

1 will reduce costs to the public as well as water right holders and
2 benefit the state's economy as well as the needs of instream and out-
3 of-stream interests.

4 The legislature further finds that additional certainty will be
5 achieved by clarifying and simplifying the extent to which water usage
6 records must be retained and by providing clearly articulated policies
7 for efficient and fair administration of the water resource statutes.

8 The legislature further finds that this clarification and
9 simplification will ensure all interests are equally protected because
10 it will be based on contemporary beneficial use and accurate assessment
11 of potential impacts on other water right holders as well as the
12 resource in general. The legislature intends to encourage the use of
13 changes and transfers of existing water rights to satisfy future water
14 needs.

15 Therefore, the legislature declares that reform to the water
16 resource management system will provide certainty, clarity, and
17 efficiency in the system, and help ensure a healthy state economy.

18 **PART 2**

19 **REVIEW OF WATER RIGHTS AND RELINQUISHMENT**

20 **Sec. 201.** RCW 90.14.130 and 1987 c 109 s 13 are each amended to
21 read as follows:

22 (1) When it appears to the department of ecology that a person
23 entitled to the use of water has not beneficially used ~~((his))~~ the
24 person's water right or some portion thereof, and it appears that said
25 right has or may have reverted to the state because of such nonuse, as
26 provided by RCW 90.14.160, 90.14.170, or 90.14.180, the department of
27 ecology shall notify such person by order: PROVIDED, That where a
28 company, association, district, or the United States has filed a
29 blanket claim under the provisions of RCW 90.14.060 for the total
30 benefits of those served by it, the notice shall be served on such
31 company, association, district or the United States and not upon any of
32 its individual water users who may not have used the water or some
33 portion thereof which they were entitled to use. The order shall
34 contain: ~~((1))~~ (a) A description of the water right, including the
35 approximate location of the point of diversion, the general description
36 of the lands or places where such waters were used, the water source,

1 the amount involved, the purpose of use, and the apparent authority
2 upon which the right is based; ~~((+2))~~ (b) a statement that unless
3 sufficient cause ~~((be))~~ is shown on appeal the water right will be
4 declared relinquished; and ~~((+3))~~ (c) a statement that such an order
5 may be appealed to the pollution control hearings board. Any person
6 aggrieved by such an order may appeal it to the pollution control
7 hearings board pursuant to RCW 43.21B.310. The order shall be served
8 by registered or certified mail to the last known address of the person
9 and be posted at the point of division or withdrawal. The order by
10 itself shall not alter the recipient's right to use water, if any.

11 (2) Notwithstanding any other provisions of this chapter, there is
12 no relinquishment of any water right if the end of the period of nonuse
13 of such a right occurred more than twenty years before the date upon
14 which an order is issued under this section as of the effective date of
15 this section.

16 **Sec. 202.** RCW 90.14.140 and 2009 c 183 s 14 are each amended to
17 read as follows:

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

- 23 (a) Drought, or other unavailability of water;
- 24 (b) Active service in the armed forces of the United States during
25 military crisis;
- 26 (c) Nonvoluntary service in the armed forces of the United States;
- 27 (d) The operation of legal proceedings;
- 28 (e) Federal or state agency leases of or options to purchase lands
29 or water rights which preclude or reduce the use of the right by the
30 owner of the water right;
- 31 (f) Federal laws imposing land or water use restrictions either
32 directly or through the voluntary enrollment of a landowner in a
33 federal program implementing those laws, or acreage limitations, or
34 production quotas;
- 35 (g) Temporarily reduced water need for irrigation use where such
36 reduction is due to varying weather conditions, including but not
37 limited to precipitation and temperature, that warranted the reduction

1 in water use, so long as the water user's diversion and delivery
2 facilities are maintained in good operating condition consistent with
3 beneficial use of the full amount of the water right;

4 (h) Temporarily reduced diversions or withdrawals of irrigation
5 water directly resulting from the provisions of a contract or similar
6 agreement in which a supplier of electricity buys back electricity from
7 the water right holder and the electricity is needed for the diversion
8 or withdrawal or for the use of the water diverted or withdrawn for
9 irrigation purposes;

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

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

18 (k) The reduced use of irrigation water resulting from crop
19 rotation. For purposes of this subsection, crop rotation means the
20 temporary change in the type of crops grown resulting from the exercise
21 of generally recognized sound farming practices. Unused water
22 resulting from crop rotation will not be relinquished if the remaining
23 portion of the water continues to be beneficially used.

