
HOUSE BILL 1538

State of Washington

58th Legislature

2003 Regular Session

By Representatives Schoesler, Holmquist, Benson, Clements, Woods, Delvin, Kristiansen, Chandler, Armstrong, Cox, Condotta, Skinner and Anderson

Read first time 01/29/2003. Referred to Committee on Agriculture & Natural Resources.

1 AN ACT Relating to water resources; amending RCW 90.03.380,
2 90.03.370, 90.14.130, 90.14.160, 90.14.170, 90.14.180, 90.03.015,
3 90.03.460, 90.44.050, 90.03.330, 90.44.100, 90.03.383, 90.54.020,
4 90.38.020, and 90.42.080; reenacting and amending RCW 90.14.140 and
5 43.84.092; adding a new section to chapter 90.14 RCW; adding new
6 sections to chapter 90.03 RCW; adding new sections to chapter 43.155
7 RCW; and creating new sections.

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

9 **Sec. 1.** RCW 90.03.380 and 2001 c 237 s 5 are each amended to read
10 as follows:

11 (1) The right to the use of water which has been applied to a
12 beneficial use in the state shall be and remain appurtenant to the land
13 or place upon which the same is used: PROVIDED, HOWEVER, That the
14 right may be transferred to another or to others and become appurtenant
15 to any other land or place of use without loss of priority of right
16 theretofore established if such change can be made without detriment or
17 injury to existing rights. The point of diversion of water for
18 beneficial use or the purpose of use may be changed, if such change can
19 be made without detriment or injury to existing rights. A change in

1 the place of use, point of diversion, and/or purpose of use of a water
2 right to enable irrigation of additional acreage or the addition of new
3 uses may be permitted if such change results in no increase in the
4 annual consumptive quantity of water used under the water right. For
5 purposes of this section, "annual consumptive quantity" means the
6 estimated or actual annual amount of water diverted or withdrawn
7 pursuant to the water right, reduced by the estimated annual amount of
8 return flows, (~~averaged over the two years~~) during the year of
9 greatest use within the most recent (~~five-year~~) fifteen-year period
10 of continuous beneficial use of the water right. Such an annual
11 consumptive quantity represents only the consumptive use portion of the
12 amount of water that may be spread to provide water for both existing
13 and new or expanded uses; it does not define either the extent of the
14 right or the total amount of water that may be transferred or changed
15 to accomplish the spreading nor does it apply to any changes,
16 transfers, or amendments that may be required to accommodate crop
17 rotation. Before any transfer of such right to use water or change of
18 the point of diversion of water or change of purpose of use can be
19 made, any person having an interest in the transfer or change, shall
20 file a written application therefor with the department, and the
21 application shall not be granted until notice of the application is
22 published as provided in RCW 90.03.280. If it shall appear that such
23 transfer or such change may be made without injury or detriment to
24 existing rights, the department shall issue to the applicant a
25 certificate in duplicate granting the right for such transfer or for
26 such change of point of diversion or of use. The certificate so issued
27 shall be filed and be made a record with the department and the
28 duplicate certificate issued to the applicant may be filed with the
29 county auditor in like manner and with the same effect as provided in
30 the original certificate or permit to divert water.

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

37 (3) A change in place of use by an individual water user or users
38 of water provided by an irrigation district need only receive approval

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

8 (4) The right to use water for any beneficial use within the
9 general category of an agricultural use includes the right to use the
10 water, without applying to the department or any other governmental
11 entity for approval, for any other beneficial use within the general
12 category of an agricultural use. The general category of an
13 agricultural use of water includes, but is not limited to, the
14 beneficial use of water for stock watering, agricultural irrigation,
15 processing agricultural commodities into agricultural products, and
16 other agricultural uses.

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

20 ~~((+5))~~ (6)(a) Pending applications for new water rights are not
21 entitled to protection from impairment, injury, or detriment when an
22 application relating to an existing surface or ground water right is
23 considered.

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

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

1 does not lose its priority date and if the information is provided by
2 the applicant within sixty days, the previously filed application shall
3 be processed at that time. This subsection ~~((+5+))~~ (6)(c) does not
4 affect any other existing authority to process applications.

5 (d) Nothing in this subsection ~~((+5+))~~ (6) is intended to stop the
6 processing of applications for new water rights.

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

12 ~~((+7+))~~ (b) The department's review of an application for change,
13 transfer, or an amendment of a surface or ground water right shall not
14 include a consideration or investigation of potential relinquishment of
15 the water right or a portion of the right through prior nonuse nor
16 shall the department's receipt or review or other consideration of such
17 an application or its action on such an application be cause for the
18 department's initiation of relinquishment proceedings under chapter
19 90.14 RCW for prior nonuse of the water right that is the subject of
20 the application.

21 (8) In revising the provisions of this section and adding
22 provisions to this section by chapter 237, Laws of 2001, the
23 legislature does not intend to imply legislative approval or
24 disapproval of any existing administrative policy regarding, or any
25 existing administrative or judicial interpretation of, the provisions
26 of this section not expressly added or revised.

27 **Sec. 2.** RCW 90.03.370 and 2002 c 329 s 10 are each amended to read
28 as follows:

29 (1)(a) All applications for reservoir permits are subject to the
30 provisions of RCW 90.03.250 through 90.03.320. But the party or
31 parties proposing to apply to a beneficial use the water stored in any
32 such reservoir shall also file an application for a permit, to be known
33 as the secondary permit, which shall be in compliance with the
34 provisions of RCW 90.03.250 through 90.03.320. Such secondary
35 application shall refer to such reservoir as its source of water supply
36 and shall show documentary evidence that an agreement has been entered
37 into with the owners of the reservoir for a permanent and sufficient

1 interest in said reservoir to impound enough water for the purposes set
2 forth in said application. When the beneficial use has been completed
3 and perfected under the secondary permit, the department shall take the
4 proof of the water users under such permit and the final certificate of
5 appropriation shall refer to both the ditch and works described in the
6 secondary permit and the reservoir described in the primary permit.
7 The department may accept for processing a single application form
8 covering both a proposed reservoir and a proposed secondary permit or
9 permits for use of water from that reservoir.

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

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

14 (ii) Adding or changing one or more purposes of use of stored
15 water;

16 (iii) Adding to the storage capacity of an existing storage
17 facility; and

18 (iv) Applications for secondary permits to secure use from existing
19 storage facilities.

20 (c) A secondary permit for the beneficial use of water shall not be
21 required for use of water stored in a reservoir where the water right
22 for the source of the stored water authorizes the beneficial use.

