irrigation purposes shall be limited as provided by RCW
33 90.66.060 (1) and (2).

34 (3) If a portion of the water governed by a water right established
35 under the authority of a family farm permit is made surplus to the
36 beneficial uses exercised under the right through the implementation of
37 practices or technologies, including but not limited to conveyance

1 practices or technologies, which are more efficient or more water-use
2 efficient than those under which the right was perfected, the right to
3 use the surplus water may be transferred to any purpose of use that is
4 a beneficial use of water. Nothing in this subsection authorizes: A
5 transfer of the portion of a water right that is necessary for the
6 production of crops historically grown under the right; or a transfer
7 of a water right or a portion of a water right that has not been
8 perfected through beneficial use before the transfer.

9 (4) The authority granted by this section to transfer or alter the
10 purpose of use of a water right established under the authority of a
11 family farm permit shall not be construed as limiting in any manner the
12 authority granted by RCW 90.03.380, 90.03.390, or 90.44.100 to alter
13 other elements of such a water right.

14 **Sec. 18.** RCW 90.66.040 and 1979 c 3 s 4 are each amended to read
15 as follows:

16 For the purposes of this chapter, the following definitions shall
17 be applicable:

18 (1) "Family farm" means a geographic area including not more than
19 two thousand acres of irrigated agricultural lands, whether contiguous
20 or noncontiguous, the controlling interest in which is held by a person
21 having a controlling interest in no more than two thousand acres of
22 irrigated agricultural lands in the state of Washington which are
23 irrigated under rights acquired after December 8, 1977.

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

29 (3) "Controlling interest" means a property interest that can be
30 transferred to another person, the percentage interest so transferred
31 being sufficient to effect a change in control of the landlord's rights
32 and benefits. Ownership of property held in trust shall not be deemed
33 a controlling interest where no part of the trust has been established
34 through expenditure or assignment of assets of the beneficiary of the
35 trust and where the rights of the family farm permit which is a part of
36 the trust cannot be transferred to another by the beneficiary of the
37 trust under terms of the trust. Each trust of a separate donor origin
38 shall be treated as a separate entity and the administration of

1 property under trust shall not represent a controlling interest on the
2 part of the trust officer.

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

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

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

10 (7) "Transfer" means a transfer, change, or amendment to a water
11 right referred to in RCW 90.03.380, 90.03.390, or 90.44.100.

12 (8) "Withdraw" means to withdraw ground water or to divert surface
13 water.

14 **Sec. 19.** RCW 90.66.060 and 1979 c 3 s 6 are each amended to read
15 as follows:

16 (1) Except as provided in subsections (2) and (3) of this section,
17 the right to withdraw water for use for the irrigation of agricultural
18 lands under authority of a family farm permit shall have no time limit
19 ((but)) and shall be conditioned upon the land being irrigated
20 complying with the definition of a family farm as defined at the time
21 the permit is issued((:—PROVIDED, HOWEVER, That)).

22 (2) If the acquisition by any person of land and water rights by
23 gift, devise, bequest, or by way of bona fide satisfaction of a debt,
24 would otherwise cause land being irrigated pursuant to a family farm
25 permit to lose its status as a family farm, such acquisition shall be
26 deemed to have no effect upon the status of family farm water permits
27 pertaining to land held or acquired by the person acquiring such land
28 and water rights if all lands held or acquired are again in compliance
29 with the definition of a family farm within five years from the date of
30 such acquisition.

31 ((+2)) If the department determines that water is being withdrawn
32 under a family farm permit for use on land not in conformity with the
33 definition of a family farm, the department shall notify the holder of
34 such family farm permit by personal service of such fact and the permit
35 shall be suspended two years from the date of receipt of notice unless
36 the person having a controlling interest in said land satisfies the
37 department that such land is again in conformity with the definition of
38 a family farm. The department may, upon a showing of good cause and

1 reasonable effort to attain compliance on the part of the person having
2 the controlling interest in such land, extend the two year period prior
3 to suspension. If conformity is not achieved prior to five years from
4 the date of notice the rights of withdrawal shall be canceled.

