
SENATE BILL 5753

State of Washington

55th Legislature

1997 Regular Session

By Senators Swecker and Rasmussen

Read first time 02/11/97. Referred to Committee on Agriculture & Environment.

1 AN ACT Relating to the processing of water rights; amending RCW
2 90.03.340, 90.03.270, 90.03.280, 90.03.290, 90.03.320, 90.03.380,
3 90.03.390, 90.44.100, 90.03.260, 90.44.060, 90.03.250, 90.03.470,
4 89.30.001, and 90.40.090; adding new sections to chapter 43.21B RCW;
5 adding new sections to chapter 90.03 RCW; creating a new section; and
6 repealing RCW 90.03.471.

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

8 **Sec. 1.** RCW 90.03.340 and 1987 c 109 s 90 are each amended to read
9 as follows:

10 After January 1, 1998, the priority date of the right acquired by
11 appropriation ((shall relate back to)) is the date ((of filing of)) the
12 ((original)) completed application form for the right is filed with the
13 department. For the purposes of this section and RCW 90.03.270, a
14 completed application form is one that contains all of the information
15 requested on the form and is accompanied by the application fee.

16 **Sec. 2.** RCW 90.03.270 and 1987 c 109 s 85 are each amended to read
17 as follows:

1 Upon receipt of ((an)) a completed water right application form, it
2 shall be the duty of the department to ~~((make an endorsement thereon of~~
3 ~~the))~~ date ((of its receipt,)) stamp and ((to)) keep a record of
4 ~~((same)) it~~. If ~~((upon examination,))~~ an application form is filed
5 with the department but the information requested on the application
6 form is ((found to be defective,)) not complete or the form is not
7 accompanied by the proper application fee, the form and any application
8 fee filed with it shall be returned to the applicant ((for correction
9 or completion,)) and the date and the reasons for the return thereof
10 shall be ~~((endorsed thereon and made a record in his office. No~~
11 ~~application shall lose its priority of filing on account of such~~
12 ~~defects, provided acceptable maps, drawings and such data as is~~
13 ~~required by the department shall be filed with the department within~~
14 ~~such reasonable time as it shall require))~~ noted in the department's
15 records and in a letter returning the form. The department may not
16 require an applicant to provide information in support of an
17 application for a water right permit that is not directly necessary for
18 the department's investigations, determinations, or findings regarding
19 that particular application.

20 **Sec. 3.** RCW 90.03.280 and 1994 c 264 s 83 are each amended to read
21 as follows:

22 ~~((Upon receipt of a proper application,))~~ The department shall
23 instruct the applicant to publish notice ~~((thereof))~~ in a form and
24 within a time prescribed by the department in a newspaper of general
25 circulation published in the county or counties in which the storage,
26 diversion or withdrawal, and use is to be made, and in such other
27 newspapers as the department may direct, once a week for two
28 consecutive weeks. The notice must include information pertinent to
29 the proposed appropriation, including the location, the source, the
30 purpose or purposes of use, and the quantity proposed to be diverted or
31 withdrawn. The notice must state that persons wishing to protest the
32 proposed application must do so in writing to the department within
33 thirty days of the last date of publication of the notice. In order to
34 be considered by the department, a protest must be received by the
35 department within thirty days of the last date of publication of the
36 notice. Upon receipt by the department of an application it shall send
37 notice thereof containing pertinent information to the director of fish
38 and wildlife.

1 NEW SECTION. **Sec. 4.** A new section is added to chapter 43.21B RCW
2 to read as follows:

3 In a proceeding before the pollution control hearings board
4 challenging a decision of the department related to the issuance,
5 conditioning, transfer, amendment, or denial of a water right permit
6 under Title 90 RCW, the burden of proof is on the person filing the
7 appeal.

8 NEW SECTION. **Sec. 5.** A new section is added to chapter 43.21B RCW
9 to read as follows:

10 Only a person with standing as defined in RCW 34.05.530 may appeal
11 to the pollution control hearings board a decision of the department to
12 issue, condition, transfer, amend, or deny a water right under Title 90
13 RCW.

14 NEW SECTION. **Sec. 6.** A new section is added to chapter 43.21B RCW
15 to read as follows:

16 If the department proposes to issue a water right permit or
17 transfer or change authorization under Title 90 RCW and:

18 (1) The decision of the department is appealed to the pollution
19 control hearings board within thirty days of the date of filing;

20 (2) The hearings board upholds the department's decision; and

21 (3) An appeal for judicial review of the hearings board decision is
22 filed under chapter 34.05 RCW,

23 the applicant for the water right may request, within ten days of the
24 filing of the appeal with the court, a hearing before the court to
25 determine whether construction and operation may begin under the water
26 right permit or authorization. If at the conclusion of the hearing the
27 court finds that construction and operation under the permit or
28 authorization would not involve a significant damaging of the
29 environment or impair existing water rights, the court may allow the
30 permittee to begin construction and operation under the permit or
31 authorization as the court deems appropriate. The court may require
32 the permittee to post bonds, in the name of the department, sufficient
33 to remove the construction or to restore the environment if the permit
34 or authorization is ultimately disapproved by the courts, or to alter
35 the construction or operation if the alteration is ultimately ordered
36 by the courts. In the hearing before the court, the burden of proving
37 whether the construction or operation might involve significant damage

1 to the environment or impair existing water rights and demonstrating
2 whether the construction would or would not be appropriate is on the
3 appellant.

4 NEW SECTION. **Sec. 7.** A new section is added to chapter 43.21B RCW
5 to read as follows:

6 One member of the pollution control hearings board may hear and
7 render a decision on an appeal from a water right applicant regarding
8 the nature and extent of the information needed to make determinations
9 regarding the application for or the processing of a water right
10 permit.

11 NEW SECTION. **Sec. 8.** A water right applicant may appeal to the
12 pollution control hearings board a determination by the department
13 regarding the nature and extent of the information needed to make
14 determinations regarding the application for or the processing of a
15 water right permit.

