
SENATE BILL 5647

State of Washington 61st Legislature 2009 Regular Session

By Senators Hatfield, Hewitt, Delvin, and Fraser

Read first time 01/28/09. Referred to Committee on Environment, Water & Energy.

1 AN ACT Relating to establishing a pilot local water management
2 program in one qualified jurisdiction; amending RCW 90.03.380,
3 90.44.100, and 43.21B.110; reenacting and amending RCW 90.14.140;
4 adding a new chapter to Title 90 RCW; and providing an expiration date.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that the Walla Walla
7 watershed community faces substantial challenges in planning for future
8 water use and meeting the needs of fish, farms, and people. The
9 legislature further finds that the participants in the Walla Walla
10 watershed planning group have demonstrated exceptional cooperation in
11 developing an innovative water management concept that enhances
12 flexibility in water use while protecting ecological functions. The
13 legislature also recognizes the significant contribution of
14 representative William Grant's leadership in the creation of a Walla
15 Walla pilot design to authorize local water management activity.

16 NEW SECTION. **Sec. 2.** The definitions in this section apply
17 throughout this chapter unless the context clearly requires otherwise.

18 (1) "Basin" means the WRIA where the planning area is located.

1 (2) "Board" means a water management board created under this
2 chapter.

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

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

5 (5) "Initiating entities" means the county boards of commissioners
6 within the planning area, the city council of the largest Washington
7 city in the planning area, the largest water user in the planning area,
8 and all federally recognized tribes owning land within the planning
9 area.

10 (6) "Instream flow" means a minimum flow under chapter 90.03 or
11 90.22 RCW or a base flow under chapter 90.54 RCW that has been set by
12 rule.

13 (7) "Local water management program" means the water bank, any
14 local water plans authorized by the board, and any other activities
15 authorized by section 5 of this act.

16 (8) "Local water plan" means a voluntary water management plan
17 developed by local water rights holders within the planning area to
18 manage their water use in a manner that enhances stream flows in
19 exchange for greater flexibility in exercising the water rights.

20 (9) "Planning area" means the entirety or a subsection of a single
21 or multiple WRIA as identified in the creation of a board under this
22 chapter.

23 (10) "Trust water right" means any water right acquired by the
24 state under chapter 90.42 RCW for management in the state's water
25 rights program.

26 (11) "Watershed plan" means a plan adopted under chapter 90.82 RCW.

27 (12) "WRIA" means a water resource inventory area established in
28 chapter 173-500 WAC as it existed on January 1, 1997.

29 NEW SECTION. **Sec. 3.** (1) Initiating entities may collectively
30 petition the department in order to establish a water management board.

31 (2) The department, in consultation with the initiating entities,
32 may create a board if:

33 (a) The initiating entities demonstrate to the department that the
34 following criteria are satisfied:

35 (i) Community support for the development of a local watershed
36 management plan, including the affected tribes, local governments, and
37 general community support;

1 (ii) There is commitment on the part of the initiating entities and
2 the affected community to enhance instream flows for fish; and

3 (iii) An adequate monitoring network is in place, as determined by
4 the department;

5 (b) The department determines the following:

6 (i) An instream flow rule for the WRIA or WRIs in the planning
7 area has been adopted since 1998;

8 (ii) The planning area is located within one of the sixteen fish-
9 critical basins designated by the department in its March 2003
10 "Washington Water Acquisition Program" report and demonstrates a
11 significant history of severely impaired flows; and

12 (iii) The watershed planning unit has completed a watershed
13 implementation plan adopted under chapter 90.82 RCW and salmon recovery
14 implementation plan adopted under chapter 77.85 RCW.

15 (3) The department, in determining whether to create a board, must
16 give strong consideration to basins that have completed a judicial
17 proceeding to adjudicate water rights under chapter 90.03 RCW.