23 (d) The following types of storage facilities do not require a
24 reservoir or secondary permit from the department for the storage and
25 use of stored water:

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

31 (ii) Facilities to recapture and reuse return flow from irrigation
32 operations when serving a single farm operation if the acreage
33 irrigated is not increased beyond the acreage allowed to be irrigated
34 under the water right that applies to the property;

35 (iii) Offstream ponds filled from a separate source not exceeding
36 ten acre feet in capacity;

37 (iv) Excavated ponds not filled from a separate source, but rather
38 from interception of the water table;

1 (v) Storm water management storage facilities if no beneficial use
2 is made of the captured water; and

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

6 (2)(a) For the purposes of this section, "reservoir" includes, in
7 addition to any surface reservoir, any naturally occurring underground
8 geological formation where water is collected and stored for subsequent
9 use as part of an underground artificial storage and recovery project.
10 To qualify for issuance of a reservoir permit an underground geological
11 formation must meet standards for review and mitigation of adverse
12 impacts identified, for the following issues:

13 (i) Aquifer vulnerability and hydraulic continuity;

14 (ii) Potential impairment of existing water rights;

15 (iii) Geotechnical impacts and aquifer boundaries and
16 characteristics;

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

18 (v) Recharge and recovery treatment requirements;

19 (vi) System operation;

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

21 (viii) Environmental impacts.

22 (b) Standards for review and standards for mitigation of adverse
23 impacts for an underground artificial storage and recovery project
24 shall be established by the department by rule. Notwithstanding the
25 provisions of RCW 90.03.250 through 90.03.320, analysis of each
26 underground artificial storage and recovery project and each
27 underground geological formation for which an applicant seeks the
28 status of a reservoir shall be through applicant-initiated studies
29 reviewed by the department.

30 (3) For the purposes of this section, "underground artificial
31 storage and recovery project" means any project in which it is intended
32 to artificially store water in the ground through injection, surface
33 spreading and infiltration, or other department-approved method, and to
34 make subsequent use of the stored water. However, (a) this subsection
35 does not apply to irrigation return flow, or to operational and seepage
36 losses that occur during the irrigation of land, or to water that is
37 artificially stored due to the construction, operation, or maintenance
38 of an irrigation district project, or to projects involving water

1 reclaimed in accordance with chapter 90.46 RCW; and (b) RCW 90.44.130
2 applies to those instances of claimed artificial recharge occurring due
3 to the construction, operation, or maintenance of an irrigation
4 district project or operational and seepage losses that occur during
5 the irrigation of land, as well as other forms of claimed artificial
6 recharge already existing at the time a ground water subarea is
7 established.

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

11 (5) The department shall report to the legislature by December 31,
12 2001, on the standards for review and standards for mitigation
13 developed under subsection (3) of this section and on the status of any
14 applications that have been filed with the department for underground
15 artificial storage and recovery projects by that date.

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

20 **Sec. 3.** RCW 90.14.140 and 2001 c 240 s 1, 2001 c 237 s 27, and
21 2001 c 69 s 5 are each reenacted and amended to read as follows:

22 (1) For the purposes of RCW 90.14.130 through 90.14.180, the
23 following constitute "sufficient cause" (~~((shall be defined as))~~) for the
24 nonuse of all or a portion of the water by the owner of a water right
25 (~~((for a period of five or more consecutive years where such nonuse~~
26 ~~occurs as a result of))~~):

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

28 (b) The destruction of works, diversions, or other facilities
29 essential to use of the water by a cause not within the control of the
30 owner of the appropriation, and good faith efforts to repair or replace
31 the works, diversions, or facilities have been and are being made;

32 (c) Nonuse occurring during a period of time within which the water
33 was included in a pending application for a transfer, change, or
34 amendment of the water right filed with the department under chapter
35 90.03 or 90.44 RCW;

36 (d) Active service in the armed forces of the United States during
37 military crisis;

1 ~~((e))~~ (e) Nonvoluntary service in the armed forces of the United
2 States;

3 ~~((d))~~ (f) The operation of legal proceedings;

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

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

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

17 ~~(h))~~ (i) Nonuse occurring during a period of time within which the
18 exercise of all or part of the water right was not necessary due to
19 climatic conditions, if the water right holder had the facility capable
20 of handling the full allowed rate and duty, and was otherwise ready,
21 willing, and able to use the entire amount of water allowed under the
22 water right;

23 (j) Temporarily reduced diversions or withdrawals of irrigation
24 water directly resulting from the provisions of a contract or similar
25 agreement in which a supplier of electricity buys back electricity from
26 the water right holder and the electricity is needed for the diversion
27 or withdrawal or for the use of the water diverted or withdrawn for
28 irrigation purposes;

29 ~~((i))~~ (k) Water conservation measures, including but not limited
30 to such measures implemented under the Yakima river basin water
31 enhancement project~~(, so long as)~~. With regard to water conservation
32 measures implemented under the Yakima river basin water enhancement
33 project, the conserved water ~~((is))~~ must be reallocated in accordance
34 with the provisions of P.L. 103-434;

35 ~~((j))~~ (l) Reliance by an irrigation water user on the transitory
36 presence of return flows in lieu of diversion or withdrawal of water
37 from the primary source of supply, if such return flows are measured or

1 reliably estimated using a scientific methodology generally accepted as
2 reliable within the scientific community; (~~or~~
3 ~~(k)~~) (m) The reduced use of irrigation water resulting from crop
4 rotation. For purposes of this subsection, crop rotation means the
5 (~~temporary~~) short-term or long-term change in the type of crops grown
6 (~~resulting from the exercise of generally recognized sound farming~~
7 ~~practices~~). Unused water resulting from crop rotation will not be
8 relinquished if the remaining portion of the water continues to be
9 beneficially used; or
10 (n) Foreclosure, bankruptcy, or economic hardship.
11 (2) Notwithstanding any other provisions of RCW 90.14.130 through
12 90.14.180, there shall be no relinquishment of any water right or
13 portion of a water right:
14 (a) If such right is claimed for power development purposes under
15 chapter 90.16 RCW and annual license fees are paid in accordance with
16 chapter 90.16 RCW;
17 (b) If such right is used for a standby or reserve water supply to
18 be used in time of drought or other low flow period so long as
19 withdrawal or diversion facilities are maintained in good operating
20 condition for the use of such reserve or standby water supply;
21 (c) If such right is claimed for a determined future development to
22 take place either within fifteen years of July 1, 1967, or the most
23 recent beneficial use of the water right, whichever date is later;
24 (d) If such right is claimed for municipal water supply purposes
25 under chapter 90.03 RCW;
26 (e) If such waters are not subject to appropriation under the
27 applicable provisions of RCW 90.40.030;
28 (f) If such right or portion of the right is leased to another
29 person for use on land other than the land to which the right is
30 appurtenant as long as the lessee makes beneficial use of the right in
31 accordance with this chapter and a transfer or change of the right has
32 been approved by the department in accordance with RCW 90.03.380,
33 90.03.383, 90.03.390, or 90.44.100;
34 (g) If such a right or portion of the right is authorized for a
35 purpose that is satisfied by the use of agricultural industrial process
36 water as authorized under RCW 90.46.150; (~~or~~)
37 (h) If such right is a trust water right under chapter 90.38 or
38 90.42 RCW; or

1 (i) If the period of full or partial nonuse of such right occurred
2 more than fifteen years before the date upon which relinquishment
3 proceedings are commenced under RCW 90.14.130 or the date upon which
4 adjudication proceedings are commenced under RCW 90.03.105 through
5 90.03.245 or 90.44.220.