16 NEW SECTION. **Sec. 9.** (1) The department shall develop a general
17 permit system for appropriating water for nonconsumptive, nonbypass
18 uses and a general permit system for appropriating marine waters for
19 use on upland sites. These systems must be designed and used to
20 streamline the consideration of applications for nonconsumptive,
21 nonbypass water uses and marine water uses that by their nature do not
22 raise issues regarding water availability or the impairment of other
23 water rights. The evaluation and report required for an application
24 under RCW 90.03.290 are not required for applications processed under
25 the general permit system. For the purposes of this section:

26 (a) "Nonconsumptive, nonbypass use" means a use of water in which
27 water is diverted from a stream or withdrawn from an aquifer and
28 following its use is discharged, as determined by the department, back
29 to or very near the point of diversion or withdrawal without
30 diminishment in quantity or quality;

31 (b) "Without diminishment of quality" means that, before being
32 discharged back to its source, the water being discharged meets state
33 water quality standards adopted under chapter 90.48 RCW; and

34 (c) "Marine waters" means the coastal saline waters under the
35 jurisdiction of the state.

1 (2) The department shall establish the general permit systems by
2 adopting rules in accordance with chapter 34.05 RCW. Before the
3 adoption of rules for a system, at least four public hearings must be
4 held at various locations around the state. The hearings on the
5 general permit system for marine water use must be held in appropriate
6 coastal communities. The rules must identify criteria for proposed
7 uses of water for which applications might be processed under each
8 system and must establish procedures for filing and processing
9 applications under the general permit systems.

10 NEW SECTION. **Sec. 10.** An application for appropriating water
11 under a general permit system established under section 9 of this act
12 must be made on a form adopted and provided by the department. Within
13 sixty days of the publication of a notice for the application in
14 accordance with RCW 90.03.280, the department shall determine whether
15 the proposed use is eligible to be processed under the general permit
16 system. If the department determines that the proposed use is eligible
17 to be processed under the system, the application must be processed
18 under it. If the department determines that the proposed use is not
19 eligible for the processing, the department shall explain to the
20 applicant in writing the reasons for its determination. For a proposed
21 use determined ineligible for the processing, if the department finds
22 that the information contained on the application form substantially
23 satisfies the information requirements for an application for a use
24 that would normally be filed for processing the application outside of
25 the general permit system, the department shall notify the applicant of
26 its finding and shall process the application as if it were filed for
27 processing outside of the system. If the department finds that the
28 information does not substantially satisfy the requirements, the
29 application must be considered to be incomplete for the processing and
30 the applicant must be notified of this consideration.

31 **Sec. 11.** RCW 90.03.290 and 1994 c 264 s 84 are each amended to
32 read as follows:

33 (1) When an application complying with the provisions of this
34 chapter and with the rules (~~and regulations~~) of the department has
35 been filed, the (~~same~~) application shall be placed on record with the
36 department, and it shall be (~~its~~) the department's duty to
37 (~~investigate the application, and~~) determine what water, if any, is

1 available for appropriation, and find and determine to what beneficial
2 use or uses it can be applied.

3 The department shall investigate the application. It is the duty
4 of the applicant to provide a completed application form. In addition
5 to providing the information requested on the form, however, the
6 applicant shall also provide such information as may be required for
7 the department's investigation, determinations, and findings regarding
8 the application and may provide additional information. The
9 information provided by the applicant must satisfy the protocols, that
10 is, study plans and criteria, established by the department for
11 obtaining and providing the information. If an applicant provides the
12 information and the protocols set by the department for obtaining and
13 providing it have been satisfied, the department shall review the
14 information and may take actions to verify that the information is
15 accurate, but it may not, except to replace inaccurate information,
16 take actions that would constitute obtaining major portions of the
17 information anew.

18 (2) With regard to an application:

19 (a) If it is proposed to appropriate water for irrigation purposes,
20 the department shall investigate, determine and find what lands are
21 capable of irrigation by means of water found available for
22 appropriation.

23 (b) If it is proposed to appropriate water for the purpose of power
24 development, the department shall investigate, determine and find
25 whether the proposed development is likely to prove detrimental to the
26 public interest, having in mind the highest feasible use of the waters
27 belonging to the public.

28 (3) If the application does not contain, and the applicant does not
29 promptly furnish sufficient information on which to base such findings,
30 the department may issue a preliminary permit, for a period of not to
31 exceed three years, requiring the applicant to make such surveys,
32 investigations, studies, and progress reports, as in the opinion of the
33 department may be necessary. If the applicant fails to comply with the
34 conditions of the preliminary permit, it and the application or
35 applications on which it is based shall be automatically canceled and
36 the applicant so notified. If the holder of a preliminary permit
37 shall, before its expiration, file with the department a verified
38 report of expenditures made and work done under the preliminary permit,
39 which, in the opinion of the department, establishes the good faith,

1 intent and ability of the applicant to carry on the proposed
2 development, the preliminary permit may, with the approval of the
3 governor, be extended, but not to exceed a maximum period of five years
4 from the date of the issuance of the preliminary permit.