18 NEW SECTION. **Sec. 4.** (1)(a) Each board must be composed of the
19 following members:

20 (i) All affected federally recognized tribes within the planning
21 area will be invited to participate and may appoint one member each;

22 (ii) The following entities must each appoint one member:

23 (A) Each county board of commissioners within the planning area;

24 (B) The city council of the largest Washington city in the planning
25 area; and

26 (C) The board of directors of the entity or the person who uses the
27 greatest quantity of water in the planning area;

28 (iii) The conservation districts' board of supervisors in the
29 planning area must jointly appoint one member; and

30 (iv) The members under (a)(i) through (iii) of this subsection must
31 appoint the remaining three members of the board. These three members
32 must be residents of the planning area. One member must represent
33 planning area water users. One member must represent environmental
34 interests in the planning area. One member must be a citizen at large.

35 (b) If for any reason one of the required governments or entities
36 to be represented on the board declines to participate, the remaining

1 board members may invite another local government within the planning
2 area to join the board.

3 (2) Each member of the board serves a two-year term and may be
4 reappointed for an additional term. Members may continue to serve on
5 the board until a new appointment is made.

6 (3) The board must create a policy advisory group and a water
7 resource panel.

8 (a) For the policy advisory group, the board must invite
9 participation from the department and the department of fish and
10 wildlife, other affected state agencies, and other interests as
11 appropriate. The board may also appoint members from local government
12 agencies, academia, watershed and salmon recovery entities, businesses,
13 and agricultural and environmental organizations as the board deems
14 appropriate.

15 (b) The water resource panel must assist and advise the board in
16 coordinating and developing water resource-related programs, planning,
17 and activities within the planning area, including the coordination of
18 efforts with all jurisdictions of the planning area and development of
19 the board's strategic actions.

20 (c) For the water resource panel, the board must appoint members to
21 the water resource panel who have expertise and understanding regarding
22 surface water and groundwater monitoring and hydrological analysis,
23 irrigation management and engineering, water rights, and fisheries
24 habitat and economic development. The board must invite participation
25 from the department and the department of fish and wildlife.

26 (d) The water resource panel must provide technical assistance for
27 the development of the local water plans and provide advice to the
28 board on the criteria for establishment of local water plans and the
29 approval, denial, or modification of the local water plans.

30 (4) A board member, employee, or contractor may not engage in any
31 act that is in conflict with the proper discharge of their official
32 duties. A person is deemed to have a conflict of interest if he or she
33 has an ownership interest in a water right that the board is asked to
34 take action on, or has an ownership, membership, or financial interest
35 in any entity, project, development, or venture related to a matter
36 before the board, including the review and approval of a local water
37 plan.

1 NEW SECTION. **Sec. 5.** (1) The board has the following authority,
2 duties, and responsibilities:

3 (a) Assume the duties, responsibilities, and all current activities
4 of the watershed planning unit and the initiating governments
5 authorized in RCW 90.82.040;

6 (b) Develop strategic actions for the planning area by building on
7 the watershed plan;

8 (c) Adopt and revise criteria, guidance, and processes to
9 effectuate the purpose of this chapter;

10 (d) Administer the local water plan process;

11 (e) Manage the water bank as authorized under this chapter;

12 (f) Acquire water rights by donation, purchase, or lease;

13 (g) Represent the interests of the planning area in local, state,
14 tribal, federal, and multistate basin water planning initiatives and
15 programs; and

16 (h) Enter into agreements with water rights holders to not divert
17 water that becomes available as a result of interstate agreements,
18 local water plans, water bank activities, or other programs and
19 projects endorsed by the board and the department.

20 (2) The board may acquire, purchase, hold, lease, manage, occupy,
21 and sell real and personal property, including water rights, or any
22 interest in water rights, enter into and perform all necessary
23 contracts, appoint and employ necessary agents and employees, including
24 an executive director and fix their compensation, employ contractors
25 including contracts for professional services, and do all lawful acts
26 required and expedient to carry out the purposes of this chapter.

27 (3) The board constitutes an independently funded entity, and may
28 provide for its own funding as determined by the board. The board may
29 solicit and accept grants, loans, and donations and may adopt fees for
30 services it provides. The board may not impose taxes or acquire
31 property, including water rights, by the exercise of eminent domain.
32 The board may distribute available funds as grants or loans to local
33 water plans or other water initiatives and projects that will further
34 the goals of the board.

35 (4) The ability of the board to fully meet its duties under this
36 chapter is dependent on the level of funding available to the board.
37 If sufficient funding is not available to the board to carry out its

1 duties, the board may, in consultation with the department, establish
2 a plan that determines and sets priorities for implementation of the
3 board's duties.