6 (3) In adding provisions to this section by chapter 237, Laws of
7 2001, the legislature does not intend to imply legislative approval or
8 disapproval of any existing administrative policy regarding, or any
9 existing administrative or judicial interpretation of, the provisions
10 of this section not expressly added or revised.

11 NEW SECTION. Sec. 4. (1) State statutes requiring the
12 relinquishment of water rights for a failure to use the rights were
13 first enacted in 1967. Under the new system of relinquishment
14 established that year, loss of a water right through nonuse is largely
15 unencumbered by the difficulties of determining the intent of a water
16 right holder. It can be determined administratively.

17 However, in providing this procedure in 1967, the legislature did
18 not have to concern itself with the state of water use records during
19 the entire history of the use of water rights. The statutes were
20 forward-looking; they dealt with contemporary events unfolding in the
21 near future. This administratively expeditious means of requiring the
22 forfeiture of property rights was balanced by the contemporary nature
23 of the type of information that could be obtained regarding the use of
24 the rights. It was supported by the ability of water right holders to
25 know readily whether or not their rights had been recently used and to
26 know readily which records of their activities could be used to counter
27 a claim that their water rights or portions of their water rights had
28 not been exercised as required. The same cannot be said thirty-six
29 years later.

30 In the intervening years, records have been lost or simply not
31 kept. Water rights have passed from one person to another, many times
32 repeatedly. Direct knowledge of the type of information that could
33 counter some partial evidence provided by another has dissipated. Some
34 judicial decisions may have left the impression that recordkeeping
35 regarding individual water use within a federal reclamation project is
36 not relevant to the application of the relinquishment laws: Water use
37 within such a project would be treated collectively, as a whole.

1 The purpose of RCW 90.14.130(3) and 90.14.140(2)(i) is to ensure
2 that the state's relinquishment laws for the nonuse of water rights are
3 applied to relatively contemporary events.

4 (2) Sections 5(3) and 3(2)(i) of this act apply retroactively,
5 except with regard to determinations of relinquishment made by the
6 pollution control hearings board or a court before the effective date
7 of those provisions.

8 **Sec. 5.** RCW 90.14.130 and 1987 c 109 s 13 are each amended to read
9 as follows:

10 (1) When it appears to the department of ecology that a person
11 entitled to the use of water has not beneficially used his or her water
12 right or some portion thereof within the preceding fifteen years, and
13 it appears that said right has or may have reverted to the state
14 because of such nonuse, as provided by RCW 90.14.160, 90.14.170, or
15 90.14.180, the department of ecology shall notify such person by order:
16 PROVIDED, That where a company, association, district, or the United
17 States has filed a blanket claim under the provisions of ((RCW
18 90.14.060)) this chapter for the total benefits of those served by it,
19 the notice shall be served on such company, association, district, or
20 the United States and not upon any of its individual water users who
21 may not have used the water or some portion thereof which they were
22 entitled to use. The order shall contain: ((+1)) (a) A description
23 of the water right, including the approximate location of the point of
24 diversion, the general description of the lands or places where such
25 waters were used, the water source, the amount involved, the purpose of
26 use, and the apparent authority upon which the right is based; ((+2))
27 (b) a statement that unless sufficient cause be shown on appeal the
28 water right will be declared relinquished; and ((+3)) (c) a statement
29 that such order may be appealed to the pollution control hearings
30 board. Any person aggrieved by such an order may appeal it to the
31 pollution control hearings board pursuant to RCW 43.21B.310. The order
32 shall be served by registered or certified mail to the last known
33 address of the person and be posted at the point of division or
34 withdrawal. The order by itself shall not alter the recipient's right
35 to use water, if any.

36 (2) Relinquishment under this chapter shall not occur except in

1 accordance with the procedure set forth in this section or in a
2 proceeding to determine rights to water under RCW 90.03.105 through
3 90.03.245 or 90.44.220.

4 (3) Notwithstanding any other provisions of this chapter, there
5 shall be no relinquishment of any water right or any portion of a water
6 right for full or partial nonuse of such right that occurred more than
7 fifteen years before the date upon which relinquishment proceedings are
8 commenced under this section or the date upon which adjudication
9 proceedings are commenced under RCW 90.03.105 through 90.03.245 or
10 90.44.220.

11 **Sec. 6.** RCW 90.14.160 and 1981 c 291 s 1 are each amended to read
12 as follows:

13 Any person entitled to divert or withdraw waters of the state
14 through any appropriation authorized by enactments of the legislature
15 prior to enactment of chapter 117, Laws of 1917, or by custom, or by
16 general adjudication, who abandons the same, or who voluntarily fails,
17 without sufficient cause, to beneficially use all or any part of said
18 right to divert or withdraw for any period of ((five)) fifteen
19 successive years after July 1, 1967, shall relinquish such right or
20 portion thereof in accordance with the procedure set forth in RCW
21 90.14.130 or as part of adjudication proceedings commenced under RCW
22 90.03.105 through 90.03.245 or 90.44.220, and said right or portion
23 thereof shall revert to the state, and the waters affected by said
24 right shall become available for appropriation in accordance with RCW
25 90.03.250.

26 **Sec. 7.** RCW 90.14.170 and 1967 c 233 s 17 are each amended to read
27 as follows:

28 Any person entitled to divert or withdraw waters of the state by
29 virtue of his or her ownership of land abutting a stream, lake, or
30 watercourse, who abandons the same, or who voluntarily fails, without
31 sufficient cause, to beneficially use all or any part of said right to
32 withdraw or divert said water for any period of ((five)) fifteen
33 successive years after July 1, 1967, shall relinquish such right or
34 portion thereof in accordance with the procedure set forth in RCW
35 90.14.130 or as part of adjudication proceedings commenced under RCW
36 90.03.105 through 90.03.245 or 90.44.220, and such right or portion

1 thereof shall revert to the state, and the waters affected by said
2 right shall become available for appropriation in accordance with the
3 provisions of RCW 90.03.250.

