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HOUSE BILL 1832

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State of Washington

57th Legislature

2001 Regular Session

By Representatives Linville and G. Chandler; by request of Governor Locke

Read first time 02/06/2001. Referred to Committee on Agriculture & Ecology.

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, 90.03.330, 90.66.040, 90.66.060, 90.14.140, 90.38.020,  
5 90.38.040, 90.42.040, and 90.42.080; adding new sections to chapter  
6 90.80 RCW; adding a new section to chapter 90.03 RCW; adding new  
7 sections to chapter 90.66 RCW; adding a new section to chapter 82.16  
8 RCW; creating new sections; prescribing penalties; and declaring an  
9 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, providing timely decisions on water transfers, and enhancing  
17 the flexibility of our water management system to meet both  
18 environmental and economic goals, are important steps to providing a  
19 better future for our state.

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

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

7 (1) Once a WRIA planning unit has been initiated under RCW  
8 90.82.060 and a lead agency has been designated, it shall notify the  
9 department and may apply to the department for funding assistance for  
10 conducting the planning. Funds shall be provided from and to the  
11 extent of appropriations made by the legislature to the department  
12 expressly for this purpose.

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

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

20 ~~((b))~~ (ii) A planning unit may apply for up to two hundred  
21 thousand dollars for each WRIA in the management area for conducting  
22 watershed assessments in accordance with RCW 90.82.070, except that a  
23 planning unit whose initiating governments choose to include an  
24 instream flow, water quality, or habitat component in accordance with  
25 RCW 90.82.080 through 90.82.100 may apply for additional funds to  
26 conduct assessments of up to one hundred thousand dollars for each  
27 component included; and

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

35 (b) A planning unit may request a different amount for phase two or  
36 phase three of watershed planning than is specified in (a) of this  
37 subsection, provided that the total amount of funds awarded do not  
38 exceed the maximum amount the planning unit is eligible for under (a)

1 of this subsection. The department shall not approve an alternate  
2 allocation of funds unless the planning unit demonstrates that an  
3 alternate allocation will not impair the unit's ability to complete a  
4 plan in accordance with this chapter.

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

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

10 (i) The planning unit meets all of the requirements of this  
11 chapter;

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

14 (iii) The application and supporting information evidences a  
15 readiness to proceed.

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

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

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

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

28 (B) Second, single WRIA planning;

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

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

33 (B) Second, single WRIA planning.

34 (d) The department may not impose any local matching fund  
35 requirement as a condition for grant eligibility or as a preference for  
36 receiving a grant.

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

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

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

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

9 (1)(a) Upon completing its proposed watershed plan, the planning  
10 unit may approve the proposal by consensus of all of the members of the  
11 planning unit or by consensus among the members of the planning unit  
12 appointed to represent units of government and a majority vote of the  
13 nongovernmental members of the planning unit.

14 (b) If the proposal is approved by the planning unit, the unit  
15 shall submit the proposal to the counties with territory within the  
16 management area. If the planning unit has received funding beyond the  
17 initial fifty thousand dollars under RCW 90.82.040, such a proposal  
18 approved by the planning unit shall be submitted to the counties within  
19 four years of the date ~~((the))~~ that funds beyond the initial funding  
20 ~~((was))~~ were first ~~((received))~~ expended by the planning unit.

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

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

35 (b) If a proposed watershed plan is not approved, it shall be  
36 returned to the planning unit with recommendations for revisions.  
37 Approval of such a revised proposal by the planning unit and the  
38 counties shall be made in the same manner provided for the original

1 watershed plan. If approval of the revised plan is not achieved, the  
2 process shall terminate.

3 (3) The planning unit shall not add an element to its watershed  
4 plan that creates an obligation unless each of the governments to be  
5 obligated has at least one representative on the planning unit and the  
6 respective members appointed to represent those governments agree to  
7 adding the element that creates the obligation. A member's agreeing to  
8 add an element shall be evidenced by a recorded vote of all members of  
9 the planning unit in which the members record support for adding the  
10 element. If the watershed plan is approved under subsections (1) and  
11 (2) of this section and the plan creates obligations: (a) For agencies  
12 of state government, the agencies shall adopt by rule the obligations  
13 of both state and county governments and rules implementing the state  
14 obligations, the obligations on state agencies are binding upon  
15 adoption of the obligations into rule, and the agencies shall take  
16 other actions to fulfill their obligations as soon as possible; or (b)  
17 for counties, the obligations are binding on the counties and the  
18 counties shall adopt any necessary implementing ordinances and take  
19 other actions to fulfill their obligations as soon as possible.