4 (5) The board, and its members and staff, acting in their official
5 capacities, are immune from liability and are not subject to any cause
6 of action or claim for damages arising from acts or omissions engaged
7 in under this chapter.

8 (6) Upon the creation of the board, and for the duration of the
9 board, the existing planning unit for the planning area, established
10 under RCW 90.82.040, is dissolved and all assets, funds, files,
11 planning documents, pending plans and grant applications, and other
12 current activities of the planning unit are transferred to the board.

13 NEW SECTION. **Sec. 6.** The board, in collaboration with the
14 department, must provide a written report to the legislature by
15 December 1, 2012, December 1, 2015, and December 1, 2018. The report
16 must summarize the actions, funding, and accomplishments of the board
17 in the previous three years, and submit recommendations for improvement
18 of the local water plan process. The 2018 report must also contain
19 recommendations on the future of the board.

20 NEW SECTION. **Sec. 7.** (1) The board may establish a water bank to
21 provide a mechanism for the holders of water rights within the planning
22 area to voluntarily deposit them in the water bank on a temporary or
23 permanent basis.

24 (2) The board has the following authority to manage the water bank
25 in the planning area:

26 (a) The board may accept a surface water right or a groundwater
27 right into the water bank on a permanent or temporary basis under terms
28 and conditions agreed upon by the water rights holder and the board.

29 (b) A water right or portion thereof that will be made available
30 under local water plans for stream flow enhancement may be deposited
31 into the water bank on a temporary or permanent basis defined by the
32 terms of the local water plan, as provided in this chapter.

33 (c) Except as provided in (d) of this subsection, the board must
34 accept a water right deposited for instream flow into the water bank
35 without conducting a review of the extent and validity of the water
36 right and the water right may not thereafter be authorized for any

1 other purposes. A water right placed in the water bank that has not
2 been tentatively determined as to its extent and validity is not
3 entitled to be protected from impairment by another water right.

4 (d) The board may manage a water right that has been deposited into
5 the water bank as mitigation for impairment to instream flows and other
6 existing water rights. However, the water right may only be available
7 for mitigation to the extent the department determines the water right
8 is valid and use of the water right for mitigation will not cause
9 detriment or injury to existing water rights.

10 (3)(a) A water right deposited in the water bank on a temporary
11 basis remains in the ownership of the water rights holder and not the
12 state of Washington or the board.

13 (b) A water right deposited in the water bank on a permanent basis
14 must be transferred to the state of Washington as a trust water right.

15 (4) A water right or portion of a water right in the water bank is
16 not subject to loss by forfeiture under RCW 90.14.130 through
17 90.14.200. When a temporary water right is withdrawn from the water
18 bank, the time period that the water right was in the water bank may
19 not be calculated as time water was not used for purposes of RCW
20 90.14.160, 90.14.170, and 90.14.180.

21 (5) When a temporarily deposited water right is withdrawn from the
22 water bank, the time period that the water right was in the water bank
23 may not be included in the five years of prior water use for purposes
24 of applications to add acreage or purposes of water use under RCW
25 90.03.380(1).

26 (6) Nothing in this chapter forecloses or diminishes the rights of
27 any person to apply to the department to transfer a water right to the
28 state trust water rights program under the authority of chapter 90.42
29 RCW or to apply for a change of a water right to a water conservancy
30 board authorized under chapter 90.80 RCW.

31 NEW SECTION. **Sec. 8.** (1) The board shall adopt guidelines and
32 criteria for filing, review, and approval of a local water plan. The
33 board shall also develop a dispute resolution process that provides for
34 water users, the board, and the department to resolve disputes
35 regarding the implementation and enforcement of a local water plan.

36 (2) A water user or group of water users within the planning area,

1 organized as provided in guidelines adopted by the board, may submit a
2 proposed local water plan to the board.