4 **Sec. 8.** RCW 90.14.180 and 1987 c 109 s 101 are each amended to
5 read as follows:

6 Any person hereafter entitled to divert or withdraw waters of the
7 state through an appropriation authorized under RCW 90.03.330,
8 90.44.080, or 90.44.090 who abandons the same, or who voluntarily
9 fails, without sufficient cause, to beneficially use all or any part of
10 said right to withdraw for any period of (~~five~~) fifteen successive
11 years shall relinquish such right or portion thereof in accordance with
12 the procedure set forth in RCW 90.14.130 or as part of adjudication
13 proceedings commenced under RCW 90.03.105 through 90.03.245 or
14 90.44.220, and such right or portion thereof shall revert to the state,
15 and the waters affected by said right shall become available for
16 appropriation in accordance with RCW 90.03.250. All certificates
17 hereafter issued by the department of ecology pursuant to RCW 90.03.330
18 shall expressly incorporate this section by reference.

19 NEW SECTION. **Sec. 9.** A new section is added to chapter 90.14 RCW
20 to read as follows:

21 For the purpose of determining relinquishment, the following shall
22 be used to determine the amount of water that has been beneficially
23 used under a water right on an annual basis: The amount beneficially
24 used is the amount of water used within the limits of the right during
25 the year in which the greatest volume of water was used under the right
26 during the most current fifteen-year period.

27 NEW SECTION. **Sec. 10.** A new section is added to chapter 90.03 RCW
28 to read as follows:

29 (1) The place of use for the surface or ground water right of a
30 public water system as defined by RCW 70.119A.020(4) is whichever of
31 the following that provides the largest service area for the system:

32 (a) The place of use listed on the system's water right certificate
33 or in the statements of claim for the system's water rights filed in
34 the state's water rights claims registry established under RCW
35 90.14.111;

1 (b) The place of use identified in the water system plan most
2 recently approved by the department of health for the system under RCW
3 43.20.050 or as part of a coordinated water system plan under chapter
4 70.116 RCW; or

5 (c) The place of use identified in the water system plan most
6 recently submitted by the system to the department of health for
7 approval under RCW 43.20.050 or as part of a coordinated water system
8 plan under chapter 70.116 RCW.

9 (2) Subsection (1)(b) and (c) of this section apply only to public
10 water systems for which water system plans have been submitted for
11 approval under RCW 43.20.050 or as part of a coordinated water system
12 plan under chapter 70.116 RCW.

13 (3) For a public water system as defined in RCW 70.119A.020(4), the
14 maximum number of service connections or maximum population to be
15 served specified on a water right application, permit, certificate, or
16 claim, or in related supporting documents, shall not be an attribute
17 limiting exercise of the water right.

18 **Sec. 11.** RCW 90.03.015 and 1987 c 109 s 65 are each amended to
19 read as follows:

20 (~~As used in this chapter:~~) The definitions in this section apply
21 throughout this chapter unless the context clearly requires otherwise.

22 (1) "Department" means the department of ecology(~~(+)~~).

23 (2) "Director" means the director of ecology(~~(+and)~~).

24 (3) "Municipal water supplier" means a purveyor, as defined in RCW
25 70.116.030(4), that: (a) Owns or operates a public water system that
26 is entitled or obligated to serve existing and additional customers and
27 uses within one or more approved water service areas to the extent such
28 customers and uses are allowed under an applicable land use plan; and
29 (b) has an approved water system plan under chapter 43.20 or 70.116
30 RCW.

31 (4) "Municipal water supply purposes" means any beneficial use for
32 which water is or is anticipated to be provided by a municipal water
33 supplier, and includes water held to meet future demands or to meet
34 state requirements for back-up supplies such as provisions in the
35 wellhead protection program.

36 (5) "Person" means any firm, association, water users' association,

1 corporation, irrigation district, or municipal corporation, as well as
2 an individual.

3 **Sec. 12.** RCW 90.03.460 and 1917 c 117 s 43 are each amended to
4 read as follows:

5 (1) Nothing in this chapter contained shall operate to effect an
6 impairment of any inchoate right to divert and use water while the
7 application of the water in question to a beneficial use is being
8 prosecuted with reasonable diligence, having due regard to the
9 circumstances surrounding the enterprise, including the magnitude of
10 the project for putting the water to a beneficial use and the market
11 for the resulting water right for irrigation or power or other
12 beneficial use, in the locality in question.

13 (2) A municipal water supplier prosecutes its surface or ground
14 water right with reasonable diligence when the right has been or is
15 identified to meet existing or reasonably anticipated future needs in
16 an approved water system plan pursuant to chapter 43.20 RCW or an
17 approved coordinated water system plan pursuant to chapter 70.116 RCW.
18 This subsection does not limit or exclude other methods or means of
19 prosecuting a water right with reasonable diligence, including, without
20 limitation, installed system capacity.

21 (3) Municipal water suppliers have a minimum of fifty years from
22 the latest approval of a plan identified in subsection (2) of this
23 section to put to use their water rights identified for reasonably
24 anticipated future use. Municipal water suppliers may have additional
25 time based on the particular facts and circumstances, including,
26 without limitation, the size and nature of the water diversion or
27 conveyance project, projected useful life of facilities, size and
28 nature of service areas, growth projections, system interconnections,
29 water conservation, and financing requirements.

30 **Sec. 13.** RCW 90.44.050 and 1987 c 109 s 108 are each amended to
31 read as follows:

32 After June 6, 1945, no withdrawal of public ground waters of the
33 state shall be begun, nor shall any well or other works for such
34 withdrawal be constructed, unless an application to appropriate such
35 waters has been made to the department and a permit has been granted by
36 it ~~((as herein))~~ provided(~~(: EXCEPT, HOWEVER, That))~~ in this section.

1 The following uses are exempt from this section, to the extent that the
2 uses are regularly used beneficially, and are entitled to a right equal
3 to that established by a permit issued under this chapter:

4 (1) Any withdrawal of public ground waters for stock-watering
5 purposes(~~(, or for))~~);

6 (2) Any withdrawal of public ground waters in an amount not
7 exceeding five thousand gallons a day for:

8 (a) The watering of a lawn; or

9 (b) The watering of a noncommercial garden not exceeding one-half
10 acre in area(~~(, or for))~~); or (~~(for))~~)

11 (c) Single or group domestic uses (~~(in an amount not exceeding five~~
12 thousand gallons a day,)); or (~~(for))~~)

13 (d) An industrial purpose (~~(in an amount not exceeding five~~
14 thousand gallons a day, is and shall be exempt from the provisions of
15 this section, but, to the extent that it is regularly used
16 beneficially, shall be entitled to a right equal to that established by
17 a permit issued under the provisions of this chapter: PROVIDED,

18 HOWEVER, That)). However, the department from time to time may require
19 the person or agency making any such small withdrawal to furnish
20 information as to the means for and the quantity of that withdrawal(~~(~~
21 PROVIDED, FURTHER, That)), but the department does not have authority
22 to require the metering or measuring of the withdrawals authorized in
23 this section. At the option of the party making withdrawals of ground
24 waters of the state not exceeding five thousand gallons per day,
25 applications under this section or declarations under RCW 90.44.090 may
26 be filed and permits and certificates obtained in the same manner and
27 under the same requirements as is in this chapter provided in the case
28 of withdrawals in excess of five thousand gallons a day.