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

24 NEW SECTION. **Sec. 4.** (1) The legislature finds that the number of  
25 applications relating to existing water rights must be reduced. The  
26 legislature also finds that existing case law requires that the  
27 evaluation of whether approval of such an application will impair any  
28 other existing water right must include evaluation of the effect of the  
29 application on any pending prior-filed applications for new water  
30 rights from the same source that are also awaiting action. The  
31 legislature finds that this case law requirement unnecessarily  
32 complicates the process of evaluating and rendering decisions on  
33 applications relating to existing water rights and creates inequity for  
34 persons awaiting action on such applications.

35 (2) The legislature intends to expedite the processing of  
36 applications relating to existing water rights. The legislature does  
37 not intend that this act divert the department of ecology's efforts or

1 in any other way deter the processing of applications for new water  
2 rights.

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

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

36 (2) If an application for change proposes to transfer water rights  
37 from one irrigation district to another, the department shall, before  
38 publication of notice, receive concurrence from each of the irrigation

1 districts that such transfer or change will not adversely affect the  
2 ability to deliver water to other landowners or impair the financial  
3 integrity of either of the districts.

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

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

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

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

24 (c) An application relating to an existing surface or ground water  
25 right may be processed ahead of a previously filed application when  
26 sufficient information for a decision on the previously filed  
27 application is not available and the applicant for the previously filed  
28 application is sent written notice that explains what information is  
29 not available and informs the applicant that processing of the next  
30 application will begin. Such a previously filed application does not  
31 lose its priority date. This subsection (5)(c) does not affect any  
32 other existing authority to process applications.

33 (d) Beginning January 1, 2002, and ending on January 1, 2004, the  
34 department shall report to the legislature by January 1st of each year  
35 on the results of processing applications under this subsection (5).  
36 In the report due on January 1, 2004, the department shall provide an  
37 evaluation and make recommendations regarding whether the provisions in  
38 this subsection (5) should be modified.

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

3       The legislature finds:

4       (1) Voluntary water transfers (~~((between water users))~~) can  
5 reallocate water use in a manner that will result in more efficient use  
6 of water resources;

7       (2) Voluntary water transfers can help alleviate water shortages,  
8 save capital outlays, reduce development costs, and provide an  
9 incentive for investment in water conservation efforts by water right  
10 holders; and

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

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

17       The following definitions apply throughout this chapter, unless the  
18 context clearly requires otherwise.

19       (1) "Board" means a water conservancy board created under this  
20 chapter.

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

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

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

24       (5) "Transfer" means a transfer, change, amendment, or other  
25 alteration of a water right authorized under RCW 90.03.380, 90.03.390,  
26 or 90.44.100.

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

29       A board shall operate on a countywide basis, and have the following  
30 powers, in addition to any other powers granted in this chapter:

31       (1) A board may act upon applications for the same kinds of  
32 transfers that the department itself is authorized to act upon except  
33 that a board may not act upon any application to establish a trust  
34 water right under chapter 90.38 or 90.42 RCW. However, a board may  
35 recommend to the department that it establish a trust water right in  
36 connection with a transfer application filed with the board. A board  
37 may also not act upon an application for the type of transfer described



1 in RCW 90.03.380(3). If a board receives an application for a transfer  
2 described in RCW 90.03.380(2), the board must, before publication of  
3 notice of the application, receive the concurrence specified in that  
4 section.

5 (2) A board may act upon an application to transfer a water right  
6 claim filed under chapter 90.14 RCW. In acting upon such an  
7 application, the board must make a tentative determination as to the  
8 validity and extent of the right, if any, embodied in the claim and may  
9 only approve a transfer of such a claim to the extent it is tentatively  
10 determined to be valid. Neither the board's tentative determination,  
11 nor the director's acceptance of such a tentative determination,  
12 constitutes an adjudication of the right under RCW 90.03.110 through  
13 90.03.240 or 90.44.220, and such a determination does not preclude or  
14 prejudice a subsequent challenge to the validity, priority, or quantity  
15 of the right in a general adjudication under those sections.

16 (3) A board may establish a water right transfer information  
17 exchange through which all or part of a water right may be listed for  
18 sale or lease. The board may also accept and post notices in the  
19 exchange from persons interested in acquiring or leasing water rights  
20 from willing sellers.