5 (4) The department shall make and file as part of the record in the
6 matter, written findings of fact concerning all things investigated,
7 and if it shall find that there is water available for appropriation
8 for a beneficial use, and the appropriation thereof as proposed in the
9 application will not impair existing rights or be detrimental to the
10 public welfare, it shall issue a permit stating the amount of water to
11 which the applicant shall be entitled and the beneficial use or uses to
12 which it may be applied: PROVIDED, That where the water applied for is
13 to be used for irrigation purposes, it shall become appurtenant only to
14 such land as may be reclaimed thereby to the full extent of the soil
15 for agricultural purposes. But where there is no unappropriated water
16 in the proposed source of supply, or where the proposed use conflicts
17 with existing rights, or threatens to prove detrimental to the public
18 interest, having due regard to the highest feasible development of the
19 use of the waters belonging to the public, it shall be duty of the
20 department to reject such application and to refuse to issue the permit
21 asked for. If the permit is refused because of conflict with existing
22 rights and such applicant shall acquire same by purchase or
23 condemnation under RCW 90.03.040, the department may thereupon grant
24 such permit. Any application may be approved for a less amount of
25 water than that applied for, if there exists substantial reason
26 therefor, and in any event shall not be approved for more water than
27 can be applied to beneficial use for the purposes named in the
28 application. In determining whether or not a permit shall issue upon
29 any application, it shall be the duty of the department to investigate
30 all facts relevant and material to the application. After the
31 department approves said application in whole or in part and before any
32 permit shall be issued thereon to the applicant, such applicant shall
33 pay the fee provided in RCW 90.03.470 or section 23 of this act:
34 PROVIDED FURTHER, That in the event a permit is issued by the
35 department upon any application, it shall be its duty to notify the
36 director of fish and wildlife of such issuance.

37 **Sec. 12.** RCW 90.03.320 and 1987 c 109 s 67 are each amended to
38 read as follows:

1 (1) Actual construction work shall be commenced on any project for
2 which permit has been granted within such reasonable time as shall be
3 prescribed by the department, and shall thereafter be prosecuted with
4 diligence and completed within the time prescribed by the department.
5 The department, in fixing the time for the commencement of the work, or
6 for the completion thereof and the application of the water to the
7 beneficial use prescribed in the permit, shall take into consideration
8 the cost and magnitude of the project and the engineering and physical
9 features to be encountered, and shall allow such time as shall be
10 reasonable and just under the conditions then existing, having due
11 regard for the public welfare and public interests affected: and, for
12 good cause shown, it shall extend the time or times fixed as aforesaid,
13 and shall grant such further period or periods as may be reasonably
14 necessary, having due regard to the good faith of the applicant and the
15 public interests affected. If the terms of the permit or extension
16 thereof, are not complied with the department shall give notice by
17 registered mail that such permit will be canceled unless the holders
18 thereof shall show cause within sixty days why the same should not be
19 so canceled. If cause be not shown, said permit shall be canceled.

20 (2) For the purposes of this section, "good cause" includes but is
21 not limited to the following circumstances:

22 (a) Active service in the armed forces of the United States during
23 a military crisis;

24 (b) Nonvoluntary service in the armed forces of the United States;

25 (c) The operation of legal proceedings;

26 (d) Delays in securing other permits necessary to proceed with the
27 development;

28 (e) A single transfer in ownership of the property;

29 (f) Encountering unanticipated physical impediments to
30 construction; and

31 (g) Encountering generally depressed economic conditions.

32 **Sec. 13.** RCW 90.03.380 and 1996 c 320 s 19 are each amended to
33 read as follows:

34 (1) The right to the use of water which has been applied to a
35 beneficial use in the state shall be and remain appurtenant to the land
36 or place upon which the same is used(~~(:—PROVIDED, HOWEVER, That~~
37 ~~said)). However, all or a portion of a water right may be transferred~~
38 to another (~~(or to others))~~ person or persons and become appurtenant to

1 any other land or place of use without loss of priority of right
2 (~~theretofore established~~) if (~~such change~~) the transfer can be made
3 without detriment or injury to existing rights.

4 (2) The point of diversion or withdrawal of water for beneficial
5 use or the purpose of use under an existing water right or permit may
6 be changed(~~(7)~~) if (~~such~~) the change or changes can be made without
7 detriment or injury to existing water rights.

8 The season of use under an existing water right or permit may be
9 changed if the change involves the same general category of water use
10 and the change can be made without detriment or injury to existing
11 water rights. An example of a general category of water use for the
12 purposes of this subsection, but not a limit to the categories, is an
13 agricultural use of water.

14 (3) The source of water for an existing water right or permit may
15 be changed from a surface water diversion to a ground water withdrawal
16 or vice versa if the two sources are in direct hydraulic continuity and
17 if the change can be made without detriment or injury to existing water
18 rights.

19 (4) The right embodied in a permit for water that has not yet been
20 put to beneficial use may be transferred or changed. For a
21 certificate, only the amount of water that has been beneficially used
22 in accordance with the laws of the state may be transferred or changed.
23 Excess quantities must be relinquished as provided under chapter 90.14
24 RCW. If a water right permit or certificate is transferred or changed,
25 the amount diverted or withdrawn for beneficial use may not be enlarged
26 as to annual quantity. This subsection shall not apply to municipal
27 water uses.

28 (5) Before any transfer of (~~such~~) a water right (~~(to use water or~~
29 ~~change of the point of diversion of water or change of purpose of use)~~)
30 or permit can be made, any person having an interest in the transfer or
31 change(~~(7)~~) shall file a written application (~~(therefor)~~) with the
32 department(~~(7 and said application)~~) on a form adopted and provided by
33 the department.

34 (6) A person proposing to relocate a point of diversion of surface
35 water is not required to file an application if the diversion point is
36 moved no more than one-quarter mile from its original location, no
37 diversions exist between the original point of diversion and the new
38 point of diversion, and no other water rights will be impaired. At
39 least fifteen days before construction of a replacement diversion

1 point, the water right holder shall inform the department in writing of
2 the intention to move the diversion point and shall submit
3 documentation that the change is in compliance with RCW 75.20.100 or
4 75.20.103.

5 (7) Authorization for the requested transfer or change shall not be
6 granted until notice of ((said)) the application ((shall be)) has been
7 published as provided in RCW 90.03.280.

8 (8) If it ((shall)) appears that ((such)) the transfer or ((such))
9 change may be made without injury or detriment to existing rights, the
10 department shall issue to the applicant an authorization to proceed
11 with the transfer or change. The department may include in its
12 authorization necessary conditions or limitations under which the
13 transfer or change may be made, including a reasonable time for
14 completion. The time may be extended upon request and a showing of
15 good cause in accordance with RCW 90.03.320 and 90.03.470. If the
16 person authorized to make a transfer or change of right fails to do so
17 within the time allowed, including extensions granted for good cause,
18 the department shall cancel the authorization and the water right or
19 permit reverts to its original form and substance.

