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ENGROSSED SUBSTITUTE HOUSE BILL 1832

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State of Washington

57th Legislature

2001 Regular Session

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

Read first time . Referred to Committee on .

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34 (B) Second, single WRIA planning;

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

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

39 (B) Second, single WRIA planning.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



1 be processed at that time. This subsection (5)(c) does not affect any  
2 other existing authority to process applications.

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

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

9 (7) In revising the provisions of this section and adding  
10 provisions to this section by this act, the legislature does not intend  
11 to imply legislative approval or disapproval of any existing  
12 administrative policy regarding, or any existing administrative or  
13 judicial interpretation of, the provisions of this section not  
14 expressly added or revised.

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

17 The legislature finds:

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

21 (2) Voluntary water right transfers can help alleviate water  
22 shortages, save capital outlays, reduce development costs, and provide  
23 an incentive for investment in water conservation efforts by water  
24 right holders; and

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

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

31 The following definitions apply throughout this chapter, unless the  
32 context clearly requires otherwise.

33 (1) "Board" means a water conservancy board created under this  
34 chapter.

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

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

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

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

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

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

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

13       (2) Counties having lands within a water resource inventory area  
14 may jointly petition the department for establishment of a water  
15 conservancy board for the water resource inventory area. Counties may  
16 jointly petition the department to establish boards serving multiple  
17 counties or one or more water resource inventory areas. For any of  
18 these multicounty options, the counties must reach their joint  
19 determination on the decision to file the petition, on the proposed  
20 bylaws, and on other matters relating to the establishment and  
21 operation of the board in accordance with the provisions of this  
22 chapter and chapter 39.34 RCW, the interlocal cooperation act. Each  
23 county must meet the requirements of RCW 90.80.020(2). The counties  
24 must jointly determine the sufficiency of a petition under RCW  
25 90.80.020(3) and each county legislative authority must hold a hearing  
26 in its county.

27       (3) If establishment of a multicounty water conservancy board under  
28 any of the options provided in subsection (2) of this section is  
29 approved by the department, the counties must jointly appoint the board  
30 commissioners and jointly appoint members to fill vacancies as they  
31 occur in accordance with the provisions of this chapter and chapter  
32 39.34 RCW.

33       (4) A board established for more than one county or for one or more  
34 water resource inventory areas has the same powers as other boards  
35 established under this chapter. The board has no jurisdiction outside  
36 the boundaries of the water resource inventory area or areas or the  
37 county or counties, as applicable, for which it has been established,  
38 except as provided in this chapter.

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

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

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

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

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

35 (c) A board may establish a water right transfer information  
36 exchange through which all or part of a water right may be listed for  
37 sale or lease. The board may also accept and post notices in the

1 exchange from persons interested in acquiring or leasing water rights  
2 from willing sellers.

3 (d) The director shall assign a representative of the department to  
4 provide technical assistance to each board. If requested by the board,  
5 the representative shall work with the board as it reviews applications  
6 for formal acceptance, prepares draft records of decision, and  
7 considers other technical or legal factors affecting the board's  
8 development of a final record of decision. A board may request and  
9 accept additional technical assistance from the department. A board  
10 may also request and accept assistance and support from the county  
11 government or governments of the county or counties in which it  
12 operates.

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

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

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

31 (2) The county legislative authority or authorities shall consider,  
32 but ~~((is))~~ are not limited in appointing, nominations to the board by  
33 people or entities petitioning or requesting the creation of the board.  
34 ~~((However,))~~ The county legislative authority or authorities shall  
35 ensure that at least one commissioner is an individual water right  
36 holder((s)) who diverts or withdraws water for use within the ((county  
37 are represented on)) area served by the board. The county legislative  
38 authority or authorities must appoint one person who is not a water

1 right holder. If the county legislative authority or authorities  
2 choose not to appoint five commissioners, and as of the effective date  
3 of this section there is no commissioner on an existing board who is  
4 not a water right holder, the county or counties are not required to  
5 appoint a new commissioner until the first vacancy occurs. In making  
6 appointments to the board, the county legislative authority or  
7 authorities shall choose from among persons who are residents of the  
8 county or counties or a county that is contiguous to the county that  
9 the water conservancy board is to serve.