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

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

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

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

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

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

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

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

12 (h) If such right is a trust water right under chapter 90.38 or
13 90.42 RCW;

14 (i) If such a right is involved in an approved local water plan
15 created under RCW 90.92.090, provided the right is subject to an
16 agreement not to divert under RCW 90.92.050, or provided the right is
17 banked under RCW 90.92.070; or

18 (j) If the end of the period of nonuse of such a right occurred
19 more than twenty years before the date: (i) Upon which an order is
20 issued under RCW 90.14.130; (ii) of filing of the department's report
21 of findings under RCW 90.03.640; or (ii) of a final decision by the
22 department or a water conservancy board on an application for change or
23 transfer of a water right under RCW 90.03.380 or 90.44.100.

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

29 **Sec. 203.** RCW 90.14.140 and 2001 c 240 s 1, 2001 c 237 s 27, and
30 2001 c 69 s 5 are each reenacted and amended to read as follows:

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

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

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

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

4 (d) The operation of legal proceedings;

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

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

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

18 (h) Temporarily reduced diversions or withdrawals of irrigation
19 water directly resulting from the provisions of a contract or similar
20 agreement in which a supplier of electricity buys back electricity from
21 the water right holder and the electricity is needed for the diversion
22 or withdrawal or for the use of the water diverted or withdrawn for
23 irrigation purposes;

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

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

32 (k) The reduced use of irrigation water resulting from crop
33 rotation. For purposes of this subsection, crop rotation means the
34 temporary change in the type of crops grown resulting from the exercise
35 of generally recognized sound farming practices. Unused water
36 resulting from crop rotation will not be relinquished if the remaining
37 portion of the water continues to be beneficially used.

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

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

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

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

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

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

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

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

26 (h) If such right is a trust water right under chapter 90.38 or
27 90.42 RCW; or

28 (i) If the end of the period of nonuse of such a right occurred
29 more than twenty years before the date: (i) Upon which an order is
30 issued under RCW 90.14.130; (ii) of filing of the department's report
31 of findings under RCW 90.03.640; or (iii) of a final decision by the
32 department or a water conservancy board on an application for change or
33 transfer of a water right under RCW 90.03.380 or 90.44.100.

34 (3) In adding provisions to this section by chapter 237, Laws of
35 2001, the legislature does not intend to imply legislative approval or
36 disapproval of any existing administrative policy regarding, or any
37 existing administrative or judicial interpretation of, the provisions
38 of this section not expressly added or revised.

1 **Sec. 204.** RCW 90.14.200 and 1989 c 175 s 180 are each amended to
2 read as follows:

3 (1) All matters relating to the implementation and enforcement of
4 this chapter by the department of ecology shall be carried out in
5 accordance with chapter 34.05 RCW, the administrative procedure act,
6 except where the provisions of this chapter expressly conflict with
7 chapter 34.05 RCW. Proceedings held pursuant to RCW 90.14.130 are
8 adjudicative proceedings within the meaning of chapter 34.05 RCW.
9 Final decisions of the department of ecology in these proceedings are
10 subject to review in accordance with chapter 43.21B RCW.