21 (4) A board may request and accept technical assistance from the  
22 department. The department must provide assistance as is reasonably  
23 possible in consideration of the resources made available to the  
24 department by the legislature. A board may request and accept  
25 assistance and support from the county government of the county in  
26 which it operates.

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

29 (1) A water conservancy board constitutes a public body corporate  
30 and politic and a separate unit of local government in the state. Each  
31 board shall consist of three commissioners appointed by the county  
32 legislative authority for six-year terms. The county legislative  
33 authority shall stagger the initial appointment of commissioners so  
34 that the first commissioners who are appointed shall serve terms of  
35 two, ~~three~~, four, ~~five~~, and six years, respectively, from the date of  
36 their appointment. The county legislative authority may appoint two  
37 additional commissioners, for a total of five. If the county elects to  
38 appoint five commissioners, the initial terms of the additional

1 commissioners shall be for three and five-year terms respectively. All  
2 vacancies shall be filled for the unexpired term.

3 (2) The county legislative authority shall consider, but is not  
4 limited in appointing, nominations to the board by people or entities  
5 petitioning or requesting the creation of the board. However, the  
6 county legislative authority shall ensure that individual water right  
7 holders who divert or withdraw water for use within the county are  
8 represented on the board. The county legislative authority must  
9 appoint one position from the public at large and the commissioner so  
10 appointed must not have an affiliation with any water user group or  
11 other water interest group, but must be appointed to represent the  
12 overall public interest. The remaining board members must be selected  
13 to represent all of the major water interests in the county. If the  
14 county legislative authority chooses not to appoint five commissioners,  
15 and as of the effective date of this section there is no commissioner  
16 on an existing board from the public at large, the commission is not  
17 required to appoint a person from the public at large until the first  
18 vacancy occurs. In making appointments to the board, the county  
19 legislative authority shall choose from among persons who are residents  
20 of the county or a county that is contiguous to the county that the  
21 water conservancy board is to serve.

22 (3) No commissioner may participate in board decisions until he or  
23 she has successfully completed the necessary training required under  
24 RCW 90.80.040. Commissioners shall serve without compensation, but are  
25 entitled to reimbursement for necessary travel expenses in accordance  
26 with RCW 43.03.050 and 43.03.060 and costs incident to receiving  
27 training.

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

30 (1) Applications to the board for transfers shall be made on a form  
31 provided by the department(~~(, and shall contain such)~~). A board may  
32 require an applicant to submit within a reasonable time additional  
33 information as may be required by the board in order to review and act  
34 upon the application. At a minimum, the application shall include  
35 information sufficient to establish to the board's satisfaction (~~of~~  
36 ~~the transferer's~~) that a water right to the quantity of water being  
37 transferred exists, and a description of any applicable limitations on  
38 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 the  
5 transfer if the water proposed to be transferred is currently diverted,  
6 withdrawn, or used within the geographic boundaries of the county, or  
7 would be diverted, withdrawn, or used within the geographic boundaries  
8 of the county if the transfer is approved. In the case of a proposed  
9 water right transfer in which the water is currently diverted or  
10 withdrawn or would be diverted or withdrawn outside the geographic  
11 boundaries of the county, the board shall hold a public hearing in the  
12 county of the diversion or withdrawal or proposed diversion or  
13 withdrawal. The board shall provide for prominent publication of  
14 notice of ~~((such))~~ the hearing in a newspaper of general circulation  
15 published in the county in which the hearing is to be held for the  
16 purpose of affording an opportunity for interested persons to comment  
17 upon the application.

18       (3) After an application for a transfer is filed with the board,  
19 the board shall publish notice of the application ~~((in accordance with~~  
20 ~~the publication requirements))~~ and send notice to state agencies ~~((as~~  
21 ~~provided in))~~ in accordance with the requirements of RCW 90.03.280.  
22 Any person may submit comments to the board regarding the application  
23 and the comments must be considered by the board in making its  
24 determination. Any ~~((water right holder))~~ person claiming ~~((detriment~~  
25 ~~or injury to an existing water right))~~ that he or she will be aggrieved  
26 or adversely affected if the transfer is approved may intervene in the  
27 application before the board ~~((pursuant to subsection (4) of this~~  
28 ~~section.~~ If a majority of the board determines that the application is  
29 complete, ~~in accordance with the law and the transfer can be made~~  
30 ~~without injury or detriment to existing water rights in accordance with~~  
31 ~~RCW 90.03.380,~~ the board shall issue the applicant a certificate  
32 conditionally approving the transfer, subject to review by the  
33 director)). A request to intervene must be in writing and must be  
34 received by the board within thirty days of the last date that the  
35 notice was published. The intervenor must clearly state the reason or  
36 reasons for the intervenor's concerns or objections to the application  
37 and may recommend means by which the concerns or objections could be  
38 relieved.