10 (3) No commissioner may participate in a record of decision of a  
11 board ((decisions)) until he or she has successfully completed the  
12 necessary training required under RCW 90.80.040. Commissioners shall  
13 serve without compensation, but are entitled to reimbursement for  
14 necessary travel expenses in accordance with RCW 43.03.050 and  
15 43.03.060 and costs incident to receiving training.

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

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

1 place of use, source of supply, purpose of use, quantity of use  
2 permitted, time of use, period of use, and the place of storage.

3 (2) The ~~((transferor and the transferee of))~~ applicant for any  
4 proposed water right transfer may apply to a board for ~~((approval of~~  
5 ~~the))~~ a record of decision on a transfer if the water proposed to be  
6 transferred is currently diverted, withdrawn, or used within the  
7 geographic ~~((boundaries of the county))~~ area in which the board has  
8 jurisdiction, or would be diverted, withdrawn, or used within the  
9 geographic ~~((boundaries of the county))~~ area in which the board has  
10 jurisdiction if the transfer is approved. In the case of a proposed  
11 water right transfer in which the water is currently diverted or  
12 withdrawn or would be diverted or withdrawn outside the geographic  
13 boundaries of the county or the water resource inventory area where the  
14 use is proposed to be made, the board shall hold a public hearing in  
15 the county of the diversion or withdrawal or proposed diversion or  
16 withdrawal. The board shall provide for prominent publication of  
17 notice of ~~((such))~~ the hearing in a newspaper of general circulation  
18 published in the county in which the hearing is to be held for the  
19 purpose of affording an opportunity for interested persons to comment  
20 upon the application. If an application is for a transfer of water out  
21 of the water resource inventory area that is the source of the water,  
22 the board shall consult with the department regarding the application.

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

1 issue the applicant a certificate conditionally approving the transfer,  
2 subject to review by the director.

3 (4) If a water right holder claims a proposed transfer will cause  
4 an impairment to that right, the water right holder is entitled to a  
5 hearing before the board. The board shall receive such evidence as it  
6 deems material and necessary to determine the validity of the claim of  
7 impairment. If the party claiming the impairment establishes by a  
8 preponderance of the evidence that his or her water right will be  
9 impaired by the proposed transfer, the board may not approve the  
10 transfer unless the applicant and the impaired party agree upon  
11 compensation for the impairment.)) The comments and information may be  
12 submitted in writing or verbally at any public meeting of the board to  
13 discuss or decide on the application. The comments must be considered  
14 by the board in making its record of decision.

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

32 (5) If a majority of the board determines that the application  
33 cannot be approved under the applicable laws of the state of  
34 Washington, the board must make a record of decision denying the  
35 application together with its report of examination documenting its  
36 record of decision. The board's record of decision is subject to  
37 review by the director under RCW 90.80.080.

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

3       (1) ~~((If a transfer is approved by the board,))~~ The board must  
4 provide a copy of its record of decision to the applicant. The board  
5 shall submit ~~((a copy of the proposed certificate conditionally~~  
6 ~~approving))~~ its record of decision on the transfer application to the  
7 department for review. The board shall also submit ~~((a))~~ its report of  
8 examination to the department summarizing ~~((any))~~ factual findings on  
9 which the board relied in ~~((deciding to approve the proposed transfer))~~  
10 reaching its record of decision and a copy of the files and records  
11 upon which the board's record of decision is based. The board shall  
12 also promptly transmit notice by mail to any person who objected to the  
13 transfer or who requested notice of the board's record of decision.

14       (2) Upon receipt of a board's record of decision, the department  
15 shall promptly post the text of the record of decision transmittal form  
16 on the department's internet site. The director shall review each  
17 ~~((proposed transfer conditionally approved))~~ record of decision made by  
18 a board for compliance with applicable state water ~~((transfer laws~~  
19 ~~including RCW 90.03.380, 90.03.390, and 90.44.100, rules and guidelines~~  
20 ~~adopted by the department, and other applicable))~~ law.

21       (3) Any party to a transfer ~~((or a)),~~ a third party who alleges his  
22 or her water right will be impaired by the proposed transfer, or other  
23 person may file ~~((objections))~~ a letter of concern or support with the  
24 department and the department may consider the concern or support  
25 expressed in the letter. ~~((If objections to the transfer are filed~~  
26 ~~with the department, the board shall forward the files and records upon~~  
27 ~~which it based its decision to the department.))~~ Such letters must be  
28 received by the department within thirty days of the department's  
29 receipt of the board's record of decision.