20 (9) If the department determines that the proposed transfer or
21 change may periodically operate to impair an existing right, the
22 department's authorization may be made contingent on the proponent's
23 willingness to subordinate the use to the potentially impaired right or
24 rights and the authorization must be so conditioned.

25 (10) The person authorized to make the transfer or change shall
26 notify the department upon completion of the transfer or change. After
27 verifying that the transfer or change has been completed in accordance
28 with the authorization, the department shall issue to those persons
29 having an interest in the resulting water right or rights a
30 certificate, certificate of change, or superceding certificate, as
31 appropriate, in duplicate ((granting)) that reflects the nature of the
32 water right ((for such transfer)) or rights transferred or ((for such
33 change of point of diversion or of use)) changed. The certificate or
34 certificates so issued ((shall)) must be filed and be made a record
35 with the department and the duplicate certificate issued to the
36 applicant ((may)) must be filed with the county auditor in like manner
37 and with the same effect as provided in the original certificate or
38 permit to divert water.

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

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

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

19 **Sec. 14.** RCW 90.03.390 and 1991 c 350 s 3 are each amended to read
20 as follows:

21 ~~((RCW 90.03.380 shall not be construed to prevent))~~ (1) A water
22 ~~((users from making))~~ right holder may make a seasonal or temporary
23 ~~((point of diversion or place of use of water))~~ a water right
24 when ~~((such))~~ the change can be made without detriment to existing
25 rights, but in no case shall such change be made without the permission
26 of ~~((the water master of the district in which such proposed change is~~
27 ~~located, or of))~~ the department. Nor shall RCW 90.03.380 be construed
28 to prevent construction of emergency interties between public water
29 systems to permit exchange of water during short-term emergency
30 situations, or rotation in the use of water for bringing about a more
31 economical use of the available supply, provided however, that the
32 department of health in consultation with the department of ecology
33 shall adopt rules or develop written guidelines setting forth standards
34 for determining when a short-term emergency exists and the
35 circumstances in which emergency interties are permitted. The rules or
36 guidelines shall be consistent with the procedures established in RCW
37 43.83B.400 through 43.83B.420. Water users owning lands to which water
38 rights are attached may rotate in the use of water to which they are

1 collectively entitled, or an individual water user having lands to
2 which are attached water rights of a different priority, may in like
3 manner rotate in use when (~~(such)~~) rotation can be made without
4 detriment to other existing water rights, and has the approval of the
5 (~~(water master or)~~) department.

6 (2) A person or persons wishing to make a seasonal or temporary
7 change or to rotate use in the manner provided in this section must
8 file an application with the department on a form adopted and provided
9 by the department. The department shall waive the notice provisions of
10 RCW 90.03.280 unless it has reason to believe that fish habitat or the
11 water rights of other persons are likely to be affected by the proposed
12 change. The department shall respond to the request by letter setting
13 forth its approval or denial, including the reason for denial. The
14 department shall retain a record of its decision as part of the records
15 of the water right or rights being changed. To the extent practicable,
16 the department shall expedite its consideration of requests under this
17 section.

18 **Sec. 15.** RCW 90.44.100 and 1987 c 109 s 113 are each amended to
19 read as follows:

20 (~~(After an application to, and upon the issuance by the department~~
21 ~~of an amendment to the appropriate permit or certificate of ground~~
22 ~~water right, the holder of a valid right to withdraw public ground~~
23 ~~waters may, without losing his priority of right, construct wells or~~
24 ~~other means of withdrawal at a new location in substitution for or in~~
25 ~~addition to those at the original location, or he may change the manner~~
26 ~~or the place of use of the water: PROVIDED, HOWEVER, That such~~
27 ~~amendment shall be issued only after publication of notice of the~~
28 ~~application and findings as prescribed in the case of an original~~
29 ~~application. Such amendment shall be issued by the department only on~~
30 ~~the conditions that:)) (1) ((The)) A ground water permit or~~
31 certificate may be transferred or changed in the manner provided in RCW
32 90.03.380 if: (a) Any additional or substitute well or wells shall tap
33 the same body of public ground water as the original well or wells;
34 ((+2)) (b) use of the original well or wells shall be discontinued
35 upon construction of the substitute well or wells; ((+3)) (c) the
36 construction of an additional well or wells shall not enlarge the right
37 conveyed by the original permit or certificate; and ((+4)) (d) other
38 existing rights shall not be impaired. The department may specify an

1 approved manner of construction and shall require a showing of
2 compliance with the terms of the amendment, as provided in RCW
3 90.44.080 in the case of an original permit.

4 (2) Authorization from the department is not required for
5 construction of a replacement well of the same size, depth, and
6 capacity that will tap the same aquifer as the original well if the new
7 well is within one-quarter mile of the original well and if the well
8 being replaced is properly decommissioned in accordance with chapter
9 18.104 RCW. The well owner shall notify the department in writing of
10 the intent to replace the original well and to describe the change in
11 location.