5 (3) This section does not apply in any manner whatsoever to a
6 transfer of surplus water authorized by section 17(3) of this act;
7 however, this section does apply to other transfers of a water right
8 established under the authority of a family farm permit to the extent
9 that the transfer is to a use of water for agricultural irrigation
10 purposes.

11 **Sec. 20.** RCW 90.14.140 and 1998 c 258 s 1 are each amended to read
12 as follows:

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

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

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

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

21 (d) The operation of legal proceedings;

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

25 (f) Federal laws imposing land or water use restrictions either
26 directly or through the voluntary enrollment of a landowner in a
27 federal program implementing those laws, or acreage limitations, or
28 production quotas.

29 (2) Notwithstanding any other provisions of RCW 90.14.130 through
30 90.14.180, there shall be no relinquishment of any water right:

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

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

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

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

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

8 (f) If such right or portion of the right is leased to another
9 person for use on land other than the land to which the right is
10 appurtenant as long as the lessee makes beneficial use of the right in
11 accordance with this chapter and a transfer or change of the right has
12 been approved by the department in accordance with RCW 90.03.380,
13 90.03.383, 90.03.390, or 90.44.100;

14 (g) If such right is a trust water right under chapter 90.38 or
15 90.42 RCW; or

16 (h) If such a right or portion of the right is authorized for a
17 purpose that is satisfied by the use of agricultural industrial
18 reclaimed water as authorized in section 34 of this act.

19 **Sec. 21.** RCW 90.38.020 and 1989 c 429 s 3 are each amended to read
20 as follows:

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

28 (b) If an aquatic species is listed as threatened or endangered
29 under the federal endangered species act (16 U.S.C. Sec. 1531 et seq.)
30 for a body of water, certain instream flows are needed for the species,
31 and the holder of a right to water from the body of water chooses to
32 donate all or a portion of the person's water right to the trust water
33 system to assist in providing those instream flows on a temporary or
34 permanent basis, the department shall accept the donation on such terms
35 as the person may prescribe as long as the donation satisfies the
36 requirements of subsection (4) of this section. Once accepted, such
37 rights are trust water rights within the conditions prescribed by the
38 donor.

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

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

7 (4) A water right donated under subsection (1)(b) of this section
8 shall not exceed the extent to which the water right was exercised
9 during any of the five years before the donation nor may the total of
10 any portion of the water right remaining with the donor plus the
11 donated portion of the water right exceed the extent to which the water
12 right was exercised during any of the five years before the donation.
13 If, upon appeal from a determination by the department, it is found
14 that exercising the trust water right resulting from the donation or
15 exercising a portion of that trust water right impairs existing water
16 rights in violation of RCW 90.38.902, the donation shall be altered to
17 eliminate the impairment.

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

23 **Sec. 22.** RCW 90.38.040 and 1994 c 264 s 90 are each amended to
24 read as follows:

25 (1) All trust water rights acquired by the department shall be
26 placed in the Yakima river basin trust water rights program to be
27 managed by the department. The department shall issue a water right
28 certificate in the name of the state of Washington for each trust water
29 right it acquires.

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

34 (3) Trust water rights may be held by the department for instream
35 flows and/or irrigation use.

36 (4) A schedule of the amount of net water saved as a result of
37 water conservation projects carried out in accordance with this
38 chapter, shall be developed annually to reflect the predicted

1 hydrologic and water supply conditions, as well as anticipated water
2 demands, for the upcoming irrigation season. This schedule shall serve
3 as the basis for the distribution and management of trust water rights
4 each year.

5 (5)(a) No exercise of a trust water right may be authorized unless
6 the department first determines that no existing water rights, junior
7 or senior in priority, will be impaired as to their exercise or injured
8 in any manner whatever by such authorization. Before any trust water
9 right is exercised, the department shall publish notice thereof in a
10 newspaper of general circulation published in the county or counties in
11 which the storage, diversion, and use are to be made, and in such other
12 newspapers as the department determines are necessary, once a week for
13 two consecutive weeks. At the same time the department may also send
14 notice thereof containing pertinent information to the director of fish
15 and wildlife.

16 (b) Subsection (5)(a) of this section does not apply to a trust
17 water right resulting from a donation for instream flows described in
18 RCW 90.38.020(1). However, the department shall provide the notice
19 described in (a) of this subsection the first time the trust water
20 right resulting from the donation is exercised.