30       (4) The director shall review the ~~((action))~~ record of decision of  
31 the board and shall affirm, reverse, or modify the action of the board  
32 within forty-five days of receipt. The forty-five day time period may  
33 be extended for an additional thirty days by the director ~~((, upon the~~  
34 ~~consent of the parties to the transfer))~~ or at the request of the board  
35 or applicant. If the director fails to act within ~~((this))~~ the  
36 prescribed time period, the board's ~~((action is final. Upon approval~~  
37 ~~of a water transfer by the action or nonaction of the director, the~~  
38 ~~conditional certificate issued by the board is final and valid))~~ record  
39 of decision becomes the decision of the department and is appealable as



1 provided by RCW 90.80.090. If the director acts within the prescribed  
2 time period, the director's decision to affirm, modify, or reverse is  
3 appealable as provided by RCW 90.80.090, and the director's decision to  
4 remand is appealable as provided by RCW 90.80.120(2)(b).

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

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

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

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

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

21 (1) A commissioner of a water conservancy board ~~((who has an~~  
22 ~~ownership interest in a water right subject to an application for~~  
23 ~~approval of a transfer or change by the board, shall not participate in~~  
24 ~~the board's review or decision upon the application))~~ shall not engage  
25 in any act which is in conflict with the proper discharge of the  
26 official duties of a commissioner. A commissioner is deemed to have a  
27 conflict of interest if he or she:

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

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

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

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

9       (a) If a person seeking to rely on this section to disqualify a  
10 commissioner knows of the basis for disqualification before the time  
11 the board issues a record of decision, the person must request the  
12 board to have the commissioner recuse himself or herself from further  
13 involvement in processing the application, or be barred from later  
14 raising that challenge.

15       (b) If the commissioner does not recuse himself or herself or if  
16 the person becomes aware of the basis for disqualification after the  
17 board issues a record of decision but within the time period under RCW  
18 90.80.080(3) for filing objections with the department, the person must  
19 raise the challenge with the department. If the department determines  
20 that the commissioner should be disqualified under this section, the  
21 director must remand the record of decision to the board for  
22 reconsideration and resubmission of a record of decision. The  
23 disqualified commissioner shall not participate in any further board  
24 review of the application. The department's decision on whether to  
25 remand a record of decision under this section may only be appealed at  
26 the same time and in the same manner as an appeal of the department's  
27 decision to affirm, modify, or reverse the record of decision after  
28 remand.

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

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

35       A water conservancy board may be formally dissolved by the county  
36 or jointly by the counties as applicable in which it operates by  
37 adoption of a resolution of the county legislative authority or  
38 authorities. Notice of the dissolution must be provided to the

1 director. The department may petition the county legislative authority  
2 of the county or the lead county for a board to request that the board  
3 be dissolved for repeated statutory violations or demonstrated  
4 inability to perform the functions for which the board was created.

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

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

10 NEW SECTION. **Sec. 18.** A new section is added to chapter 90.80 RCW  
11 to read as follows:

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

17 (2) Upon the conclusion of its business involving a water right  
18 transfer application, a board must promptly send the original copies of  
19 all records relating to that application to the department for  
20 recordkeeping. A board may keep a copy of the original documents.  
21 After the records are transferred to the department, the responsibility  
22 for making the records available under chapter 42.17 RCW is transferred  
23 to the department.

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

26 For purposes of carrying out the official business of a board, a  
27 quorum consists of the physical presence of two of the three members of  
28 a three-member board or three of the five members of a five-member  
29 board. A board may operate with one or two vacant positions as long as  
30 it meets the quorum requirement.

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

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

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

3       The department shall report biennially by December 31st of each  
4 even-numbered year to the appropriate committees of the legislature on  
5 the boards formed or sought to be formed under the authority of this  
6 chapter, the transfer applications reviewed and other activities  
7 conducted by the boards, and the funding of such boards. Conservancy  
8 boards must provide information regarding their activities to the  
9 department to assist the department in preparing the report.