3 (3) A local water plan must include:

4 (a) A determination by the board of the baseline water use for all
5 water rights involved in the local water plan, based on the guidelines
6 adopted by the board, and in consultation with the water resource
7 panel. The baseline documents regarding water use that are submitted
8 by the water users may not be used by the department to determine the
9 validity of the water rights in any future administrative or regulatory
10 actions;

11 (b) A clearly defined set of practices that provide for flexibility
12 of water use as defined in subsection (4) of this section;

13 (c) An estimate of the amount of water that would remain instream
14 either long term or during critical flow periods for fish;

15 (d) Performance measures and options for achieving reductions in
16 total water use from baseline; and

17 (e) Measurement, tracking, and monitoring measures and procedures
18 that ensure the implementation and enforcement of the measures for
19 flexibility of water use, enhancement of the stream flows, and other
20 elements, terms, and conditions in the local water plan.

21 (4) The local water plan may have elements and provide rights to
22 the use and application of water that are not otherwise authorized in
23 the water rights, including:

24 (a) The ability to use the quantity of water defined as baseline in
25 section 12(1)(a) of this act on new or additional places of use, from
26 new or additional points of diversion or withdrawal, and at different
27 times of the year;

28 (b) The ability to change or add a source of water supply including
29 the use of groundwater to supplement surface water rights and the
30 ability to implement the conjunctive use of the groundwater and surface
31 water; and

32 (c) The storage of water and infiltration of the water to the
33 groundwater to supplement shallow groundwater withdrawals or for the
34 purpose of replenishing the aquifer.

35 (5) To participate in a local water plan, water rights holders
36 must: (a) Agree to allow a portion or all of their baseline water use
37 to remain instream, as specified in the approved local water plan; (b)
38 have existing operable water conveyance infrastructure in place and

1 available for use; (c) agree that any water made available for stream
2 flow enhancement may not be diverted from the water source and used
3 during the term of the local water plan, but instead must be deposited
4 into the water bank or, upon request by the water rights holder,
5 transferred to the trust water rights program consistent with chapter
6 90.42 RCW; (d) measure and monitor their water use, stream flows
7 upstream and downstream of the boundaries of the plan, and groundwater
8 levels within the boundaries of the plan; and (e) commit to staying in
9 the program consistent with criteria established by the board.

10 (6) The water users must submit annual reports to the department
11 and the board regarding contract performance, consistent with the
12 guidelines adopted by the board.

13 (7) A local water plan may be effective for a term of one to ten
14 years.

15 NEW SECTION. **Sec. 9.** (1) The board must provide a thirty-day
16 public notice period for the proposal for a local water plan and accept
17 comments from all interested persons during that period.

18 (2) To become effective, the local water plan must be approved by
19 both the board and the department. A proposed local water plan must
20 not be approved if the board and the department determine the local
21 water plan will not substantially enhance instream flow conditions.

22 (3) The approved local water plan must be signed by the executive
23 director of the board, by the director, and by all water users
24 participating in the local water plan. The local water plan is a
25 contract among the board, the department, and the water users in which
26 all parties agree to abide by all terms and conditions of the local
27 water plan.

28 (4) If an approved local water plan is not in compliance with its
29 terms and conditions, the board shall, consistent with the dispute
30 resolution process adopted by the board, seek compliance. If a local
31 water plan is revoked, the water users in the local water plan must
32 thereafter exercise the water rights only as the water rights were
33 authorized and conditioned prior to the approval of the local water
34 plan, and all rights and duties that were terms in the local water plan
35 lapse and are not valid or enforceable.

1 NEW SECTION. **Sec. 10.** (1) Any person not party to the local water
2 plan and aggrieved by the director's decision may appeal the decision
3 to the pollution control hearings board as provided under RCW
4 43.21B.230.

5 (2) A water rights holder who believes the holder's water right has
6 been impaired by any action under this chapter may request that the
7 department review the impairment claim. If the department determines
8 that some action under this chapter is impairing existing rights, the
9 department, the board, and the water users must amend the local water
10 plan to eliminate the impairment. Any decision of the department to
11 alter or not alter a local water plan is appealable to the pollution
12 control hearings board under RCW 43.21B.230.

13 NEW SECTION. **Sec. 11.** (1) A local water plan expires by its
14 terms, by withdrawal of one or more water users to the local water
15 plan, or upon agreement by all parties to the contact. Upon the
16 expiration of a local water plan that has been operating for five or
17 more years, the water users may request that the board and the
18 department make the elements of the local water plan, including water
19 deposited to the water bank for placement in the trust water rights
20 program, permanent authorizations and conditions for use of the water
21 rights.