1       (4) If (~~(a water right holder)~~) an intervenor claims a proposed  
2 transfer will cause ((an)) impairment to ((that)) the intervenor's  
3 water right(~~(, the water right holder)~~) or to an instream flow  
4 established by the department, or would be detrimental to the public  
5 interest or in violation of other requirements of law, the intervenor  
6 is entitled to a hearing before the board. The board shall receive  
7 such evidence as it deems material and necessary to determine the  
8 validity of the claim of ((impairment)) the intervenor. If the ((party  
9 claiming the impairment)) intervenor establishes by a preponderance of  
10 the evidence that ((his or her water right will be impaired by the  
11 proposed transfer)) the intervenor's claim is true, the board may not  
12 approve the transfer unless the applicant and ((the)) any person  
13 claiming an impaired ((party)) water right agree upon appropriate  
14 compensation for the impairment, or for other claims the board  
15 prescribes mitigation for the claim that may be cured by the  
16 compensation or mitigation.

17       (5) If a majority of the board determines that the application is  
18 complete, and that the transfer can be made without injury or detriment  
19 to existing water rights or the public interest and is in accordance  
20 with RCW 90.03.380, 90.03.390, or 90.44.100, the board must issue a  
21 proposed decision approving the transfer, subject to review by the  
22 director. The board must include in its proposed decision any  
23 conditions that are deemed necessary for the transfer to qualify for  
24 approval under the laws of the state. The proposed decision of the  
25 board must be documented in a report of examination. The board's  
26 proposed approval must clearly state that the applicant is not  
27 permitted to proceed to effect the proposed transfer until a final  
28 decision is made by the director.

29       (6) If a majority of the board determines that the application  
30 cannot be approved under the laws of the state of Washington, the board  
31 must issue a proposed denial of the application together with its  
32 report of examination documenting its determination. The board's  
33 determination is subject to review by the director under RCW 90.80.080.

34       **Sec. 11.** RCW 90.80.080 and 1997 c 441 s 11 are each amended to  
35 read as follows:

36       (1) (~~(If a transfer is approved by the board,))~~ The board must  
37 provide a copy of its determination to the applicant. The board shall  
38 submit ((a copy of the)) its proposed ((certificate conditionally

1 ~~approving~~) decision on the transfer application to the department for  
2 review. The board shall also submit ~~((a))~~ its report of examination to  
3 the department summarizing ~~((any))~~ factual findings on which the board  
4 relied in ~~((deciding to approve the proposed transfer))~~ reaching its  
5 determination. The board shall also promptly transmit notice by mail  
6 to any person who objected to the transfer or who requested notice of  
7 the board's determination.

8 (2) The director shall review each proposed ~~((transfer~~  
9 ~~conditionally approved))~~ decision made by a board for compliance with  
10 state water right transfer laws including RCW 90.03.380, 90.03.390, and  
11 90.44.100, rules and guidelines adopted by the department, and other  
12 applicable law.

13 (3) Any ~~((party to a transfer or a third party who alleges his or~~  
14 ~~her water right will be impaired by the proposed transfer))~~ person may  
15 file ~~((objections))~~ a written objection to the board's determination  
16 with the department. Objections must be received by the department  
17 within thirty days of the board's determination. If one or more  
18 objections to the transfer are filed with the department, the board  
19 shall forward the files and records upon which it based its decision to  
20 the department.

21 (4) The director shall review the action of the board and if no  
22 objection has been filed, the director must affirm, reverse, or modify  
23 the action of the board within forty-five days of receipt. If one or  
24 more objections are filed within the time frame prescribed in  
25 subsection (3) of this section, the director has seventy-five days from  
26 the date the department received the board's determination to affirm,  
27 reverse, or modify the action of the board. The ~~((forty-five day))~~  
28 time period may be extended for an additional thirty days by the  
29 director, upon the consent of the ~~((parties to the transfer))~~  
30 applicant. If the director fails to act within ~~((this))~~ the prescribed  
31 time period, the board's action is final~~((— Upon approval of a water~~  
32 ~~transfer by the action or nonaction of the director, the conditional~~  
33 ~~certificate issued by the board is final and valid))~~ and becomes the  
34 action of the department. If the director acts within the prescribed  
35 time period, the director's action is final.