10       NEW SECTION. **Sec. 22.** It is the intent of the legislature to help  
11 preserve the agricultural economy of the state by allowing changes of  
12 family farm water permits from agricultural irrigation to other  
13 agricultural purposes. Within the urbanizing areas of the state, the  
14 legislature recognizes the need to allow water from family farms to be  
15 converted to other purposes as the use of the land changes consistent  
16 with adopted land use plans. The legislature also intends to allow  
17 farmers to benefit from water conservation projects and from temporary  
18 leases of their family farm water permits. Water conservation and  
19 water leases will also allow farmers to contribute to instream flows  
20 and other purposes. However, outside of urbanizing areas, the  
21 legislature intends to preserve farmlands by ensuring that the quantity  
22 of water needed to grow the crops historically grown remains with the  
23 farm. In addition, to help retain family farms within the state, the  
24 legislature intends to allow family farms of a large enough size to be  
25 economically viable under modern agricultural market conditions.

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

28       (1) Transfers of water rights established as family farm permits  
29 under this chapter may be approved as authorized under this section and  
30 under RCW 90.03.380, 90.03.390, or 90.44.100 or chapter 90.80 RCW as  
31 appropriate.

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

33       (a) For use for agricultural irrigation purposes as limited by RCW  
34 90.66.060 (1) and (2);

35       (b) To any purpose of use that is a beneficial use of water if the  
36 transfer is made exclusively under a lease agreement, except that

1 transfers for the use of water for agricultural irrigation purposes  
2 shall be limited as provided by RCW 90.66.060 (1) and (2);

3 (c) To any purpose of use that is a beneficial use of water if the  
4 water right is for the use of water at a location that is, at the time  
5 the transfer is approved, within the boundaries of an urban growth area  
6 designated under chapter 36.70A RCW or, in counties not planning under  
7 chapter 36.70A RCW, within a city or town or within areas designated  
8 for urban growth in comprehensive plans prepared under chapter 36.70  
9 RCW, except that transfers for the use of water for agricultural  
10 irrigation purposes shall be limited as provided by RCW 90.66.060 (1)  
11 and (2).

12 (3) If a portion of the water governed by a water right established  
13 under the authority of a family farm permit is made surplus to the  
14 beneficial uses exercised under the right through the implementation of  
15 practices or technologies, including but not limited to conveyance  
16 practices or technologies, that are more water-use efficient than those  
17 under which the right was perfected, the right to use the surplus water  
18 may be transferred to any purpose of use that is a beneficial use of  
19 water. Nothing in this subsection authorizes: A transfer of the  
20 portion of a water right that is necessary for the production of crops  
21 historically grown under the right; or a transfer of a water right or  
22 a portion of a water right that has not been perfected through  
23 beneficial use before the transfer. Water right transfers approved  
24 under this subsection must be consistent with the provisions of RCW  
25 90.03.380(1).

26 (4) Before a change in purpose of a family farm water permit to  
27 municipal supply purpose or domestic purpose may be authorized, the  
28 public water system that is receiving the family farm water permit must  
29 be meeting the water conservation requirements of its current water  
30 system plan approved by the department of health or its small water  
31 system management program.

32 (5) The place of use for a water right transferred under the  
33 authority of this section shall remain within: The water resource  
34 inventory area containing the place of use for the water right before  
35 the transfer; or the urban growth area or contiguous urban growth areas  
36 of the place of use for the water right before the transfer if the  
37 urban growth area or contiguous urban growth areas cross boundaries of  
38 water resource inventory areas.

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

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

8 For the purposes of this chapter, the following definitions shall  
9 be applicable:

10 (1) "Family farm" means a geographic area including not more than  
11 ~~((two))~~ six thousand acres of irrigated agricultural lands, whether  
12 contiguous or noncontiguous, the controlling interest in which is held  
13 by a person having a controlling interest in no more than ~~((two))~~ six  
14 thousand acres of irrigated agricultural lands in the state of  
15 Washington which are irrigated under rights acquired after December 8,  
16 1977.

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

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

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

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

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

4 (7) "Transfer" means a transfer, change, or amendment to part or  
5 all of a water right authorized under RCW 90.03.380, 90.03.390, or  
6 90.44.100 or chapter 90.80 RCW.

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

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

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

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

26 ((+2)) (3) For family farm permits under this chapter, if the  
27 department determines that water is being withdrawn ((under a family  
28 farm permit)) for use on land not in conformity with the definition of  
29 a family farm, the department shall notify the holder of such family  
30 farm permit by personal service of such fact and the permit shall be  
31 suspended two years from the date of receipt of notice unless the  
32 person having a controlling interest in said land satisfies the  
33 department that such land is again in conformity with the definition of  
34 a family farm. The department may, upon a showing of good cause and  
35 reasonable effort to attain compliance on the part of the person having  
36 the controlling interest in such land, extend the two year period prior  
37 to suspension. If conformity is not achieved prior to five years from  
38 the date of notice the rights of withdrawal shall be canceled.