22 (2) The request under subsection (1) of this section must be
23 evaluated based on whether:

24 (a) The determination of the baseline water use adequately analyzed
25 the extent and validity of the donated water right; and

26 (b)(i) Whether there is injury or detriment to other existing water
27 rights; or

28 (ii) The written approval obtained from the holder of an impaired
29 water right is continued or renewed.

30 (3) If the board and the department approve the request under
31 subsection (1) of this section, the department shall issue superseding
32 water rights consistent with the management and uses of the water under
33 the local water plan. That portion of the water rights deposited in
34 the water bank for placement in the trust water rights program must be
35 made permanent and transferred in accordance with chapter 90.42 RCW.

36 (4) If the local water plan expires and the water management and
37 uses under the local water plan are not granted approval to be

1 permanent, the water users in the local water plan must thereafter
2 exercise the water rights only as the water rights were authorized and
3 conditioned prior to the local water plan, and all rights and duties
4 that were terms in the local water plan lapse and are not valid or
5 enforceable.

6 NEW SECTION. **Sec. 12.** (1) The water rights in the local water
7 plan as authorized for the uses described in section 8(4) of this act
8 are:

9 (a) Not subject to either the approval of the department under RCW
10 90.03.380 through 90.03.390, 90.44.100, and 90.44.105, or a tentative
11 determination of the validity and extent of the water rights;

12 (b) Not subject to loss by forfeiture under RCW 90.14.130 through
13 90.14.200 during the period of time from when the local water plan is
14 approved to the expiration or nullification of the local water plan as
15 provided in section 11 of this act; and

16 (c) Not to be exercised in a manner that would result in injury or
17 detriment to other existing water rights unless express written
18 approval is obtained from the holder of the impaired water right. To
19 allow impacts to existing instream flow rights, the board and the
20 department must agree that the flow benefits provided by a local water
21 plan outweigh the impacts on existing instream flow rights.

22 (2) The years during the period of time when the local water plan
23 is operational may not be considered or calculated as a period of time
24 that the water was not applied to use for purposes of RCW 90.14.130
25 through 90.14.200. Further, the years during this period of time may
26 not be considered or calculated as a period of time that the water was
27 not applied to use and for purposes of future applications to change
28 the water right for additional purposes or acreage under RCW 90.03.380.

29 NEW SECTION. **Sec. 13.** The local water management program
30 authorized by this chapter must be piloted in a basin located east of
31 the crest of the Cascades in a county with a population between fifty-
32 five thousand and sixty thousand people, as reported in the 2000
33 census.

34 **Sec. 14.** RCW 90.14.140 and 2001 c 240 s 1, 2001 c 237 s 27, and
35 2001 c 69 s 5 are each reenacted and amended to read as follows:

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

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

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

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

9 (d) The operation of legal proceedings;

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

13 (f) Federal laws imposing land or water use restrictions either
14 directly or through the voluntary enrollment of a landowner in a
15 federal program implementing those laws, or acreage limitations, or
16 production quotas;

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

23 (h) 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) Water conservation measures implemented under the Yakima river
30 basin water enhancement project, so long as the conserved water is
31 reallocated in accordance with the provisions of P.L. 103-434;

32 (j) Reliance by an irrigation water user on the transitory presence
33 of return flows in lieu of diversion or withdrawal of water from the
34 primary source of supply, if such return flows are measured or reliably
35 estimated using a scientific methodology generally accepted as reliable
36 within the scientific community; or

37 (k) The reduced use of irrigation water resulting from crop
38 rotation. For purposes of this subsection, crop rotation means the

1 temporary change in the type of crops grown resulting from the exercise
2 of generally recognized sound farming practices. Unused water
3 resulting from crop rotation will not be relinquished if the remaining
4 portion of the water continues to be beneficially used.