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

24 **Sec. 23.** RCW 90.42.040 and 1993 c 98 s 3 are each amended to read
25 as follows:

26 (1) All trust water rights acquired by the state shall be placed in
27 the state trust water rights program to be managed by the department.
28 Trust water rights acquired by the state shall be held or authorized
29 for use by the department for instream flows, irrigation, municipal, or
30 other beneficial uses consistent with applicable regional plans for
31 pilot planning areas, or to resolve critical water supply problems.

32 (2) The department shall issue a water right certificate in the
33 name of the state of Washington for each permanent trust water right
34 conveyed to the state indicating the reach or reaches of the stream,
35 the quantity, and the use or uses to which it may be applied. A
36 superseding certificate shall be issued that specifies the amount of
37 water the water right holder would continue to be entitled to as a
38 result of the water conservation project. The superseding certificate

1 shall retain the same priority date as the original right. For
2 nonpermanent conveyances, the department shall issue certificates or
3 such other instruments as are necessary to reflect the changes in
4 purpose or place of use or point of diversion or withdrawal. Water
5 rights for which such nonpermanent conveyances are arranged shall not
6 be subject to relinquishment for nonuse.

7 (3) A trust water right retains the same priority date as the water
8 right from which it originated, but as between them the trust right
9 shall be deemed to be inferior in priority unless otherwise specified
10 by an agreement between the state and the party holding the original
11 right.

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

18 (5) Before any trust water right is created or modified, the
19 department shall, at a minimum, require that a notice be published in
20 a newspaper of general circulation published in the county or counties
21 in which the storage, diversion, and use are to be made, and in other
22 newspapers as the department determines is necessary, once a week for
23 two consecutive weeks. At the same time the department shall send a
24 notice containing pertinent information to all appropriate state
25 agencies, potentially affected local governments and federally
26 recognized tribal governments, and other interested parties.

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

30 (7) RCW 90.03.380 has no applicability to trust water rights
31 acquired by the state through the funding of water conservation
32 projects.

33 (8) Subsections (4) and (5) of this section do not apply to a trust
34 water right resulting from a donation for instream flows described in
35 RCW 90.42.080(1)(b). However, the department shall provide the notice
36 described in subsection (5) of this section the first time the trust
37 water right resulting from the donation is exercised.

1 **Sec. 24.** RCW 90.42.080 and 1993 c 98 s 4 are each amended to read
2 as follows:

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

10 (b) If an aquatic species is listed as threatened or endangered
11 under the federal endangered species act (16 U.S.C. Sec. 1531 et seq.)
12 for a body of water, certain instream flows are needed for the species,
13 and the holder of a right to water from the 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 those instream flows on a temporary or
16 permanent basis, the department shall accept the donation on such terms
17 as the person may prescribe as long as the donation satisfies the
18 requirements of subsection (4) of this section. Once accepted, such
19 rights are trust water rights within the conditions prescribed by the
20 donor.

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

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

27 (4) A water right donated under subsection (1)(b) of this section
28 shall not exceed the extent to which the water right was exercised
29 during any of the five years before the donation nor may the total of
30 any portion of the water right remaining with the donor plus the
31 donated portion of the water right exceed the extent to which the water
32 right was exercised during any of the five years before the donation.
33 If, upon appeal from a determination by the department, it is found
34 that exercising the trust water right resulting from the donation or
35 exercising a portion of that trust water right impairs existing water
36 rights in violation of RCW 90.42.070, the donation shall be altered to
37 eliminate the impairment.

38 (5) The provisions of RCW 90.03.380 and 90.03.390 do not apply to
39 donations for instream flows described in subsection (1)(b) of this

1 section, but do apply to other transfers of water rights under this
2 section.

3 ~~((5))~~ (6) No funds may be expended for the purchase of water
4 rights by the state pursuant to this section unless specifically
5 appropriated for this purpose by the legislature.