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

3        (1) The legislature intends to provide an incentive for water  
4 distribution businesses to help reduce their customers' use of water  
5 through measures such as: Water conservation and outreach programs,  
6 distributing shower flow restrictors, toilet tank water displacement  
7 devices, and leak detection dye tablets; providing water-efficient  
8 fixtures at no cost, giving a rebate for customer-purchased fixtures,  
9 or arranging for suppliers to provide fixtures at a reduced price;  
10 providing plants for low-water demand landscaping, moisture sensors,  
11 flow timers, low-volume sprinklers, and drip irrigation systems; and  
12 using conservation pricing and billings that show percentage  
13 increase/decrease in water use over the same period from the previous  
14 year.

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

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

29        (4)(a) There is created in the state general fund the state water  
30 rights trust account. Moneys in the account may be spent only after  
31 appropriation. Expenditures from the account may be used by the  
32 department of ecology, in consultation with the department of fish and  
33 wildlife, only to purchase or lease water rights to augment instream  
34 flows in streams supporting fish stocks that are listed as threatened  
35 or endangered under federal law or listed as depressed or threatened by  
36 reason of inadequate stream flows under state law.

37        (b) The legislature intends that an amount equal to one-third of  
38 the total tax savings resulting from this section in each state fiscal  
39 year shall be appropriated from the general fund--state to the state



1 water rights trust account. The department of revenue shall calculate  
2 the total amount of tax savings reported by water suppliers under this  
3 section and shall report this amount to the office of financial  
4 management and the appropriate committees of the legislature by October  
5 1st of each calendar year.

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

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

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

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

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

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

17 (d) The operation of legal proceedings;

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

21 (f) Federal laws imposing land or water use restrictions either  
22 directly or through the voluntary enrollment of a landowner in a  
23 federal program implementing those laws, or acreage limitations, or  
24 production quotas.

25 (2) Notwithstanding any other provisions of RCW 90.14.130 through  
26 90.14.180, there shall be no relinquishment of any water right:

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

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

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

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

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

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

9 (g) If such right is a trust water right under chapter 90.38 or  
10 90.42 RCW.

11 (3) In adding provisions to this section by this act, the  
12 legislature does not intend to imply legislative approval or  
13 disapproval of any existing administrative policy regarding, or any  
14 existing administrative or judicial interpretation of, the provisions  
15 of this section not expressly added or revised.

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

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

25 (b) If an aquatic species is listed as threatened or endangered  
26 under federal law for a body of water, or is listed as depressed or  
27 threatened by reason of inadequate stream flows under state law, and  
28 the holder of a right to water from the body of water chooses to donate  
29 all or a portion of the person's water right to the trust water system  
30 to assist in providing those instream flows on a temporary or permanent  
31 basis, the department shall accept the donation on such terms as the  
32 person may prescribe as long as the donation satisfies the requirements  
33 of subsection (4) of this section and the other applicable requirements  
34 of this chapter and the terms prescribed are relevant and material to  
35 protecting any interest in the water right retained by the donor. Once  
36 accepted, such rights are trust water rights within the conditions  
37 prescribed by the 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 the five years before the donation nor may the total of any  
10 portion of the water right remaining with the donor plus the donated  
11 portion of the water right exceed the extent to which the water right  
12 was exercised during the five years before the donation. A water right  
13 holder who believes his or her water right has been impaired by a trust  
14 water right donated under subsection (1)(b) of this section may request  
15 that the department review the impairment claim. If the department  
16 determines that exercising the trust water right resulting from the  
17 donation or exercising a portion of that trust water right donated  
18 under subsection (1)(b) of this section is impairing existing water  
19 rights in violation of RCW 90.38.902, the trust water right shall be  
20 altered by the department to eliminate the impairment. Any decision of  
21 the department to alter or not alter a trust water right donated under  
22 subsection (1)(b) of this section is appealable to the pollution  
23 control hearings board under RCW 43.21B.230. A donated water right's  
24 status as a trust water right under this subsection is not evidence of  
25 the validity or quantity of the water right.

26 (5) Any water right conveyed to the trust water right system as a  
27 gift that is expressly conditioned to limit its use to instream  
28 purposes shall be managed by the department for public purposes to  
29 ensure that it qualifies as a gift that is deductible for federal  
30 income taxation purposes for the person or entity conveying the water  
31 right.