36 **Sec. 12.** RCW 90.80.090 and 1997 c 441 s 12 are each amended to  
37 read as follows:

1 The decision of the director to approve or deny an action to create  
2 a board, or to approve, deny, or modify a water transfer either by  
3 action or ~~((nonaction))~~ inaction shall be appealable to the pollution  
4 control hearings board in the same manner as other water right  
5 decisions made pursuant to chapter 90.03 RCW.

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

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

13 **Sec. 14.** RCW 90.80.120 and 1997 c 441 s 16 are each amended to  
14 read as follows:

15 (1) ~~A commissioner of a water conservancy board ((who has an~~  
16 ~~ownership interest in a water right subject to an application for~~  
17 ~~approval of a transfer or change by the board, shall not participate in~~  
18 ~~the board's review or decision upon the application))~~ may not  
19 participate in the board's review or proposed decision upon an  
20 application if the commissioner has an interest, financial or  
21 otherwise, direct or indirect, in the outcome of the decision. This  
22 includes, but is not limited to, serving as an officer, director,  
23 trustee, member, or employee of the applicant, any potential purchaser  
24 of the water right, or an intervenor in the application.

25 (2) ~~((A commissioner of a water conservancy board who also serves~~  
26 ~~as an employee or upon the governing body of a municipally owned water~~  
27 ~~system, shall not participate in the board's review or decision upon an~~  
28 ~~application for the transfer or change of a water right in which that~~  
29 ~~water system has or is proposed to have an ownership interest))~~ A  
30 violation of this section is grounds for removal from office and  
31 imposition of a civil fine. This section is enforceable in an action  
32 brought before the superior court of the county in which the board  
33 operates.

34 NEW SECTION. **Sec. 15.** A new section is added to chapter 90.80 RCW  
35 to read as follows:

1 A water conservancy board may be formally dissolved by the county  
2 in which it operates by adoption of a resolution of the county  
3 legislative authority. Notice of the dissolution must be provided to  
4 the director.

5 **Sec. 16.** 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.

9 NEW SECTION. **Sec. 17.** A new section is added to chapter 90.80 RCW  
10 to read as follows:

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

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

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

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

30 **Sec. 19.** RCW 90.80.140 and 1997 c 441 s 18 are each amended to  
31 read as follows:

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

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

3        (1) By June 30, 2002, the department must adopt rules to establish  
4 certification procedures, qualifications, fees, and other requirements  
5 for certified water rights examiners.

6        (2) Certified water rights examiners must be certified by the  
7 department to perform the following functions:

8        (a) To carry out the proof examination of a permitted water right  
9 development as a prerequisite to the issuance of a final water right  
10 certificate. The examiner must provide a report and detailed map to  
11 the department as to that examination;

12        (b) To carry out the proof examination for a change or transfer of  
13 an existing water right or water right claim and to provide a report  
14 and detailed map to the department as to that examination as a  
15 prerequisite to the issuance of a superseding certificate or  
16 certificate of change;

17        (c) To provide advice and assistance or to act as an agent for a  
18 person applying or considering whether to apply for a new water right  
19 or for a water right change or transfer; and

20        (d) To evaluate water rights and provide an opinion to a person  
21 seeking such an opinion as to the validity and quantification of an  
22 existing water right. The opinion is not subject to disclosure under  
23 chapter 42.17 RCW, nor may the department request a copy of the  
24 opinion.

25        (3) The department must develop and administer a written  
26 examination for purposes of certifying water rights examiners. An  
27 examination fee in an amount established by the department's rule  
28 required by subsection (1) of this section must be paid in advance of  
29 testing. The certification is valid for one year, renewable upon  
30 payment of a renewal fee prior to the expiration of the one-year  
31 period. Examiners in good standing are not required to retest to  
32 receive a certification renewal. Former examiners whose certifications  
33 have lapsed for more than one year are required to retake the  
34 examination to be recertified. The department's denial of  
35 certification or a renewal may be appealed to the pollution control  
36 hearings board under RCW 43.21B.230.