29 **Sec. 14.** RCW 90.03.330 and 1987 c 109 s 89 are each amended to
30 read as follows:

31 (1) Upon a showing satisfactory to the department that any
32 appropriation has been perfected in accordance with the provisions of
33 this chapter, it shall be the duty of the department to issue to the
34 applicant a certificate stating such facts in a form to be prescribed
35 by him, and such certificate shall thereupon be recorded with the
36 department. Any original water right certificate issued, as provided
37 by this chapter, shall be recorded with the department and thereafter,

1 at the expense of the party receiving the same, be by the department
2 transmitted to the county auditor of the county or counties where the
3 distributing system or any part thereof is located, and be recorded in
4 the office of such county auditor, and thereafter be transmitted to the
5 owner thereof.

6 (2) A certificate issued by the department under this chapter may
7 not be revoked or diminished without specific statutory direction to do
8 so unless:

9 (a) The water right represented by the certificate has been
10 relinquished under chapter 90.14 RCW or as part of a general
11 adjudication proceeding commenced under RCW 90.03.105 through 90.03.245
12 or 90.44.220 and the revocation or diminishment represents that
13 relinquishment; or

14 (b) The certificate was issued with ministerial errors or was
15 obtained through the misrepresentation of the completion of the project
16 or the quantity appropriated. The department may adjust a certificate
17 under this subsection (2)(b) if ministerial errors are discovered, but
18 only to the extent necessary to correct the ministerial errors; it may
19 diminish the right represented by a certificate if the certificate was
20 obtained through a misrepresentation on the part of the applicant or
21 permit holder but only to the extent of the misrepresentation; and it
22 may revoke a certificate obtained through a misrepresentation on the
23 part of the applicant or permit holder if the misrepresentation was so
24 critical to the decision to issue the certificate that it is clear that
25 no certificate for any aspect of the right would have been issued under
26 the laws and policies applicable at the time the decision to issue the
27 certificate was made. However, the authority provided by this
28 subsection (2) does not include revoking, diminishing, or adjusting a
29 certificate based on any change in policy regarding the issuance of
30 such certificates occurring since the certificate was issued.

31 **Sec. 15.** RCW 90.44.100 and 1997 c 316 s 2 are each amended to read
32 as follows:

33 (1) After an application to, and upon the issuance by the
34 department of an amendment to the appropriate permit or certificate of
35 ground water right, the holder of a valid right to withdraw public
36 ground waters may, without losing the holder's priority of right,
37 construct wells or other means of withdrawal at a new location in

1 substitution for or in addition to those at the original location, or
2 the holder may change the (~~manner~~) purpose or the place of use of the
3 water.

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

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

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

6 (4) A certificate issued by the department under this chapter may
7 not be revoked or diminished without specific statutory direction to do
8 so unless:

9 (a) The water right represented by the certificate has been
10 relinquished under chapter 90.14 RCW or as part of a general
11 adjudication proceeding commenced under RCW 90.03.105 through 90.03.245
12 or 90.44.220 and the revocation or diminishment represents that
13 relinquishment; or

14 (b) The certificate was issued with ministerial errors or was
15 obtained through the misrepresentation of the completion of the project
16 or the quantity appropriated. The department may adjust a certificate
17 under this subsection (4)(b) if ministerial errors are discovered, but
18 only to the extent necessary to correct the ministerial errors; it may
19 diminish the right represented by a certificate if the certificate was
20 obtained through a misrepresentation on the part of the applicant or
21 permit holder but only to the extent of the misrepresentation; and it
22 may revoke a certificate obtained through a misrepresentation on the
23 part of the applicant or permit holder if the misrepresentation was so
24 critical to the decision to issue the certificate that it is clear that
25 no certificate for any aspect of the right would have been issued under
26 the laws and policies applicable at the time the decision to issue the
27 certificate was made. However, the authority provided by this
28 subsection (4) does not include revoking, diminishing, or adjusting a
29 certificate based on any change in policy regarding the issuance of
30 such certificates occurring since the certificate was issued.

31 (5) As used in this section, the "location of the original well or
32 wells" is the area described as the point of withdrawal in the original
33 public notice published for the application for the water right for the
34 well.

35 (6) The right to use water for any beneficial use within the
36 general category of an agricultural use includes the right to use the
37 water, without applying to the department or any other governmental
38 entity for approval, for any other beneficial use within the general

1 category of an agricultural use. The general category of an
2 agricultural use of water includes, but is not limited to, the
3 beneficial use of water for stock watering, agricultural irrigation,
4 processing agricultural commodities into agricultural products, and
5 other agricultural uses.

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

8 Surface and ground water rights held by the same person may be
9 conjunctively used without a transfer, change, or amendment of the
10 rights to maintain flows in streams during portions of the year of
11 generally reduced flows as long as the total quantity of water used
12 under the surface and ground water rights on an annual basis is within
13 the total quantity of water authorized under the rights and other water
14 rights existing at the time the conjunctive use is initiated are not
15 impaired.

16 **Sec. 17.** RCW 90.03.383 and 1991 c 350 s 1 are each amended to read
17 as follows:

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

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

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

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

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

1 approved pursuant to chapter 70.116 RCW, and further provided that the
2 water used is within the instantaneous and annual withdrawal rates
3 specified in the water right permit and that no outstanding complaints
4 of impairment to existing water rights have been filed with the
5 department of ecology prior to September 1, 1991. Where such
6 complaints of impairment have been received, the department of ecology
7 shall make all reasonable efforts to resolve them in a timely manner
8 through agreement of the parties or through available administrative
9 remedies.

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

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

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

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

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

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

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

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

12 **Sec. 18.** RCW 90.54.020 and 1997 c 442 s 201 are each amended to
13 read as follows:

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

16 (1) Uses of water for domestic, stock watering, industrial,
17 commercial, agricultural, irrigation, hydroelectric power production,
18 mining, fish and wildlife maintenance and enhancement, recreational,
19 and thermal power production purposes, and preservation of
20 environmental and aesthetic values, and all other uses compatible with
21 the enjoyment of the public waters of the state, are declared to be
22 beneficial.

23 (2) Allocation of waters among potential uses and users shall be
24 based generally on the securing of the maximum net benefits for the
25 people of the state. Maximum net benefits shall constitute total
26 benefits less costs including opportunities lost.