12 **Sec. 16.** RCW 90.03.260 and 1987 c 109 s 84 are each amended to
13 read as follows:

14 ~~((Each application for permit to appropriate water shall set forth~~
15 ~~the name and post office address of the applicant, the source of water~~
16 ~~supply, the nature and amount of the proposed use, the time during~~
17 ~~which water will be required each year, the location and description of~~
18 ~~the proposed ditch, canal, or other work, the time within which the~~
19 ~~completion of the construction and the time for the complete~~
20 ~~application of the water to the proposed use. If for agricultural~~
21 ~~purposes, it shall give the legal subdivision of the land and the~~
22 ~~acreage to be irrigated, as near as may be, and the amount of water~~
23 ~~expressed in acre feet to be supplied per season. If for power~~
24 ~~purposes, it shall give the nature of the works by means of which the~~
25 ~~power is to be developed, the head and amount of water to be utilized,~~
26 ~~and the uses to which the power is to be applied. If for construction~~
27 ~~of a reservoir, it shall give the height of the dam, the capacity of~~
28 ~~the reservoir, and the uses to be made of the impounded waters. If for~~
29 ~~municipal water supply, it shall give the present population to be~~
30 ~~served, and, as near as may be, the future requirement of the~~
31 ~~municipality. If for mining purposes, it shall give the nature of the~~
32 ~~mines to be served and the method of supplying and utilizing the water;~~
33 ~~also their location by legal subdivisions. All applications shall be~~
34 ~~accompanied by such maps and drawings, in duplicate, and such other~~
35 ~~data, as may be required by the department, and such accompanying data~~
36 ~~shall be considered as a part of the application.)) The department~~
37 ~~shall adopt rules in accordance with chapter 34.05 RCW by January 1,~~
38 ~~1998, that specify the contents of completed water right application~~

1 forms. The rules must include specific timelines for the department to
2 follow in making a determination as to whether an application is
3 complete and notifying the applicant of its determination. The rules
4 must also identify the kinds of inaccuracies that render an application
5 incomplete.

6 **Sec. 17.** RCW 90.44.060 and 1987 c 109 s 109 are each amended to
7 read as follows:

8 Applications for permits for appropriation of underground water
9 shall be made in the same form and manner provided in RCW 90.03.250
10 through 90.03.340, as amended, the provisions of which sections are
11 hereby extended to govern and to apply to ground water, or ground water
12 right certificates and to all permits that shall be issued pursuant to
13 such applications, and the rights to the withdrawal of ground water
14 acquired thereby shall be governed by RCW 90.03.250 through 90.03.340,
15 inclusive(~~(: PROVIDED, That each application to withdraw public ground~~
16 ~~water by means of a well or wells shall set forth the following~~
17 ~~additional information: (1) the name and post office address of the~~
18 ~~applicant; (2) the name and post office address of the owner of the~~
19 ~~land on which such well or wells or works will be located; (3) the~~
20 ~~location of the proposed well or wells or other works for the proposed~~
21 ~~withdrawal; (4) the ground water area, sub-area, or zone from which~~
22 ~~withdrawal is proposed, provided the department has designated such~~
23 ~~area, sub-area, or zone in accord with RCW 90.44.130; (5) the amount of~~
24 ~~water proposed to be withdrawn, in gallons a minute and in acre feet a~~
25 ~~year, or millions of gallons a year; (6) the depth and type of~~
26 ~~construction proposed for the well or wells or other works: AND~~
27 ~~PROVIDED FURTHER, That)).~~ The department shall adopt rules in
28 accordance with chapter 34.05 RCW by January 1, 1998, that specify the
29 contents of completed water right application forms. The rules must
30 include specific timelines for the department to follow in making a
31 determination as to whether an application is complete and notifying
32 the applicant of its determination. The rules must also identify the
33 kinds of inaccuracies that render an application incomplete. Any
34 permit issued pursuant to an application for constructing a well or
35 wells to withdraw public ground water may specify an approved type and
36 manner of construction for the purposes of preventing waste of said
37 public waters and of conserving their head.

1 **Sec. 18.** RCW 90.03.250 and 1987 c 109 s 83 are each amended to
2 read as follows:

3 Any person, municipal corporation, firm, irrigation district,
4 association, corporation or water users' association hereafter desiring
5 to appropriate water for a beneficial use shall make an application to
6 the department for a permit to make such appropriation, and shall not
7 use or divert such waters until he has received a permit from the
8 department as in this chapter provided. The construction of any ditch,
9 canal or works, or performing any work in connection with said
10 construction or appropriation, or the use of any waters, shall not be
11 an appropriation of such water nor an act for the purpose of
12 appropriating water unless a permit to make said appropriation has
13 first been granted by the department: PROVIDED, That a temporary
14 permit may be granted upon a proper showing made to the department to
15 be valid only during the pendency of such application for a permit
16 unless sooner revoked by the department: PROVIDED, FURTHER, That
17 nothing in this chapter contained shall be deemed to affect RCW
18 90.40.010 through 90.40.080 except that the notice and certificate
19 therein provided for in RCW 90.40.030 shall be addressed to the
20 department, and the department shall exercise the powers and perform
21 the duties prescribed by RCW 90.40.030.

22 The department shall encourage the filing of a consolidated
23 application for a complex project under a single ownership that
24 proposes to divert or withdraw water from more than one source,
25 including a combination of surface and ground water sources. The
26 filing of a consolidated application for transfer or change of one or
27 more water rights involving multiple sources must also be encouraged if
28 all of the affected diversions or withdrawals are intended to serve a
29 single project with a single ownership. The department shall adopt and
30 provide forms for consolidated applications.

31 NEW SECTION. **Sec. 19.** (1) Future de minimis appropriations of
32 surface water may be developed under streamlined procedures if the
33 department has adopted a reservation of water for such uses under RCW
34 90.54.050.

35 (2) For purposes of this chapter, "de minimis appropriation" means
36 diversion and use of surface water in an amount not exceeding four
37 hundred fifty gallons per day and not exceeding an instantaneous
38 diversion rate of two one-hundredths cubic feet per second.

1 (3) Applications for appropriating water under this section must be
2 made on a form adopted and provided by the department. Within sixty
3 days of the publication of a notice in accordance with RCW 90.03.280,
4 the department shall issue or deny a permit for the requested
5 appropriation. If the department denies the application, it shall
6 explain its determination in writing.

7 (4) The department shall waive the evaluation and report
8 requirements of RCW 90.03.290 if during the establishment of the
9 reservation it was conclusively determined that water is available and
10 that no impairment of existing water rights or the public interest will
11 occur.

12 (5) This section may not be utilized in areas that are within urban
13 growth areas as designated under RCW 36.70A.110 or within the service
14 areas of an existing public water system as defined in RCW 70.119A.020
15 that has an available water supply.