37        (4) The department shall establish and from time to time update by  
38 rule the amount of fees charged for the examination, certification,  
39 certificate renewal, and training of water right examiners. The



1 department shall set the fees at a sufficient level to defray all costs  
2 of administering the program to license and regulate water right  
3 examiners. Fees collected under this section shall be credited by the  
4 state treasurer to the state reclamation revolving account established  
5 in RCW 89.16.020. The fees must be allocated and expended by the  
6 director for the administration of the licensed water rights examiner  
7 program.

8 (5) The department may issue an order suspending or revoking the  
9 certificate of any certified water right examiner for good cause,  
10 including illegal acts, misrepresentation of the facts associated with  
11 a proof examination and report, or gross incompetence. The  
12 department's order may be appealed to the pollution control hearings  
13 board under RCW 43.21B.230.

14 (6) The department must keep a record of any complaints it receives  
15 or irregularities it observes regarding individual certified water  
16 rights examiners. The department must inform the examiner if a  
17 complaint is received or an irregularity is observed and permit the  
18 examiner to provide a written explanation to the department. The  
19 records must be made available to any person who requests them. The  
20 department must investigate complaints that allege or irregularities  
21 that indicate a breach of law.

22 (7) Each examiner may set his or her own fees for services offered.

23 (8) The department must retain a list of all active certified water  
24 rights examiners and the geographic areas of the state in which each  
25 has indicated a willingness to work. The list must be provided to any  
26 person who requests it and must be posted electronically by the  
27 department.

28 (9) The department must provide at least one day of continuing  
29 education training per year for water rights examiners. Examiners are  
30 required to attend the department's training session or attend an  
31 alternative training opportunity of at least one day's duration  
32 provided by a third party and approved by the department. The  
33 department must provide timely information to licensed examiners  
34 regarding changes in water resource laws, rules, policies, court  
35 decisions, and procedures.

36 (10) Proof examinations, opinions, or other actions taken by  
37 certified water rights examiners are not binding on the department, nor  
38 are they prima facie evidence in any legal proceeding.

1 (11) The department and officers or employees of the department may  
2 not be found liable for damages alleged to have arisen from the actions  
3 or inactions of the department, its officers, or employees under this  
4 section.

5 **Sec. 21.** RCW 90.03.330 and 1987 c 109 s 89 are each amended to  
6 read as follows:

7 (1) After a permit holder has completed the project as provided in  
8 the permit and has put water to beneficial use, the permit holder must  
9 submit to the department a statement to that effect. The statement  
10 must be made on a form provided by the department and signed before a  
11 notary public.

12 (2) The department must review the following information before it  
13 issues a water right certificate under this section:

14 (a) A description and the location of any constructed works and  
15 other equipment or methods used for acquiring, storing, conveying, and  
16 making beneficial use of water, including the sizes and capacities of  
17 the facilities;

18 (b) An accurate and legible site map suitable for permanent  
19 recordkeeping that illustrates the location of facilities and the lands  
20 upon which water has been beneficially used;

21 (c) Photographs of major facilities and photographic evidence of  
22 beneficial use;

23 (d) The source or sources from which water is withdrawn or  
24 diverted;

25 (e) The beneficial uses of water that are served by the works;

26 (f) The date water was first beneficially used under the permit;

27 (g) The maximum instantaneous and annual quantity of water that has  
28 been put to beneficial use based on measurements of flow through the  
29 system during operation;

30 (h) A legal description of the lands on which water has been  
31 beneficially used;

32 (i) For irrigation, the acreage that has been irrigated, the crops  
33 grown, and the type of irrigation system employed;

34 (j) For domestic or municipal water supply, the number and type of  
35 housing units, businesses, or other end uses that have received and  
36 beneficially used water from the system;

1       (k) For hydroelectric power, the head, the maximum flow used during  
2 generation, the capacity of turbines, and the maximum electrical  
3 output;

4       (l) Evidence that the conditions of the permit have been complied  
5 with including, but not limited to, the proper installation and  
6 operation of any required measuring devices, fish screens, well  
7 inspection ports, well identification tags, and well surface seals; and

8       (m) Any other information the department determines is necessary to  
9 confirm that the permit holder has completed the project and has put  
10 water to beneficial use.

11       (3) The permit holder may choose at his or her expense to use a  
12 water rights examiner, certified by the department under section 20 of  
13 this act, to conduct the proof examination in subsection (2) of this  
14 section. If the person elects to use a certified water rights  
15 examiner, the examiner must prepare a report of the proof examination  
16 and submit it to the department. The first page of the report and the  
17 first page of any attachments to the report, including any map or maps,  
18 must have the written certification and signature of the water rights  
19 examiner and the permit holder attesting to the truth and accuracy of  
20 the contents. The form of the written certification must be specified  
21 by the department.