11 (2) RCW 90.14.130 provides nonexclusive procedures for determining
12 a relinquishment of water rights under RCW 90.14.160, 90.14.170, and
13 90.14.180. RCW 90.14.160, 90.14.170, and 90.14.180 may be applied in,
14 among other proceedings, general adjudication proceedings initiated
15 under RCW 90.03.110 or 90.44.220(~~(+ PROVIDED, That)~~). Notwithstanding
16 any other provisions of this chapter, there is no relinquishment of any
17 water right if the end of the period of nonuse of such a right occurred
18 more than twenty years before the date of filing of the department's
19 report of findings under RCW 90.03.640 or the date of a final decision
20 by the department or a water conservancy board on an application for
21 change or transfer of a water right under RCW 90.03.380 or 90.44.100.

22 (3) Nothing ((herein)) in this section shall apply to litigation
23 involving determinations of the department of ecology under RCW
24 90.03.290 relating to the impairment of existing rights.

25 NEW SECTION. **Sec. 205.** A new section is added to chapter 90.03
26 RCW to read as follows:

27 (1) Sections 201 through 204 of this act do not apply to water
28 right determinations issued by a superior court in a general
29 adjudication that is pending as of the effective date of this section.
30 Upon the entry of a final decree by a superior court in a general
31 adjudication, sections 201 through 204 of this act apply to subsequent
32 relinquishment orders under RCW 90.14.130 and decisions on applications
33 for changes, transfers, or amendments of water rights under RCW
34 90.03.380 or 90.44.100.

35 (2) Sections 201 through 204 of this act do not apply to
36 relinquishment orders entered prior to the effective date of this
37 section under RCW 90.14.130 or to final decisions issued prior to the

1 effective date of this section by the department on applications for
2 changes, transfers, or amendments of water rights under RCW 90.03.380
3 or 90.44.100.

4 (3) Sections 201 through 204 of this act do not apply to orders of
5 the pollution control hearings board entered prior to the effective
6 date of this section in appeals of relinquishment orders under RCW
7 90.14.130 or decisions on applications for changes, transfers, or
8 amendments of water rights under RCW 90.03.380 or 90.44.100.

9 **PART 3**
10 **INSTREAM FLOWS**

11 **Sec. 301.** RCW 90.03.255 and 1997 c 360 s 2 are each amended to
12 read as follows:

13 (1) The department shall, when evaluating an application for a
14 water right, transfer, or change filed pursuant to RCW 90.03.250 or
15 90.03.380 that includes provision for any water impoundment or other
16 resource management technique, take into consideration the benefits and
17 costs, including environmental effects, of any water impoundment or
18 other resource management technique that is included as a component of
19 the application. The department's consideration shall extend to any
20 increased water supply that results from the impoundment or other
21 resource management technique, including but not limited to any
22 recharge of groundwater that may occur, as a means of making water
23 available or otherwise offsetting the impact of the diversion of
24 surface water proposed in the application for the water right,
25 transfer, or change. Provision for an impoundment or other resource
26 management technique in an application shall be made solely at the
27 discretion of the applicant and shall not otherwise be made by the
28 department as a condition for approving an application that does not
29 include such provision.

30 (2) The department shall not deny an application for a new water
31 right or change, transfer, or amendment of a water right based on the
32 presumption that an instream flow trust water right established as
33 mitigation for the water right application may be diverted by junior
34 water right holders.

35 (3) This section does not lessen, enlarge, or modify the rights of

1 any riparian owner, or any existing water right acquired by
2 appropriation or otherwise.

3 NEW SECTION. **Sec. 302.** A new section is added to chapter 90.42
4 RCW to read as follows:

5 (1) Upon permanently acquiring a water right under a permit,
6 certificate, or claim in the trust water rights program for instream
7 flow purposes, the department may file suit in superior court to
8 protect its water right from impairment. In any such action by the
9 department, the court shall join only those parties holding water
10 rights with priority dates junior in time to the trust water right,
11 whose diversion or withdrawal of water is alleged by the department to
12 be impairing the trust water right. Prior to filing such an action,
13 the department shall comply with the procedures of RCW 90.03.605.

14 (2)(a) If the court concludes that any permit, certificate, or
15 claim is causing impairment of the department's trust water right, the
16 court shall issue an order enabling the department to regulate the
17 permits, certificates, or claims to prevent impairment of the trust
18 water right.