5 (2) Notwithstanding any other provisions of RCW 90.14.130 through
6 90.14.180, there shall be no relinquishment of any water right:

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

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

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

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

19 (e) If such waters are not subject to appropriation under the
20 applicable provisions of RCW 90.40.030;

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

27 (g) If such a right or portion of the right is authorized for a
28 purpose that is satisfied by the use of agricultural industrial process
29 water as authorized under RCW 90.46.150; (~~or~~)

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

32 (i) If such a right is involved in an approved local water plan
33 created under section 9 of this act, provided the right is subject to
34 an agreement not to divert under section 5 of this act, or provided the
35 right is deposited into a water bank created under section 7 of this
36 act.

37 (3) In adding provisions to this section by chapter 237, Laws of
38 2001, the legislature does not intend to imply legislative approval or

1 disapproval of any existing administrative policy regarding, or any
2 existing administrative or judicial interpretation of, the provisions
3 of this section not expressly added or revised.

4 **Sec. 15.** RCW 90.03.380 and 2003 c 329 s 2 are each amended to read
5 as follows:

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

1 water bank created under section 7 of this act, in an approved local
2 water plan created under section 9 of this act, or the water right was
3 subject to an agreement to not divert under section 5 of this act will
4 not be included in the most recent five-year period of continuous
5 beneficial use for the purpose of determining the annual consumptive
6 quantity under this section. If the water right has not been used
7 during the previous five years but the nonuse of which qualifies for
8 one or more of the statutory good causes or exceptions to
9 relinquishment in RCW 90.14.140 and 90.44.520, the period of nonuse is
10 not included in the most recent five-year period of continuous
11 beneficial use for purposes of determining the annual consumptive
12 quantity of water under this section.

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

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

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

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

34 (b) Applications relating to existing surface or ground water
35 rights may be processed and decisions on them rendered independently of
36 processing and rendering decisions on pending applications for new
37 water rights within the same source of supply without regard to the
38 date of filing of the pending applications for new water rights.

1 (c) Notwithstanding any other existing authority to process
2 applications, including but not limited to the authority to process
3 applications under WAC 173-152-050 as it existed on January 1, 2001, an
4 application relating to an existing surface or ground water right may
5 be processed ahead of a previously filed application relating to an
6 existing right when sufficient information for a decision on the
7 previously filed application is not available and the applicant for the
8 previously filed application is sent written notice that explains what
9 information is not available and informs the applicant that processing
10 of the next application will begin. The previously filed application
11 does not lose its priority date and if the information is provided by
12 the applicant within sixty days, the previously filed application shall
13 be processed at that time. This subsection (5)(c) does not affect any
14 other existing authority to process applications.

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

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

21 (7) 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 (8) The development and use of a small irrigation impoundment, as
28 defined in RCW 90.03.370(8), does not constitute a change or amendment
29 for the purposes of this section. The exemption expressly provided by
30 this subsection shall not be construed as requiring a change or
31 transfer of any existing water right to enable the holder of the right
32 to store water governed by the right.

33 (9) This section does not apply to a water right involved in an
34 approved local water plan created under section 9 of this act, a water
35 right that is subject to an agreement not to divert under section 5 of
36 this act, or a water right that is deposited into a water bank created
37 under section 7 of this act.

1 **Sec. 16.** RCW 90.44.100 and 2003 c 329 s 3 are each amended to read
2 as follows:

3 (1) After an application to, and upon the issuance by the
4 department of an amendment to the appropriate permit or certificate of
5 groundwater right, the holder of a valid right to withdraw public
6 groundwaters may, without losing the holder's priority of right,
7 construct wells or other means of withdrawal at a new location in
8 substitution for or in addition to those at the original location, or
9 the holder may change the manner or the place of use of the water.

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

29 (3) The construction of a replacement or new additional well or
30 wells at the location of the original well or wells shall be allowed
31 without application to the department for an amendment. However, the
32 following apply to such a replacement or new additional well: (a) The
33 well shall tap the same body of public groundwater as the original well
34 or wells; (b) if a replacement well is constructed, the use of the
35 original well or wells shall be discontinued and the original well or
36 wells shall be properly decommissioned as required under chapter 18.104
37 RCW; (c) if a new additional well is constructed, the original well or
38 wells may continue to be used, but the combined total withdrawal from

1 the original and additional well or wells shall not enlarge the right
2 conveyed by the original water use permit or certificate; (d) the
3 construction and use of the well shall not interfere with or impair
4 water rights with an earlier date of priority than the water right or
5 rights for the original well or wells; (e) the replacement or
6 additional well shall be located no closer than the original well to a
7 well it might interfere with; (f) the department may specify an
8 approved manner of construction of the well; and (g) the department
9 shall require a showing of compliance with the conditions of this
10 subsection (3).