16 (6) The department shall develop, in cooperation with the
17 department of health, informational materials regarding the risks of
18 drinking untreated surface water. This informational material may be
19 provided to prospective applicants. The department shall attach the
20 informational materials to any permit that is approved under subsection
21 (3) of this section.

22 NEW SECTION. Sec. 20. (1) The department may authorize short-term
23 uses of water without publication of the notice required under RCW
24 90.03.280 and without the report required under RCW 90.03.290.
25 However, before approving a short-term use, the department shall
26 determine to its satisfaction that the substantive criteria in RCW
27 90.03.290 are met and that a stream affected by a short-term use will
28 be retained with sufficient flows to maintain instream uses and to
29 protect existing water rights. The department shall adopt and provide
30 application forms for persons applying for a short-term use and shall
31 expedite its consideration of short-term use requests to the extent
32 practicable.

33 (2) For the purposes of this chapter, "short-term use" means a use
34 of water that will not exceed one year in duration. Short-term uses
35 include but are not limited to use in construction, dust control,
36 dewatering, and short-term planned fire suppression activities.

1 NEW SECTION. **Sec. 21.** The department shall establish a register
2 that identifies, by water resource inventory area, applications for new
3 water rights and applications for water right transfers and changes.
4 The applications appearing in the register must be limited to those
5 requesting a new appropriation or change or transfer of more than three
6 cubic feet per second of water. The register must identify: The
7 location of the proposed use, change, or transfer; whether the
8 application is for surface or ground water; and, for surface water
9 applications, the water source. The department shall produce the
10 register once every two weeks and shall make the register available to
11 interested parties for a fee that is based on the cost of producing and
12 mailing the register. One year after the effective date of this
13 section, the department may cease production of the register if the
14 number of requests for the register are not adequate to cover the costs
15 of producing and mailing it.

16 **Sec. 22.** RCW 90.03.470 and 1993 c 495 s 2 are each amended to read
17 as follows:

18 (~~Except as otherwise provided in subsection (15) of this~~
19 ~~section,~~) The following fees shall be collected by the department (~~in~~
20 ~~advance~~):

21 (1) (~~For the examination of an application for permit to~~
22 ~~appropriate water or on application to change point of diversion,~~
23 ~~withdrawal, purpose or place of use, a minimum of ten dollars, to be~~
24 ~~paid with the application. For each second foot between one and five~~
25 ~~hundred second feet, two dollars per second foot; for each second foot~~
26 ~~between five hundred and two thousand second feet, fifty cents per~~
27 ~~second foot; and for each second foot in excess thereof, twenty cents~~
28 ~~per second foot. For each acre foot of storage up to and including one~~
29 ~~hundred thousand acre feet, one cent per acre foot, and for each acre~~
30 ~~foot in excess thereof, one fifth cent per acre foot. The ten dollar~~
31 ~~fee payable with the application shall be a credit to that amount~~
32 ~~whenever the fee for direct diversion or storage totals more than ten~~
33 ~~dollars under the above schedule and in such case the further fee due~~
34 ~~shall be the total computed amount less ten dollars.~~

35 ~~Within five days from receipt of an application the department~~
36 ~~shall notify the applicant by registered mail of any additional fees~~
37 ~~due under the above schedule and any additional fees shall be paid to~~

1 and received by the department within thirty days from the date of
2 filing the application, or the application shall be rejected.

3 (2) For filing and recording a permit to appropriate water for
4 irrigation purposes, forty cents per acre for each acre to be irrigated
5 up to and including one hundred acres, and twenty cents per acre for
6 each acre in excess of one hundred acres up to and including one
7 thousand acres, and ten cents for each acre in excess of one thousand
8 acres; and also twenty cents for each theoretical horsepower up to and
9 including one thousand horsepower, and four cents for each theoretical
10 horsepower in excess of one thousand horsepower, but in no instance
11 shall the minimum fee for filing and recording a permit to appropriate
12 water be less than five dollars. For all other beneficial purposes the
13 fee shall be twice the amount of the examination fee except that for
14 individual household and domestic use, which may include water for
15 irrigation of a family garden, the fee shall be five dollars.

16 (3) For filing and recording any other water right instrument, four
17 dollars for the first hundred words and forty cents for each additional
18 hundred words or fraction thereof.

19 (4) For making a copy of any document recorded or filed in his
20 office, forty cents for each hundred words or fraction thereof, but
21 when the amount exceeds twenty dollars, only the actual cost in excess
22 of that amount shall be charged.

23 (5) For certifying to copies, documents, records or maps, two
24 dollars for each certification.

25 (6) For blueprint copies of a map or drawing, or, for such other
26 work of a similar nature as may be required of the department, at
27 actual cost of the work.

28 (7)) For granting each extension of time for beginning
29 construction work under a permit to appropriate water((, an amount
30 equal to one half of the filing and recording fee, except that the
31 minimum fee shall be not less than five dollars for each year that an
32 extension is granted,)) and for granting an extension of time for
33 completion of construction work or for completing application of water
34 to a beneficial use, ((five)) one hundred dollars ((for each year that
35 an extension is granted)).

36 ((+8)) (2) For the inspection of any hydraulic works to insure
37 safety to life and property, the actual cost of the inspection,
38 including the expense incident thereto.

1 ~~((9))~~ (3) For the examination of plans and specifications as to
2 safety of controlling works for storage of ten acre feet or more of
3 water, a minimum fee of ~~((ten))~~ fifty dollars, or the actual cost.

4 ~~((10))~~ (4) For recording an assignment either of a permit to
5 appropriate water or of an application for such a permit, a fee of
6 ~~((five))~~ one hundred dollars.

7 ~~((11) For preparing and issuing all water right certificates, five~~
8 ~~dollars.~~

9 ~~(12))~~ (5) For filing and recording a protest against granting any
10 application, ~~((two))~~ fifty dollars.