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

11 **Sec. 25.** RCW 90.03.330 and 1987 c 109 s 89 are each amended to
12 read as follows:

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

25 (2) A certificate issued by the department under the provisions of
26 this chapter may not be revoked or diminished without specific
27 legislative or judicial direction, provided that the water right
28 represented by the certificate has not been relinquished under the
29 provisions of chapter 90.14 RCW, issued with ministerial errors, or
30 obtained through the misrepresentation of the completion of the project
31 or the quantity appropriated. The department may revoke or adjust a
32 certificate if ministerial errors are discovered or if a certificate
33 has been obtained through misrepresentation.

34 **Sec. 26.** RCW 90.44.100 and 1997 c 316 s 2 are each amended to read
35 as follows:

36 (1) After an application to, and upon the issuance by the
37 department of an amendment to the appropriate permit or certificate of

1 ground water right, the holder of a valid right to withdraw public
2 ground waters may, without losing the holder's priority of right,
3 construct wells or other means of withdrawal at a new location in
4 substitution for or in addition to those at the original location, or
5 the holder may change the ((~~manner~~)) purpose or the place of use of the
6 water.

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

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

1 rights for the original well or wells; (e) the replacement or
2 additional well shall be located no closer than the original well to a
3 well it might interfere with; (f) the department may specify an
4 approved (~~manner~~) purpose of construction of the well; and (g) the
5 department shall require a showing of compliance with the conditions of
6 this subsection (3).

7 (4) A certificate issued by the department under the provisions of
8 this chapter may not be revoked or diminished without specific
9 legislative or judicial direction, provided that the water right
10 represented by the certificate has not been relinquished under the
11 provisions of chapter 90.14 RCW, issued with ministerial errors, or
12 obtained through the misrepresentation of the completion of the project
13 or the quantity appropriated. The department may revoke or adjust a
14 certificate if ministerial errors are discovered or if a certificate
15 has been obtained through misrepresentation.

16 (5) As used in this section, the "location of the original well or
17 wells" is the area described as the point of withdrawal in the original
18 public notice published for the application for the water right for the
19 well.

20 (6) The right to use water for any beneficial use within the
21 general category of an agricultural use includes the right to use the
22 water, without applying to the department or any other governmental
23 entity for approval, for any other beneficial use within the general
24 category of an agricultural use. The general category of an
25 agricultural use of water includes, but is not limited to, the
26 beneficial use of water for stock watering, agricultural irrigation,
27 agricultural frost control, processing agricultural commodities into
28 agricultural products, and other agricultural uses.

29 **Sec. 27.** RCW 90.03.390 and 1991 c 350 s 3 are each amended to read
30 as follows:

31 (1) RCW 90.03.380 shall not be construed to prevent water users
32 from making a seasonal or temporary change of point of diversion or
33 place of use of water when such change can be made without detriment to
34 existing rights(~~, but in no case shall such change be made without the~~
35 ~~permission of the water master of the district in which such proposed~~
36 ~~change is located, or of the department. Nor shall RCW 90.03.380 be~~
37 ~~construed to prevent construction of emergency interties between public~~
38 ~~water systems to permit exchange of water during short term emergency~~

1 ~~situations, or rotation in the use of water for bringing about a more~~
2 ~~economical use of the available supply, provided however, that the~~
3 ~~department of health in consultation with the department of ecology~~
4 ~~shall adopt rules or develop written guidelines setting forth standards~~
5 ~~for determining when a short term emergency exists and the~~
6 ~~circumstances in which emergency interties are permitted. The rules or~~
7 ~~guidelines shall be consistent with the procedures established in RCW~~
8 ~~43.83B.400 through 43.83B.420)).~~ Water users owning lands to which
9 water rights are attached may rotate in the use of water to which they
10 are collectively entitled, or an individual water user having lands to
11 which are attached water rights of a different priority, may in like
12 manner rotate in use when such rotation can be made without detriment
13 to other existing water rights(~~(, and has the approval of the water~~
14 ~~master or department)).~~ Before rotating the use of water, the water
15 right holder shall notify the department of the change and describe the
16 land subject to the rotation in use.

17 (2) A person may change the place of use of a water right without
18 the requirement of approval under this section where the water is used
19 on land contiguous to the place of use of the water right, the land is
20 owned or leased by the holder of the water right, and the total amount
21 of land to which the water is applied is not increased. Before making
22 the change, the water right holder shall notify the department of the
23 change and describe the land subject to the change in place of use.
24 This subsection does not apply to the use of water within an irrigation
25 district or to changes in use that increase the total amount of acreage
26 irrigated under a water right.