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

29 (a) Perennial rivers and streams of the state shall be retained
30 with base flows necessary to provide for preservation of wildlife,
31 fish, scenic, aesthetic and other environmental values, and
32 navigational values. Lakes and ponds shall be retained substantially
33 in their natural condition. Withdrawals of water which would conflict
34 therewith shall be authorized only in those situations where it is
35 clear that overriding considerations of the public interest will be
36 served.

1 (b) Waters of the state shall be of high quality. Regardless of
2 the quality of the waters of the state, all wastes and other materials
3 and substances proposed for entry into said waters shall be provided
4 with all known, available, and reasonable methods of treatment prior to
5 entry. Notwithstanding that standards of quality established for the
6 waters of the state would not be violated, wastes and other materials
7 and substances shall not be allowed to enter such waters which will
8 reduce the existing quality thereof, except in those situations where
9 it is clear that overriding considerations of the public interest will
10 be served. Technology-based effluent limitations or standards for
11 discharges for municipal water treatment plants located on the
12 Chehalis, Columbia, Cowlitz, Lewis, or Skagit river shall be adjusted
13 to reflect credit for substances removed from the plant intake water
14 if:

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

17 (ii) The municipality demonstrates that no violation of receiving
18 water quality standards or appreciable environmental degradation will
19 result.

20 (4) The development of multipurpose water storage facilities shall
21 be a high priority for programs of water allocation, planning,
22 management, and efficiency. The department, other state agencies, and
23 local governments(~~(, and planning units formed under section 107 or 108~~
24 ~~of this act)~~) shall evaluate the potential for the development of new
25 storage projects and the benefits and effects of storage in reducing
26 damage to stream banks and property, increasing the use of land,
27 providing water for municipal, industrial, agricultural, power
28 generation, and other beneficial uses, and improving stream flow
29 regimes for fisheries and other instream uses.

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

32 (6) Multiple-purpose impoundment structures are to be preferred
33 over single-purpose structures. Due regard shall be given to means and
34 methods for protection of fishery resources in the planning for and
35 construction of water impoundment structures and other artificial
36 obstructions.

37 (7) Federal, state, and local governments, individuals,
38 corporations, groups and other entities shall be encouraged to carry

1 out practices of conservation as they relate to the use of the waters
2 of the state. In addition to traditional development approaches,
3 improved water use efficiency and conservation shall be emphasized in
4 the management of the state's water resources and in some cases will be
5 a potential new source of water with which to meet future needs
6 throughout the state.

7 (8) Development of water supply systems, whether publicly or
8 privately owned, which provide water to the public generally in
9 regional areas within the state shall be encouraged. Development of
10 water supply systems for multiple domestic use which will not serve the
11 public generally shall be discouraged where water supplies are
12 available from water systems serving the public.

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

16 (10) Adjudicating water rights and claims under RCW 90.03.105
17 through 90.03.245 and 90.44.220 can be one of the most effective means
18 of resolving uncertainty regarding the rights of water users. Although
19 resolving uncertainty regarding water rights in entire regions may be
20 required from time to time, initiating and conducting such
21 adjudications in smaller geographic areas to settle rights against
22 smaller bodies of water is to be given high priority in managing water
23 resources.

24 (11) Expressions of the public interest will be sought at all
25 stages of water planning and allocation discussions.

26 ((+11)) (12) Water management programs, including but not limited
27 to, water quality, flood control, drainage, erosion control and storm
28 runoff are deemed to be in the public interest.

29 **Sec. 19.** RCW 90.38.020 and 2002 c 329 s 7 are each amended to read
30 as follows:

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

1 (b) If the holder of a right to water from a body of water chooses
2 to donate all or a portion of the person's water right to the trust
3 water system to assist in providing instream flows on a temporary or
4 permanent basis, the department shall accept the donation on such terms
5 as the person may prescribe as long as the donation satisfies the
6 requirements of subsection (4) of this section and the other applicable
7 requirements of this chapter and the terms prescribed are relevant and
8 material to protecting any interest in the water right retained by the
9 donor. Once accepted, such rights are trust water rights within the
10 conditions prescribed by the donor.

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

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

17 (4) A water right donated under subsection (1)(b) of this section
18 shall not exceed the extent to which the water right was exercised
19 during the five years before the donation nor may the total of any
20 portion of the water right remaining with the donor plus the donated
21 portion of the water right exceed the extent to which the water right
22 was exercised during the five years before the donation. A water right
23 holder who believes his or her water right has been impaired by a trust
24 water right donated under subsection (1)(b) of this section may request
25 that the department review the impairment claim. If the department
26 determines that exercising the trust water right resulting from the
27 donation or exercising a portion of that trust water right donated
28 under subsection (1)(b) of this section is impairing existing water
29 rights in violation of RCW 90.38.902, the trust water right shall be
30 altered by the department to eliminate the impairment. Any decision of
31 the department to alter or not alter a trust water right donated under
32 subsection (1)(b) of this section is appealable to the pollution
33 control hearings board under RCW 43.21B.230. A donated water right's
34 status as a trust water right under this subsection is not evidence of
35 the validity or quantity of the water right.

36 (5) Any water right conveyed to the trust water right system as a
37 gift that is expressly conditioned to limit its use to instream
38 purposes shall be managed by the department for public purposes to

1 ensure that it qualifies as a gift that is deductible for federal
2 income taxation purposes for the person or entity conveying the water
3 right.

4 (6) If the department acquires a trust water right by lease, the
5 amount of the trust water right shall not exceed the extent to which
6 the water right was exercised during the five years before the
7 acquisition was made nor may the total of any portion of the water
8 right remaining with the original water right holder plus the portion
9 of the water right leased by the department exceed the extent to which
10 the water right was exercised during the five years before the
11 acquisition. A water right holder who believes his or her water right
12 has been impaired by a trust water right leased under this subsection
13 may request that the department review the impairment claim. If the
14 department determines that exercising the trust water right resulting
15 from the leasing or exercising of a portion of that trust water right
16 leased under this subsection is impairing existing water rights in
17 violation of RCW 90.38.902, the trust water right shall be altered by
18 the department to eliminate the impairment. Any decision of the
19 department to alter or not to alter a trust water right leased under
20 this subsection is appealable to the pollution control hearings board
21 under RCW 43.21B.230. The department's leasing of a trust water right
22 under this subsection is not evidence of the validity or quantity of
23 the water right.

24 (7) For a water right donated to or acquired by the trust water
25 rights program on a temporary basis, the full quantity of water
26 diverted or withdrawn to exercise the right before the donation or
27 acquisition shall be placed in the trust water rights program and shall
28 revert to the donor or person from whom it was acquired when the trust
29 period ends.

30 (8) The procedures identified in subsection (1)(b) of this section
31 for donations and identified in subsection (6) of this section for
32 leases shall also apply to donations or leases of existing water rights
33 where:

34 (a) Existing water rights related to agriculture are donated or
35 leased to preserve the opportunity for future agricultural use and to
36 enhance instream flows temporarily; or

37 (b) Existing water rights acquired for the purpose of providing
38 water supply to industrial lands as designated in a land use plan

1 adopted under chapter 36.70A RCW are donated or leased to preserve the
2 opportunity for future industrial use and to enhance instream flows
3 temporarily.