11 ~~((13) The department shall provide timely notification by~~
12 ~~certified mail with return receipt requested to applicants that fees~~
13 ~~are due. No action may be taken until the fee is paid in full.~~
14 ~~Failure to remit fees within sixty days of the department's~~
15 ~~notification shall be grounds for rejecting the application or~~
16 ~~canceling the permit. Cash shall not be accepted. Fees must be paid~~
17 ~~by check or money order and are nonrefundable.~~

18 ~~(14))~~ (6) For filing an application for and authorizing a seasonal
19 change or rotation, one hundred dollars.

20 (7) For filing an application for and authorizing a temporary or
21 short-term water use, one hundred dollars.

22 (8) For a consolidated application covering multiple sources or
23 changes:

24 (a) The filing fee must be based upon either the total amount of
25 water or the total number of changes requested, or both;

26 (b) The examination fee is the total of the examination fees
27 calculated for the individual applications and changes; and

28 (c) The certificate fee is as is appropriate for the individual
29 certificates, since separate permits would issue and, therefore,
30 separate certificates would result.

31 For purposes of calculating fees for ground water filings, one
32 cubic foot per second shall be regarded as equivalent to four hundred
33 fifty gallons per minute.

34 ~~((15) For the period beginning July 1, 1993, and ending June 30,~~
35 ~~1994, there is imposed and the department shall collect a one hundred~~
36 ~~dollar surcharge on all water rights applications or changes filed~~
37 ~~under this section, and upon all water rights applications or changes~~
38 ~~pending as of July 1, 1993. This charge shall be in addition to any~~
39 ~~other fees imposed under this section.))~~

1 NEW SECTION. **Sec. 23.** (1) The department shall collect the
2 following fees in advance of each of the three stages of the permitting
3 process:

4 (a) Application filing fees for the following:

5 (i) Surface water and ground water applications:

6 (A) Greater than 0.0 and less than or equal
7 to 0.02 cubic feet per second \$ 100

8 (B) Greater than 0.02 and less than or equal to
9 0.1 cubic feet per second \$ 150

10 (C) Greater than 0.1 and less than or equal to
11 0.2 cubic feet per second \$ 200

12 (D) Greater than 0.2 and less than or equal to
13 0.5 cubic feet per second \$ 250

14 (E) Greater than 0.5 and less than or equal to 1
15 cubic feet per second \$ 300

16 (F) Greater than 1 and less than or equal to 3
17 cubic feet per second \$ 900

18 (G) Greater than 3 and less than or equal to 5
19 cubic feet per second \$ 1500

20 (H) Greater than 5 and less than or equal to 20
21 cubic feet per second \$ 1700

22 (I) Greater than 20 and less than or equal to 100
23 cubic feet per second \$ 2,000

24 (J) Greater than 100 cubic feet per second \$ 2,200

25 (ii) Reservoir applications:

26 (A) Greater than 0.0 and less than or equal to
27 10 acre-feet \$ 100

28 (B) Greater than 10 and less than or equal to
29 100 acre-feet \$ 200

30 (C) Greater than 100 and less than or equal to
31 1,000 acre-feet \$ 600

32 (D) Greater than 1,000 acre-feet \$ 1,500

33 (iii) Change applications:

34 (A) Changing a single element \$ 150

35 (B) Changing multiple elements \$ 250

36 (b) Examination fees for the following:

37 (i) Surface water applications:

38 (A) Greater than 0.0 and less than or equal to
39 0.02 cubic feet per second \$ 100

1	(B) Greater than 0.02 and less than or equal to	
2	0.1 cubic feet per second	\$ 200
3	(C) Greater than 0.01 and less than or equal to	
4	0.2 cubic feet per second	\$ 250
5	(D) Greater than 0.2 and less than or equal to	
6	0.5 cubic feet per second	\$ 300
7	(E) Greater than 0.5 and less than or equal to	
8	1 cubic feet per second	\$ 400
9	(F) Greater than 1 and less than or equal to 3	
10	cubic feet per second	\$ 1,300
11	(G) Greater than 3 and less than or equal to 5	
12	cubic feet per second	\$ 2,200
13	(H) Greater than 5 and less than or equal to 20	
14	cubic feet per second	\$ 2,500
15	(I) Greater than 20 and less than or equal to 100	
16	cubic feet per second	\$ 2,800
17	(J) Greater than 100 cubic feet per second	\$ 3,200
18	(ii) Ground water applications:	
19	(A) Greater than 0.0 and less than or equal to	
20	0.02 cubic feet per second	\$ 100
21	(B) Greater than 0.02 and less than or equal to	
22	0.1 cubic feet per second	\$ 250
23	(C) Greater than 0.1 and less than or equal to	
24	0.2 cubic feet per second	\$ 300
25	(D) Greater than 0.2 and less than or equal to	
26	0.5 cubic feet per second	\$ 400
27	(E) Greater than 0.5 and less than or equal to 1	
28	cubic feet per second	\$ 500
29	(F) Greater than 1 or less than or equal to 3	
30	cubic feet per second	\$ 1,500
31	(G) Greater than 3 and less than or equal to 5	
32	cubic feet per second	\$ 2,600
33	(H) Greater than 5 and less than or equal to 20	
34	cubic feet per second	\$ 3,000
35	(I) Greater than 20 and less than or equal to 100	
36	cubic feet per second	\$ 3,400
37	(J) Greater than 100 cubic feet per second	\$ 3,800
38	(iii) Reservoir applications:	
39	(A) Greater than 0.0 and less than or equal to 10	