32 (6) If the department acquires a trust water right by lease in an  
33 area in which a drought order has been issued under RCW 43.83B.405 and  
34 is in effect at the time the department leases the water right, the  
35 amount of the trust water right shall not exceed the extent to which  
36 the water right was exercised during the five years before the  
37 acquisition was made nor may the total of any portion of the water  
38 right remaining with the original water right holder plus the portion  
39 of the water right leased by the department exceed the extent to which

1 the water right was exercised during the five years before the  
2 acquisition. A water right holder who believes his or her water right  
3 has been impaired by a trust water right leased under this subsection  
4 may request that the department review the impairment claim. If the  
5 department determines that exercising the trust water right resulting  
6 from the leasing or exercising a portion of that trust water right  
7 leased under this subsection is impairing existing water rights in  
8 violation of RCW 90.38.902, the trust water right shall be altered by  
9 the department to eliminate the impairment. Any decision of the  
10 department to alter or not to alter a trust water right leased under  
11 this subsection is appealable to the pollution control hearings board  
12 under RCW 43.21B.230. The department's leasing of a trust water right  
13 under this subsection is not evidence of the validity or quantity of  
14 the water right.

15 (7) For a water right donated to or acquired by the trust water  
16 rights program on a temporary basis, the full quantity of water  
17 diverted or withdrawn to exercise the right before the donation or  
18 acquisition shall be placed in the trust water rights program and shall  
19 revert to the donor or person from whom it was acquired when the trust  
20 period ends.

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

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

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

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

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

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

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

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

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

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

31 (1) All trust water rights acquired by the state shall be placed in  
32 the state trust water rights program to be managed by the department.  
33 Trust water rights acquired by the state shall be held or authorized  
34 for use by the department for instream flows, irrigation, municipal, or  
35 other beneficial uses consistent with applicable regional plans for  
36 pilot planning areas, or to resolve critical water supply problems. To  
37 the extent practicable and subject to legislative appropriation, trust  
38 water rights acquired in an area with an approved watershed plan

1 developed under chapter 90.82 RCW shall be consistent with that plan if  
2 the plan calls for such acquisition.

3 (2) The department shall issue a water right certificate in the  
4 name of the state of Washington for each permanent trust water right  
5 conveyed to the state indicating the reach or reaches of the stream,  
6 the quantity, and the use or uses to which it may be applied. A  
7 superseding certificate shall be issued that specifies the amount of  
8 water the water right holder would continue to be entitled to as a  
9 result of the water conservation project. The superseding certificate  
10 shall retain the same priority date as the original right. For  
11 nonpermanent conveyances, the department shall issue certificates or  
12 such other instruments as are necessary to reflect the changes in  
13 purpose or place of use or point of diversion or withdrawal. ((Water  
14 rights for which such nonpermanent conveyances are arranged shall not  
15 be subject to relinquishment for nonuse.))

16 (3) A trust water right retains the same priority date as the water  
17 right from which it originated, but as between them the trust right  
18 shall be deemed to be inferior in priority unless otherwise specified  
19 by an agreement between the state and the party holding the original  
20 right.

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

27 (5) Before any trust water right is created or modified, the  
28 department shall, at a minimum, require that a notice be published in  
29 a newspaper of general circulation published in the county or counties  
30 in which the storage, diversion, and use are to be made, and in other  
31 newspapers as the department determines is necessary, once a week for  
32 two consecutive weeks. At the same time the department shall send a  
33 notice containing pertinent information to all appropriate state  
34 agencies, potentially affected local governments and federally  
35 recognized tribal governments, and other interested parties.

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

1 (7) RCW 90.03.380 has no applicability to trust water rights  
2 acquired by the state through the funding of water conservation  
3 projects.

4 (8) Subsections (4) and (5) of this section do not apply to a trust  
5 water right resulting from a donation for instream flows described in  
6 RCW 90.42.080(1)(b) or to a trust water right leased under RCW  
7 90.42.080(8) if the period of the lease does not exceed five years.  
8 However, the department shall provide the notice described in  
9 subsection (5) of this section the first time the trust water right  
10 resulting from the donation is exercised.