11 (4) As used in this section, the "location of the original well or
12 wells" is the area described as the point of withdrawal in the original
13 public notice published for the application for the water right for the
14 well.

15 (5) The development and use of a small irrigation impoundment, as
16 defined in RCW 90.03.370(8), does not constitute a change or amendment
17 for the purposes of this section. The exemption expressly provided by
18 this subsection shall not be construed as requiring an amendment of any
19 existing water right to enable the holder of the right to store water
20 governed by the right.

21 (6) This section does not apply to a water right involved in an
22 approved local water plan created under section 9 of this act or a
23 water right that is deposited into a water bank created under section
24 7 of this act.

25 **Sec. 17.** RCW 43.21B.110 and 2003 c 393 s 19 are each amended to
26 read as follows:

27 (1) The hearings board shall only have jurisdiction to hear and
28 decide appeals from the following decisions of the department, the
29 director, local conservation districts, and the air pollution control
30 boards or authorities as established pursuant to chapter 70.94 RCW, or
31 local health departments:

32 (a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431,
33 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.48.144, 90.56.310, and
34 90.56.330.

35 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
36 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,
37 90.14.130, 90.48.120, and 90.56.330.

1 (c) A final decision by the department or director made under this
2 act.

3 (d) Except as provided in RCW 90.03.210(2), the issuance,
4 modification, or termination of any permit, certificate, or license by
5 the department or any air authority in the exercise of its
6 jurisdiction, including the issuance or termination of a waste disposal
7 permit, the denial of an application for a waste disposal permit, the
8 modification of the conditions or the terms of a waste disposal permit,
9 or a decision to approve or deny an application for a solid waste
10 permit exemption under RCW 70.95.300.

11 (~~(d)~~) (e) Decisions of local health departments regarding the
12 grant or denial of solid waste permits pursuant to chapter 70.95 RCW.

13 (~~(e)~~) (f) Decisions of local health departments regarding the
14 issuance and enforcement of permits to use or dispose of biosolids
15 under RCW 70.95J.080.

16 (~~(f)~~) (g) Decisions of the department regarding waste-derived
17 fertilizer or micronutrient fertilizer under RCW 15.54.820, and
18 decisions of the department regarding waste-derived soil amendments
19 under RCW 70.95.205.

20 (~~(g)~~) (h) Decisions of local conservation districts related to
21 the denial of approval or denial of certification of a dairy nutrient
22 management plan; conditions contained in a plan; application of any
23 dairy nutrient management practices, standards, methods, and
24 technologies to a particular dairy farm; and failure to adhere to the
25 plan review and approval timelines in RCW 90.64.026.

26 (~~(h)~~) (i) Any other decision by the department or an air
27 authority which pursuant to law must be decided as an adjudicative
28 proceeding under chapter 34.05 RCW.

29 (2) The following hearings shall not be conducted by the hearings
30 board:

31 (a) Hearings required by law to be conducted by the shorelines
32 hearings board pursuant to chapter 90.58 RCW.

33 (b) Hearings conducted by the department pursuant to RCW 70.94.332,
34 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

35 (c) Proceedings conducted by the department, or the department's
36 designee, under RCW 90.03.160 through 90.03.210 or 90.44.220.

37 (d) Hearings conducted by the department to adopt, modify, or
38 repeal rules.

1 (e) Appeals of decisions by the department as provided in chapter
2 43.21L RCW.

3 (3) Review of rules and regulations adopted by the hearings board
4 shall be subject to review in accordance with the provisions of the
5 administrative procedure act, chapter 34.05 RCW.

6 NEW SECTION. **Sec. 18.** Sections 1 through 13 of this act
7 constitute a new chapter in Title 90 RCW.

8 NEW SECTION. **Sec. 19.** This act expires June 30, 2019.

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