22       (4) Upon a showing satisfactory to the department that any  
23 appropriation or change of water right has been perfected in accordance  
24 with the provisions of this chapter, it shall be the duty of the  
25 department to issue to the applicant a certificate stating such facts  
26 in a form to be prescribed by ((him)) the department, and such  
27 certificate shall thereupon be recorded with the department. Any  
28 original water right certificate issued, as provided by this chapter,  
29 shall be recorded with the department and thereafter, at the expense of  
30 the party receiving the same, be transmitted by the department  
31 ((transmitted)) to the county auditor of the county or counties where  
32 the distributing system or any part thereof is located, and be recorded  
33 in the office of such county auditor, and thereafter be transmitted to  
34 the owner thereof.

35       (5) The department shall make its decision whether to issue a  
36 certificate within one hundred twenty days of receiving the report of  
37 a certified water rights examiner provided to the department under this  
38 section.

1        NEW SECTION.    **Sec. 22.**    A new section is added to chapter 90.66 RCW  
2 to read as follows:

3        (1) Transfers of water rights established as family farm permits  
4 under this chapter may be approved as authorized under this section and  
5 under RCW 90.03.380, 90.03.390, or 90.44.100 or chapter 90.80 RCW as  
6 appropriate.

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

8        (a) For use for agricultural irrigation purposes as limited by RCW  
9 90.66.060 (1) and (2) except as provided in RCW 90.66.060(3);

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

14       (c) To any purpose of use that is a beneficial use of water if the  
15 water right is for the use of water at a location that is, immediately  
16 before the transfer is approved, within the boundaries of a city or  
17 town or within the boundaries of an urban growth area designated under  
18 chapter 36.70A RCW, except that transfers for the use of water for  
19 agricultural irrigation purposes shall be limited as provided by RCW  
20 90.66.060 (1) and (2).

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

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

1       **Sec. 23.** RCW 90.66.040 and 1979 c 3 s 4 are each amended to read  
2 as follows:

3       For the purposes of this chapter, the following definitions shall  
4 be applicable:

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

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

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

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

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

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

35       (7) "Transfer" means a transfer, change, or amendment to a water  
36 right authorized under RCW 90.03.380, 90.03.390, or 90.44.100 or  
37 chapter 90.80 RCW.

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

1       **Sec. 24.** RCW 90.66.060 and 1979 c 3 s 6 are each amended to read  
2 as follows:

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

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

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

31       (4) This section does not apply in any manner whatsoever to a  
32 transfer of surplus water authorized by section 22(3) of this act.  
33 However, this section does apply to other transfers of a water right  
34 established under the authority of a family farm permit to the extent  
35 that the transfer is to a use of water for agricultural irrigation  
36 purposes.

37       NEW SECTION. **Sec. 25.** A new section is added to chapter 90.66 RCW  
38 to read as follows:

1 A certificate of water right must be issued to the holder of a  
2 family farm permit, a publicly owned land permit, or a public water  
3 entity permit in accordance with RCW 90.03.330 after and to the extent  
4 that water has been put to beneficial use. However, a person holding  
5 a family farm permit must not be issued a water right certificate until  
6 the person has divested controlling interest in all irrigated acreage  
7 exceeding two thousand acres.

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

10 (1) In computing tax under this chapter, there shall be deducted  
11 from the gross income those amounts expended to improve consumers'  
12 efficiency of water use or to otherwise reduce the use of water by the  
13 consumer when the expenditures are implementing elements of the  
14 conservation plan within a state approved water system plan.

15 (2) This chapter does not apply to amounts received for water  
16 services supplied by an entity that holds a permit under RCW 90.46.030  
17 when the water supplied is reclaimed water as defined in RCW 90.46.010.

18 NEW SECTION. **Sec. 27.** The office of financial management, in  
19 consultation with the departments of revenue, health, and ecology, must  
20 evaluate the long-term revenue impacts of the deductions and exclusions  
21 authorized by section 26 of this act, and report its findings by  
22 October 1, 2001, to the legislature's standing committees with  
23 jurisdiction over water resources and the legislative fiscal  
24 committees.