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

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

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

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

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

1       (4) A water right donated under subsection (1)(b) of this section  
2 shall not exceed the extent to which the water right was exercised  
3 during the five years before the donation nor may the total of any  
4 portion of the water right remaining with the donor plus the donated  
5 portion of the water right exceed the extent to which the water right  
6 was exercised during the five years before the donation. A water right  
7 holder who believes his or her water right has been impaired by a trust  
8 water right donated under subsection (1)(b) of this section may request  
9 that the department review the impairment claim. If the department  
10 determines that exercising the trust water right resulting from the  
11 donation or exercising a portion of that trust water right donated  
12 under subsection (1)(b) of this section is impairing existing water  
13 rights in violation of RCW 90.42.070, the trust water right shall be  
14 altered by the department to eliminate the impairment. Any decision of  
15 the department to alter or not to alter a trust water right donated  
16 under subsection (1)(b) of this section is appealable to the pollution  
17 control hearings board under RCW 43.21B.230. A donated water right's  
18 status as a trust water right under this subsection is not evidence of  
19 the validity or quantity of the water right.

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

24       ~~((+5))~~ (6) No funds may be expended for the purchase of water  
25 rights by the state pursuant to this section unless specifically  
26 appropriated for this purpose by the legislature.

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

33       (8) If the department acquires a trust water right by lease in an  
34 area in which a drought order has been issued under RCW 43.83B.405 and  
35 is in effect at the time the department leases the water right, the  
36 amount of the trust water right shall not exceed the extent to which  
37 the water right was exercised during the five years before the  
38 acquisition was made nor may the total of any portion of the water  
39 right remaining with the original water right holder plus the portion



1 of the water right leased by the department exceed the extent to which  
2 the water right was exercised during the five years before the  
3 acquisition. A water right holder who believes his or her water right  
4 has been impaired by a trust water right leased under this subsection  
5 may request that the department review the impairment claim. If the  
6 department determines that exercising the trust water right resulting  
7 from the leasing or exercising a portion of that trust water right  
8 leased under this subsection is impairing existing water rights in  
9 violation of RCW 90.42.070, the trust water right shall be altered by  
10 the department to eliminate the impairment. Any decision of the  
11 department to alter or not to alter a trust water right leased under  
12 this subsection is appealable to the pollution control hearings board  
13 under RCW 43.21B.230. The department's leasing of a trust water right  
14 under this subsection is not evidence of the validity or quantity of  
15 the water right.

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

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

26 (2) Beginning December 31, 2001, and ending on December 31, 2004,  
27 the department of ecology shall report to the legislature by January  
28 1st of each year on the results of processing applications under RCW  
29 90.03.380(5) and processing applications through water conservancy  
30 boards under chapter 90.80 RCW. In the report due on December 31,  
31 2004, the department of ecology shall provide an evaluation and make  
32 recommendations regarding modification of any of the provisions of RCW  
33 90.03.380(5).

34 (3) By October 1, 2001, the office of financial management must  
35 complete an assessment of watershed planning, including evaluation of  
36 the performance of both watershed planning units and state agencies  
37 involved in watershed planning. The office's assessment must address  
38 the progress of planning units toward completion of watershed plans and

1 the use of funds provided by the state of Washington to planning units  
2 and state agencies for developing those plans. The assessment must  
3 include an assessment of the progress of planning units and the  
4 department of ecology in setting instream flows. The office must  
5 report the results of the assessment to the appropriate committees of  
6 the legislature, and the governor.

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

13 (5) The office of financial management, in consultation with the  
14 departments of revenue, health, and ecology, must evaluate the long-  
15 term revenue impacts and the costs and benefits of the deductions and  
16 exclusions authorized by section 26 of this act. The office of  
17 financial management must also evaluate the costs and benefits and  
18 revenue impacts of other potential water conservation tax incentives,  
19 including but not limited to those that may involve the sales, use,  
20 property, utility, and business and occupations taxes. The office of  
21 financial management must report its findings regarding tax incentives  
22 by December 31, 2001, to the legislature's standing committees with  
23 jurisdiction over water resources and the legislative fiscal  
24 committees.

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

30 NEW SECTION. **Sec. 33.** If any provision of this act or its  
31 application to any person or circumstance is held invalid, the  
32 remainder of the act or the application of the provision to other  
33 persons or circumstances is not affected.

34 NEW SECTION. **Sec. 34.** This act is necessary for the immediate  
35 preservation of the public peace, health, or safety, or support of the

1 state government and its existing public institutions, and takes effect  
2 immediately.

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