4 **Sec. 20.** RCW 90.42.080 and 2002 c 329 s 9 are each amended to read
5 as follows:

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

13 (b) If the holder of a right to water from a body of water chooses
14 to donate all or a portion of the person's water right to the trust
15 water system to assist in providing instream flows on a temporary or
16 permanent basis, the department shall accept the donation on such terms
17 as the person may prescribe as long as the donation satisfies the
18 requirements of subsection (4) of this section and the other applicable
19 requirements of this chapter and the terms prescribed are relevant and
20 material to protecting any interest in the water right retained by the
21 donor. Once accepted, such rights are trust water rights within the
22 conditions prescribed by the donor.

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

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

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

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

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

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

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

24 (8) If the department acquires a trust water right by lease, the
25 amount of the trust water right shall not exceed the extent to which
26 the water right was exercised during the five years before the
27 acquisition was made nor may the total of any portion of the water
28 right remaining with the original water right holder plus the portion
29 of the water right leased by the department exceed the extent to which
30 the water right was exercised during the five years before the
31 acquisition. A water right holder who believes his or her water right
32 has been impaired by a trust water right leased under this subsection
33 may request that the department review the impairment claim. If the
34 department determines that exercising the trust water right resulting
35 from the leasing or exercising of a portion of that trust water right
36 leased under this subsection is impairing existing water rights in
37 violation of RCW 90.42.070, the trust water right shall be altered by
38 the department to eliminate the impairment. Any decision of the

1 department to alter or not to alter a trust water right leased under
2 this subsection is appealable to the pollution control hearings board
3 under RCW 43.21B.230. The department's leasing of a trust water right
4 under this subsection is not evidence of the validity or quantity of
5 the water right.

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

12 (10) The procedures identified in subsection (1)(b) of this section
13 for donations and identified in subsection (8) of this section for
14 leases also apply to donations or leases of existing water rights
15 where:

16 (a) Existing water rights related to agriculture are donated or
17 leased to preserve the opportunity for future agricultural use and to
18 enhance instream flows temporarily; or

19 (b) Existing water rights acquired for the purpose of providing
20 water supply to industrial lands as designated in a land use plan
21 adopted under chapter 36.70A RCW are donated or leased to preserve the
22 opportunity for future industrial use and to enhance instream flows
23 temporarily.

24 NEW SECTION. Sec. 21. A new section is added to chapter 43.155
25 RCW to read as follows:

26 The legislature finds that the state has a significant need to
27 provide a reliable water supply for people, farms, and fish, and that
28 this can be accomplished through such activities as the construction of
29 multiple purpose water storage facilities, and the leasing of water.

30 NEW SECTION. Sec. 22. A new section is added to chapter 43.155
31 RCW to read as follows:

32 The water for agriculture, salmon, and humans account is hereby
33 created in the state treasury. The moneys in this account shall only
34 be used for activities that develop water storage projects for multiple
35 purposes, lease water, ensure safe drinking water, increase municipal
36 and agricultural water conservation, promote water reuse, and to

1 implement projects developed through locally based watershed planning.
2 All interest earnings on moneys deposited into the account, including
3 loan repayments, shall remain in the account and may be used for
4 eligible purposes. Moneys in the account may be spent only after
5 appropriation.

6 NEW SECTION. **Sec. 23.** A new section is added to chapter 43.155
7 RCW to read as follows:

8 (1) The proceeds from the sale of bonds authorized by this
9 subchapter shall be deposited into the water for agriculture, salmon,
10 and humans account created in section 22 of this act unless otherwise
11 specified below. These funds shall be appropriated by the legislature
12 as follows:

13 (a) Fifty percent of the funding shall be used for water storage
14 and conveyance projects for multiple instream and out-of-stream
15 purposes. For this purpose, funding for a water storage facility that
16 is within the distribution works of a public water system and within an
17 incorporated area or within an area designated as an urban growth area
18 under chapter 36.70A RCW shall be considered funding for a drinking
19 water system and not funding that applies to the fifty percent
20 dedicated by this subsection (1)(a). The department shall establish
21 criteria for a grant and loan program for the construction, planning,
22 design, and studies necessary for water storage and conveyance
23 projects. The department shall contract with the public works board
24 created under RCW 43.155.030 to administer these grants and loans;

25 (b) Twenty-five percent of the funding shall be deposited into the
26 public works assistance account under chapter 43.155 RCW and shall be
27 used for safe drinking water and reclaimed water projects;

28 (c) Ten percent of the funding shall be used for agricultural water
29 conservation projects and instream flows;

30 (d) Seven and one-half percent of the funding shall be used to
31 lease water to meet instream flow levels needed by fish; and

32 (e) Seven and one-half percent of the funding shall be used for
33 implementing projects developed through the watershed planning process
34 authorized under chapter 90.82 RCW.

35 (2) The percentage of the local funding for a capital project that
36 is required under this section to receive state funding shall be the
37 same for all types and categories of capital projects.

1 (3) If an agricultural water conservation project is provided
2 funding under this section and in consideration thereof a portion of
3 the water available under a water right involved in the project is to
4 be transferred or otherwise dedicated to the state, the transfer or
5 dedication shall be in the form of a lease of water for a period that
6 is not more than the period during which the elements of the
7 conservation project are estimated to operate effectively and
8 efficiently. The quantity of water transferred or dedicated to the
9 state expressed as a percentage of the total water available under the
10 right before the transfer or dedication shall not exceed the percentage
11 of the total cost of the conservation project represented by the funds
12 provided by the state for the conservation project.

13 (4) The legislature may authorize expenditures from the water for
14 agriculture, salmon, and humans account to pay for the costs of
15 establishing and administering the water infrastructure programs
16 described in subsection (1) of this section. The amount of funding
17 dedicated to this purpose shall not exceed one percent of the total
18 amount of bonds sold in any calendar year. These funds may be used to
19 define technical and financial program requirements, such as grant and
20 loan criteria, to solicit, review, and award funds, and to monitor
21 performance, make payments, and conduct other administrative
22 activities.

23 NEW SECTION. **Sec. 24.** A new section is added to chapter 43.155
24 RCW to read as follows:

25 The legislature shall appropriate any moneys that are provided
26 under section 23 of this act for capital projects, including planning,
27 engineering, and other studies for such projects, to the public works
28 board created under RCW 43.155.030. Before November 1st of each year,
29 the board shall develop and submit to the governor and the legislature
30 a prioritized list of projects that are recommended for funding by the
31 legislature under this section. The board shall approve and disburse
32 grants and loans for such projects from appropriations made under this
33 section.