25 **Sec. 28.** RCW 90.14.140 and 1998 c 258 s 1 are each amended to read  
26 as follows:

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

- 31 (a) Drought, or other unavailability of water;
- 32 (b) Active service in the armed forces of the United States during  
33 military crisis;
- 34 (c) Nonvoluntary service in the armed forces of the United States;
- 35 (d) The operation of legal proceedings;

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

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

8 (2) Notwithstanding any other provisions of RCW 90.14.130 through  
9 90.14.180, there shall be no relinquishment of any water right:

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

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

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

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

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

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

30 (g) If such right is a trust water right under chapter 90.38 or  
31 90.42 RCW.

32 **Sec. 29.** RCW 90.38.020 and 1989 c 429 s 3 are each amended to read  
33 as follows:

34 (1)(a) The department may acquire water rights, including but not  
35 limited to storage rights, by purchase, lease, gift, or other  
36 appropriate means other than by condemnation, from any person or entity  
37 or combination of persons or entities. Once acquired, such rights are  
38 trust water rights. A water right acquired by the state that is



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

3 (b) If an aquatic species is listed as threatened or endangered  
4 under the federal endangered species act (16 U.S.C. Sec. 1531 et seq.)  
5 for a body of water, certain instream flows are needed for the species,  
6 and the holder of a right to water from the body of water chooses to  
7 donate all or a portion of the person's water right to the trust water  
8 system to assist in providing those instream flows on a temporary or  
9 permanent basis, the department may accept the donation on such terms  
10 as the person may prescribe as long as the donation satisfies the  
11 requirements of this chapter. Once accepted, such rights are trust  
12 water rights within the conditions prescribed by the donor.

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

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

19 (4) A water right donated under subsection (1)(b) of this section  
20 shall not exceed the extent to which water was beneficially used during  
21 any of the five years before the donation nor may the total of any  
22 portion of the water right remaining with the donor plus the donated  
23 portion of the water right exceed the extent to which water was  
24 beneficially used during any of the five years before the donation.  
25 If, upon appeal from a determination by the department, it is found  
26 that exercising the trust water right resulting from the donation or  
27 exercising a portion of that trust water right impairs existing water  
28 rights in violation of RCW 90.38.902, the trust water right shall be  
29 altered to eliminate the impairment.

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

35 **Sec. 30.** RCW 90.38.040 and 1994 c 264 s 90 are each amended to  
36 read as follows:

37 (1) All trust water rights acquired by the department shall be  
38 placed in the Yakima river basin trust water rights program to be

1 managed by the department. The department shall issue a water right  
2 certificate in the name of the state of Washington for each trust water  
3 right it acquires.

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

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

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

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

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

28 (c) Subsection (5)(b) of this section does not apply to a trust  
29 water right resulting from a donation for instream flows described in  
30 RCW 90.38.020(1). However, the department shall provide the notice  
31 described in (b) of this subsection the first time the trust water  
32 right resulting from the donation is exercised.

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

36 **Sec. 31.** RCW 90.42.040 and 1993 c 98 s 3 are each amended to read  
37 as follows:

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

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

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

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

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

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

4 (7) RCW 90.03.380 has no applicability to trust water rights  
5 acquired by the state through the funding of water conservation  
6 projects.

7 (8) Subsection (5) of this section does not apply to a trust water  
8 right resulting from a donation for instream flows described in RCW  
9 90.42.080(1)(b). However, the department shall provide the notice  
10 described in subsection (5) of this section the first time the trust  
11 water right resulting from the donation is exercised.

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

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

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

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

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

37 (4) A water right donated under subsection (1)(b) of this section  
38 shall not exceed the extent to which the water right was exercised

1 during any of the five years before the donation nor may the total of  
2 any portion of the water right remaining with the donor plus the  
3 donated portion of the water right exceed the extent to which the water  
4 right was exercised during any of the five years before the donation.  
5 If, upon appeal from a determination by the department, it is found  
6 that exercising the trust water right resulting from the donation or  
7 exercising a portion of that trust water right impairs existing water  
8 rights in violation of RCW 90.42.070, the trust water right shall be  
9 altered to eliminate the impairment.

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

14 ~~((+5))~~ (6) No funds may be expended for the purchase of water  
15 rights by the state pursuant to this section unless specifically  
16 appropriated for this purpose by the legislature.

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

22 NEW SECTION. Sec. 33. This act is necessary for the immediate  
23 preservation of the public peace, health, or safety, or support of the  
24 state government and its existing public institutions, and takes effect  
25 immediately.

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