27 (3) RCW 90.03.380 shall not be construed to prevent construction of
28 emergency interties between public water systems to permit exchange of
29 water during short-term emergency situations, or rotation in the use of
30 water for bringing about a more economical use of the available supply,
31 however, the department of health in consultation with the department
32 of ecology shall adopt rules or develop written guidelines setting
33 forth standards for determining when a short-term emergency exists and
34 the circumstances in which emergency interties are permitted. The
35 rules or guidelines shall be consistent with the procedures established
36 in RCW 43.83B.400 through 43.83B.420.

37 **Sec. 28.** RCW 90.14.043 and 1985 c 435 s 1 are each amended to read
38 as follows:

1 (1) Notwithstanding any time restrictions imposed by the provisions
2 of chapter 90.14 RCW, a person may file a claim pursuant to RCW
3 90.14.041 if such person obtains a certification from the pollution
4 control hearings board as provided in this section.

5 (2) A certification shall be issued by the pollution control
6 hearings board if, upon petition to the board, it is shown to the
7 satisfaction of the board that:

8 (a) Waters of the state have been applied to beneficial use
9 continuously (with no period of nonuse exceeding ((five)) ten
10 consecutive years) in the case of surface water beginning not later
11 than June 7, 1917, and in the case of ground water beginning not later
12 than June 7, 1945, or

13 (b) Waters of the state have been applied to beneficial use
14 continuously (with no period of nonuse exceeding five consecutive
15 years) from the date of entry of a court decree confirming a water
16 right and any failure to register a claim resulted from a reasonable
17 misinterpretation of the requirements as they related to such court
18 decreed rights.

19 (3) The board shall have jurisdiction to accept petitions for
20 certification from any person through September 1, 1985, and not
21 thereafter.

22 (4) A petition for certification shall include complete information
23 on the claim pursuant to RCW 90.14.051 (1) through (8), and any such
24 information as the board may require.

25 (5) The department of ecology is directed to accept for filing any
26 claim certified by the board as provided in subsection (2) of this
27 section. The department of ecology, upon request of the board, may
28 provide assistance to the board pertinent to any certification
29 petition.

30 (6) A certification by the pollution control hearings board or a
31 filing with the department of ecology of a claim under this section
32 shall not constitute a determination or confirmation that a water right
33 exists.

34 (7) The provisions of RCW 90.14.071 shall have no applicability to
35 certified claims filed pursuant to this section.

36 (8) This section shall have no applicability to ground waters
37 resulting from the operations of reclamation projects.

1 **Sec. 29.** RCW 90.14.160 and 1981 c 291 s 1 are each amended to read
2 as follows:

3 Any person entitled to divert or withdraw waters of the state
4 through any appropriation authorized by enactments of the legislature
5 prior to enactment of chapter 117, Laws of 1917, or by custom, or by
6 general adjudication, who abandons the same, or who voluntarily fails,
7 without sufficient cause, to beneficially use all or any part of said
8 right to divert or withdraw for any period of ((five)) ten successive
9 years after July 1, 1967, shall relinquish such right or portion
10 thereof, and said right or portion thereof shall revert to the state,
11 and the waters affected by said right shall become available for
12 appropriation in accordance with RCW 90.03.250.

13 **Sec. 30.** RCW 90.14.170 and 1967 c 233 s 17 are each amended to
14 read as follows:

15 Any person entitled to divert or withdraw waters of the state by
16 virtue of his ownership of land abutting a stream, lake, or
17 watercourse, who abandons the same, or who voluntarily fails, without
18 sufficient cause, to beneficially use all or any part of said right to
19 withdraw or divert said water for any period of ((five)) ten successive
20 years after July 1, 1967, shall relinquish such right or portion
21 thereof, and such right or portion thereof shall revert to the state,
22 and the waters affected by said right shall become available for
23 appropriation in accordance with the provisions of RCW 90.03.250.