34 **Sec. 25.** RCW 43.84.092 and 2002 c 242 s 2, 2002 c 114 s 24 and
35 2002 c 56 s 402 are each reenacted and amended to read as follows:

1 (1) All earnings of investments of surplus balances in the state
2 treasury shall be deposited to the treasury income account, which
3 account is hereby established in the state treasury.

4 (2) The treasury income account shall be utilized to pay or receive
5 funds associated with federal programs as required by the federal cash
6 management improvement act of 1990. The treasury income account is
7 subject in all respects to chapter 43.88 RCW, but no appropriation is
8 required for refunds or allocations of interest earnings required by
9 the cash management improvement act. Refunds of interest to the
10 federal treasury required under the cash management improvement act
11 fall under RCW 43.88.180 and shall not require appropriation. The
12 office of financial management shall determine the amounts due to or
13 from the federal government pursuant to the cash management improvement
14 act. The office of financial management may direct transfers of funds
15 between accounts as deemed necessary to implement the provisions of the
16 cash management improvement act, and this subsection. Refunds or
17 allocations shall occur prior to the distributions of earnings set
18 forth in subsection (4) of this section.

19 (3) Except for the provisions of RCW 43.84.160, the treasury income
20 account may be utilized for the payment of purchased banking services
21 on behalf of treasury funds including, but not limited to, depository,
22 safekeeping, and disbursement functions for the state treasury and
23 affected state agencies. The treasury income account is subject in all
24 respects to chapter 43.88 RCW, but no appropriation is required for
25 payments to financial institutions. Payments shall occur prior to
26 distribution of earnings set forth in subsection (4) of this section.

27 (4) Monthly, the state treasurer shall distribute the earnings
28 credited to the treasury income account. The state treasurer shall
29 credit the general fund with all the earnings credited to the treasury
30 income account except:

31 (a) The following accounts and funds shall receive their
32 proportionate share of earnings based upon each account's and fund's
33 average daily balance for the period: The capitol building
34 construction account, the Cedar River channel construction and
35 operation account, the Central Washington University capital projects
36 account, the charitable, educational, penal and reformatory
37 institutions account, the common school construction fund, the county
38 criminal justice assistance account, the county sales and use tax

1 equalization account, the data processing building construction
2 account, the deferred compensation administrative account, the deferred
3 compensation principal account, the department of retirement systems
4 expense account, the drinking water assistance account, the drinking
5 water assistance administrative account, the drinking water assistance
6 repayment account, the Eastern Washington University capital projects
7 account, the education construction fund, the emergency reserve fund,
8 the federal forest revolving account, the health services account, the
9 public health services account, the health system capacity account, the
10 personal health services account, the state higher education
11 construction account, the higher education construction account, the
12 highway infrastructure account, the industrial insurance premium refund
13 account, the judges' retirement account, the judicial retirement
14 administrative account, the judicial retirement principal account, the
15 local leasehold excise tax account, the local real estate excise tax
16 account, the local sales and use tax account, the medical aid account,
17 the mobile home park relocation fund, the multimodal transportation
18 account, the municipal criminal justice assistance account, the
19 municipal sales and use tax equalization account, the natural resources
20 deposit account, the oyster reserve land account, the perpetual
21 surveillance and maintenance account, the public employees' retirement
22 system plan 1 account, the public employees' retirement system combined
23 plan 2 and plan 3 account, the public facilities construction loan
24 revolving account beginning July 1, 2004, the public health
25 supplemental account, the Puyallup tribal settlement account, the
26 regional transportation investment district account, the resource
27 management cost account, the site closure account, the special wildlife
28 account, the state employees' insurance account, the state employees'
29 insurance reserve account, the state investment board expense account,
30 the state investment board commingled trust fund accounts, the
31 supplemental pension account, the Tacoma Narrows toll bridge account,
32 the teachers' retirement system plan 1 account, the teachers'
33 retirement system combined plan 2 and plan 3 account, the tobacco
34 prevention and control account, the tobacco settlement account, the
35 transportation infrastructure account, the tuition recovery trust fund,
36 the University of Washington bond retirement fund, the University of
37 Washington building account, the volunteer fire fighters' and reserve
38 officers' relief and pension principal fund, the volunteer fire

1 fighters' and reserve officers' administrative fund, the Washington
2 fruit express account, the Washington judicial retirement system
3 account, the Washington law enforcement officers' and fire fighters'
4 system plan 1 retirement account, the Washington law enforcement
5 officers' and fire fighters' system plan 2 retirement account, the
6 Washington school employees' retirement system combined plan 2 and 3
7 account, the Washington state health insurance pool account, the
8 Washington state patrol retirement account, the Washington State
9 University building account, the Washington State University bond
10 retirement fund, the water for agriculture, salmon, and humans account,
11 the water pollution control revolving fund, and the Western Washington
12 University capital projects account. Earnings derived from investing
13 balances of the agricultural permanent fund, the normal school
14 permanent fund, the permanent common school fund, the scientific
15 permanent fund, and the state university permanent fund shall be
16 allocated to their respective beneficiary accounts. All earnings to be
17 distributed under this subsection (4)(a) shall first be reduced by the
18 allocation to the state treasurer's service fund pursuant to RCW
19 43.08.190.

20 (b) The following accounts and funds shall receive eighty percent
21 of their proportionate share of earnings based upon each account's or
22 fund's average daily balance for the period: The aeronautics account,
23 the aircraft search and rescue account, the county arterial
24 preservation account, the department of licensing services account, the
25 essential rail assistance account, the ferry bond retirement fund, the
26 grade crossing protective fund, the high capacity transportation
27 account, the highway bond retirement fund, the highway safety account,
28 the motor vehicle fund, the motorcycle safety education account, the
29 pilotage account, the public transportation systems account, the Puget
30 Sound capital construction account, the Puget Sound ferry operations
31 account, the recreational vehicle account, the rural arterial trust
32 account, the safety and education account, the special category C
33 account, the state patrol highway account, the transportation equipment
34 fund, the transportation fund, the transportation improvement account,
35 the transportation improvement board bond retirement account, and the
36 urban arterial trust account.

37 (5) In conformance with Article II, section 37 of the state

1 Constitution, no treasury accounts or funds shall be allocated earnings
2 without the specific affirmative directive of this section.

3 NEW SECTION. **Sec. 26.** Sections 21 through 24 of this act
4 constitute a new subchapter in chapter 43.155 RCW entitled "water
5 infrastructure and stewardship."

6 NEW SECTION. **Sec. 27.** Sections 5 (1) and (2) and 6 through 8 of
7 this act apply retroactively, except with regard to determinations of
8 relinquishment made by the pollution control hearings board or a court
9 before the effective date of those sections of this act.

--- END ---