1	acre-feet	\$ 100
2	(B) Greater than 10 and less than or equal to 100	
3	acre-feet	\$ 250
4	(C) Greater than 100 and less than or equal to	
5	1,000 acre-feet	\$ 900
6	(D) Greater than 1,000 acre-feet	\$ 2,200
7	(iv) Changes to permits and certificates:	
8	(A) Changing a single element	\$ 200
9	(B) Changing multiple elements	\$ 300
10	(c) Certificate fees:	
11	(i) Surface water and ground water applications:	
12	(A) Greater than 0.0 and less than or equal to	
13	0.02 cubic feet per second	\$ 100
14	(B) Greater than 0.02 and less than or equal to	
15	0.1 cubic feet per second	\$ 150
16	(C) Greater than 0.1 and less than or equal to	
17	0.2 cubic feet per second	\$ 200
18	(D) Greater than 0.2 and less than or equal to	
19	0.5 cubic feet per second	\$ 250
20	(E) Greater than 0.5 and less than or equal to 1	
21	cubic feet per second	\$ 300
22	(F) Greater than 1 and less than or equal to 3	
23	cubic feet per second	\$ 900
24	(G) Greater than 3 and less than or equal to 5	
25	cubic feet per second	\$ 1,500
26	(H) Greater than 5 and less than or equal to 20	
27	cubic feet per second	\$ 1,700
28	(I) Greater than 20 and less than or equal to 100	
29	cubic feet per second	\$ 2,000
30	(J) Greater than 100 cubic feet per second	\$ 2,200
31	(ii) Reservoir applications:	
32	(A) Greater than 0.0 and less than or equal to 10	
33	acre-feet	\$ 200
34	(B) Greater than 10 and less than or equal to 100	
35	acre-feet	\$ 300
36	(C) Greater than 100 and less than or equal to	
37	1,000 acre-feet	\$ 1,000
38	(D) Greater than 1,000 acre-feet	\$ 1,500
39	(iii) Changes to permits and certificates:	

- 1 (A) Changing a single element \$ 150
2 (B) Changing multiple elements \$ 250

3 For purposes of calculating fees for ground water filings, one
4 cubic foot per second shall be regarded as equivalent to four hundred
5 fifty gallons per minute.

6 A schedule of the water right fees shall be included with the water
7 right application.

8 (2) The application fee shall be paid at the time the application
9 is submitted to the department.

10 (3) By certified mail with return receipt requested, the department
11 shall include with an approved change application, reservoir permit, or
12 permit to appropriate water, notice of the amount of the examination
13 fee that is due and payable. The examination fee shall be due and
14 payable to the department within thirty days after the approved change
15 application, reservoir permit, or permit to appropriate water is
16 received by the applicant. A late fee of ten percent shall be assessed
17 on any delinquent payments of the examination fee. The approved change
18 application, reservoir permit, or permit to appropriate water shall be
19 deemed cancelled if there is a failure to remit fees within ninety days
20 of the department's notice.

21 (4) The certificate fee shall be collected before the issuance of
22 the water right certificate.

23 (5) The water right permit processing account is created in the
24 state treasury. All receipts collected under RCW 90.03.470 and this
25 section shall be deposited into the account. Moneys in the account may
26 be spent only after appropriation. Expenditures from the account may
27 be used only for functions of the department of ecology related to:
28 Filing, examination, and certification of water right permits, changes
29 to water right permits, and transfer of water rights; and a
30 proportionate share of indirect costs allocated to these functions
31 necessary to fund the general administrative functions of the
32 department. The goal is for the department to expend funds from the
33 water right permit processing account to supplement the funds
34 appropriated from the general fund for water right permit processing.

35 NEW SECTION. **Sec. 24.** (1) There is created a water rights
36 programs review task force. The task force shall be comprised of eight
37 members, who are appointed as follows:

1 (a) Four members of the house of representatives, two from each
2 major caucus, to be appointed by the speaker of the house of
3 representatives; and

4 (b) Four members of the senate, two from each major caucus, to be
5 appointed by the president of the senate.

6 (2) The task force may conduct a review, including but not limited
7 to the following matters:

8 (a) Periodically review the number of water right permit decisions
9 that have been made, the reasons for conditioning and denial of permit
10 applications, and the number of new applications that have been filed;

11 (b) Review and evaluate appeals that have been filed and decisions
12 that have been rendered regarding the issuance, conditioning, or denial
13 of water right permit applications;

14 (c) Conduct work sessions or public hearings on issues that relate
15 to the processing of water right permit applications; and

16 (d) Monitor the efficiency of the water right permit processing
17 program and recommend changes to the department and the legislature on
18 funding and the related water right permit process.

19 (3) The office of program research and senate committee services
20 shall jointly provide for the staff support of the task force.

21 (4) Task force members may adopt rules for conducting the business
22 of the task force. The task force expires December 31, 1998.

23 **Sec. 25.** RCW 89.30.001 and 1933 c 149 s 1 are each amended to read
24 as follows:

25 Reclamation districts including an area of not less than one
26 million acres of land may be created and maintained in this state, as
27 herein provided, for the reclamation and improvement of arid and
28 semiarid lands situated in such districts, and for the generation
29 and/or sale of hydroelectric energy(~~(:—PROVIDED, That no~~
30 ~~appropriation, license, filing, recording, examination or other fee or~~
31 ~~fees, as provided in RCW 90.16.050 through 90.16.090 or in RCW~~
32 ~~90.03.470 shall be applicable to a district or districts created under~~
33 ~~this chapter)).~~

34 **Sec. 26.** RCW 90.40.090 and 1988 c 127 s 83 are each amended to
35 read as follows:

36 An application filed by the department of ecology or its assignee,
37 the United States Bureau of Reclamation, for a permit to appropriate

1 waters of the Columbia River under chapter 90.03 RCW, for the
2 development of the Grand Coulee project shall be perfected in the same
3 manner and to the same extent as though such appropriation had been
4 made by a private person, corporation or association(~~(, but no fees, as~~
5 ~~provided for in RCW 90.03.470, shall be required)~~)).

6 NEW SECTION. **Sec. 27.** RCW 90.03.471 and 1987 c 109 s 99 & 1925
7 ex.s. c 161 s 3 are each repealed.

8 NEW SECTION. **Sec. 28.** Sections 8 through 10, 19 through 21, and
9 23 of this act are each added to chapter 90.03 RCW.

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