24 **Sec. 31.** RCW 90.14.180 and 1987 c 109 s 101 are each amended to
25 read as follows:

26 Any person hereafter entitled to divert or withdraw waters of the
27 state through an appropriation authorized under RCW 90.03.330,
28 90.44.080, or 90.44.090 who abandons the same, or who voluntarily
29 fails, without sufficient cause, to beneficially use all or any part of
30 said right to withdraw for any period of ((five)) ten successive years
31 shall relinquish such right or portion thereof, and such right or
32 portion thereof shall revert to the state, and the waters affected by
33 said right shall become available for appropriation in accordance with
34 RCW 90.03.250. All certificates hereafter issued by the department of
35 ecology pursuant to RCW 90.03.330 shall expressly incorporate this
36 section by reference.

1 **Sec. 32.** RCW 90.46.005 and 1997 c 355 s 1 are each amended to read
2 as follows:

3 The legislature finds that by encouraging the use of reclaimed
4 water while assuring the health and safety of all Washington citizens
5 and the protection of its environment, the state of Washington will
6 continue to use water in the best interests of present and future
7 generations.

8 To facilitate the use of reclaimed water as soon as is practicable,
9 the legislature encourages the cooperative efforts of the public and
10 private sectors and the use of pilot projects to effectuate the goals
11 of this chapter. The legislature further directs the department of
12 health and the department of ecology to coordinate efforts towards
13 developing an efficient and streamlined process for creating and
14 implementing processes for the use of reclaimed water.

15 It is hereby declared that the people of the state of Washington
16 have a primary interest in the development of facilities to provide
17 reclaimed water to replace potable water in nonpotable applications, to
18 supplement existing surface and ground water supplies, and to assist in
19 meeting the future water requirements of the state.

20 The legislature further finds and declares that the utilization of
21 reclaimed water by local communities for domestic, agricultural,
22 industrial, recreational, and fish and wildlife habitat creation and
23 enhancement purposes, including wetland enhancement, will contribute to
24 the peace, health, safety, and welfare of the people of the state of
25 Washington. To the extent reclaimed water is appropriate for
26 beneficial uses, it should be so used to preserve potable water for
27 drinking purposes. Use of reclaimed water constitutes the development
28 of new basic water supplies needed for future generations.

29 The legislature further finds and declares that the use of
30 reclaimed water is not inconsistent with the policy of antidegradation
31 of state waters announced in other state statutes, including the water
32 pollution control act, chapter 90.48 RCW and the water resources act,
33 chapter 90.54 RCW.

34 The legislature finds that other states, including California,
35 Florida, and Arizona, have successfully used reclaimed water to
36 supplement existing water supplies without threatening existing
37 resources or public health.

38 It is the intent of the legislature that the department of ecology
39 and the department of health undertake the necessary steps to encourage

1 the development of water reclamation facilities so that reclaimed water
2 may be made available to help meet the growing water requirements of
3 the state.

4 The legislature further finds and declares that reclaimed water
5 facilities are water pollution control facilities as defined in chapter
6 70.146 RCW and are eligible for financial assistance as provided in
7 chapter 70.146 RCW. The legislature finds that funding demonstration
8 projects will ensure the future use of reclaimed water. The
9 demonstration projects in RCW 90.46.110 are varied in nature and will
10 provide the experience necessary to test different facets of the
11 standards and refine a variety of technologies so that water purveyors
12 can begin to use reclaimed water technology in a more cost-effective
13 manner. This is especially critical in smaller cities and communities
14 where the feasibility for such projects is great, but there are scarce
15 resources to develop the necessary facilities.

16 The legislature further finds that the agricultural processing
17 industry can play a critical and beneficial role in promoting the
18 efficient use of water by having the opportunity to develop and reuse
19 agricultural industrial reclaimed water from food processing.

20 **Sec. 33.** RCW 90.46.010 and 1997 c 444 s 5 are each amended to read
21 as follows:

22 (~~Unless the context clearly requires otherwise,~~) The definitions
23 in this section apply throughout this chapter unless the context
24 clearly requires otherwise.

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

29 (2) "Land application" means application of treated effluent for
30 purposes of irrigation or landscape enhancement for residential,
31 business, and governmental purposes.

32 (3) "Person" means any state, individual, public or private
33 corporation, political subdivision, governmental subdivision,
34 governmental agency, municipality, copartnership, association, firm,
35 trust estate, or any other legal entity whatever.

36 (4) "Reclaimed water" means effluent derived in any part from
37 sewage from a wastewater treatment system that has been adequately and
38 reliably treated, so that as a result of that treatment, it is suitable

1 for a beneficial use or a controlled use that would not otherwise occur
2 and is no longer considered wastewater.

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

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

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

10 (8) "Beneficial use" means the use of reclaimed water, that has
11 been transported from the point of production to the point of use
12 without an intervening discharge to the waters of the state, for a
13 beneficial purpose.

14 (9) "Direct recharge" means the controlled subsurface addition of
15 water directly to the ground water basin that results in the
16 replenishment of ground water.

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

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

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

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

30 (14) "Surface percolation" means the controlled application of
31 water to the ground surface for the purpose of replenishing ground
32 water.

33 (15) "Wetland or wetlands" means areas that are inundated or
34 saturated by surface water or ground water at a frequency and duration
35 sufficient to support, and that under normal circumstances do support,
36 a prevalence of vegetation typically adapted to life in saturated soil
37 conditions. Wetlands generally include swamps, marshes, bogs, and
38 similar areas. Wetlands regulated under this chapter shall be

1 delineated in accordance with the manual adopted by the department of
2 ecology pursuant to RCW 90.58.380.

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

7 (17) "Constructed treatment wetlands" means those wetlands
8 intentionally constructed on nonwetland sites and managed for the
9 primary purpose of wastewater or storm water treatment. Constructed
10 treatment wetlands are considered part of the collection and treatment
11 system and are not considered "waters of the state."

12 (18) "Agricultural industrial reclaimed water" means water that has
13 been used for the purpose of agriculture processing and has been
14 adequately and reliably treated, so that as a result of that treatment,
15 it is suitable for other agricultural water use.

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

20 (20) "Agricultural water use" means the use of water for irrigation
21 and other uses related to the production of agricultural products.
22 These uses include, but are not limited to, construction, operation,
23 and maintenance of agricultural facilities and livestock operations at
24 farms, ranches, dairies, and nurseries. Examples of these uses
25 include, but are not limited to, dust control, temperature control, and
26 fire control.

27 NEW SECTION. Sec. 34. A new section is added to chapter 90.46 RCW
28 to read as follows:

29 The owner of an agricultural processing plant that generates
30 agricultural industrial reclaimed water may obtain a permit from the
31 department of ecology for application of that water to agricultural
32 water use. The department of ecology may issue an agricultural
33 reclaimed water permit under chapter 90.48 RCW to the owner of the
34 agricultural processing plant who may then distribute the water through
35 methods including, but not limited to, irrigation systems, subject to
36 provisions in the permit governing the location, rate, water quality,
37 and purpose. In cases where the department of ecology determines that
38 a significant risk to public health exists, in land application of the

1 water, the department must refer the application to the department of
2 health for review and consultation.

3 The owner of the agricultural processing plant who obtains a permit
4 under this section has the exclusive right to the use of any
5 agricultural industrial reclaimed water generated from the plant and to
6 the distribution of such water through facilities including irrigation
7 systems. Use and distribution of the water by the owner is exempt from
8 the permit requirements of RCW 90.03.250, 90.03.380, 90.44.060, and
9 90.44.100.

10 **Sec. 35.** RCW 90.03.252 and 1997 c 444 s 2 are each amended to read
11 as follows:

12 The permit requirements of RCW 90.03.250 do not apply to the use of
13 reclaimed water by the owner of a wastewater treatment facility under
14 the provisions of RCW 90.46.120 and do not apply to the use of
15 agricultural industrial reclaimed water as provided under section 34 of
16 this act.

17 **Sec. 36.** RCW 90.44.062 and 1997 c 444 s 3 are each amended to read
18 as follows:

19 The permit requirements of RCW 90.44.060 do not apply to the use of
20 reclaimed water by the owner of a wastewater treatment facility under
21 the provisions of RCW 90.46.120 and do not apply to the use of
22 agricultural industrial reclaimed water as provided under section 34 of
23 this act.

24 NEW SECTION. **Sec. 37.** This act is necessary for the immediate
25 preservation of the public peace, health, or safety, or support of the
26 state government and its existing public institutions, and takes effect
27 immediately.

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