19 (b) After the court has issued an order under (a) of this
20 subsection, and after all appeals have been exhausted, the department
21 may issue a notice and order, consistent with its authority under RCW
22 43.27A.190, to protect a permanent instream flow trust water right from
23 impairment. The department may serve a notice and order claiming
24 impairment upon the holder of a permit, certificate, or claim that is
25 subject to the court's order.

26 (c) Any water right holder may appeal the notice and order issued
27 by the department under (b) of this subsection to the pollution control
28 hearings board under chapter 43.21B RCW.

29 **PART 4**

30 **FEEES**

31 NEW SECTION. **Sec. 401.** A new section is added to chapter 90.03
32 RCW to read as follows:

33 (1) Notwithstanding any other provision of law, a person other than
34 the permit applicant who wishes to protest a decision of the department

1 must pay a protest fee of five hundred dollars in addition to the
2 appropriate fee required under RCW 90.03.470(11).

3 (2) Except for the applicant, for any party who appeals a decision
4 made by the department by filing an appeal with the pollution control
5 hearings board under chapter 43.21B RCW, a fee of one thousand dollars
6 is required.

7 (3) All fees collected under this section must be paid to the
8 department and deposited into the water rights processing account under
9 RCW 90.03.650.

10 **PART 5**

11 **PROGRAM EFFICIENCIES AND ACCOUNTABILITY**

12 NEW SECTION. **Sec. 501.** A new section is added to chapter 90.03
13 RCW to read as follows:

14 (1)(a) The department shall process all water right applications
15 pending as of the effective date of this section by July 1, 2021,
16 except as provided in subsection (3) of this section.

17 (b) As used in this subsection, water right applications include:
18 (i) Applications for a new appropriation; (ii) transfers, changes, or
19 amendments to existing permits, water right or storage certificates, or
20 claimed rights; and (iii) applications for water use mitigation credits
21 issued as a result of water banking.

22 (2) By December 31, 2011, the department shall provide the
23 legislature with a schedule, by water resource inventory area or source
24 of water, showing where and when the department will process water
25 right applications between the effective date of this section and July
26 1, 2021.

27 (3) By July 1, 2017, the department shall provide all applicants
28 with permit applications pending as of the effective date of this
29 section with the opportunity to be processed by the department either
30 individually or pursuant to a coordinated cost-reimbursement agreement.
31 If an applicant is offered the opportunity to be processed by the
32 department prior to July 1, 2017, but declines, the department may
33 limit future processing of that application to either the cost-
34 reimbursement process pursuant to RCW 90.03.265 or require the
35 applicant to submit the applicant's own draft report of examination at

1 such time the applicant is prepared to have the applicant's water right
2 application processed.

3 (4) The department shall conduct a comprehensive review of its
4 water right application review procedures, with the objective of
5 simplifying the procedures, eliminating unnecessary steps, and
6 decreasing the time required to fully process an application from
7 filing through a final decision. The department shall seek
8 recommendations from a diverse group of stakeholders and government
9 representatives familiar with the department's water right processing
10 and water resource management activities and provide stakeholders an
11 opportunity to comment upon proposals for administrative or legislative
12 changes to simplify procedures.

13 (5) The department shall implement changes to improve water right
14 processing for which it has current administrative authority by January
15 1, 2012.

16 (6)(a) The department shall provide a report to the legislature,
17 consistent with RCW 43.01.036, by December 31, 2011, and shall
18 supplement and update the report every even-numbered year thereafter to
19 document continuing process improvements.

20 (b) The report must summarize:

21 (i) The review conducted;

22 (ii) The proposals considered by the department, including those
23 forwarded by stakeholders;

24 (iii) The changes implemented; and

25 (iv) Recommendations for any legislation necessary to implement
26 additional changes.

27 NEW SECTION. **Sec. 502.** A new section is added to chapter 90.03
28 RCW to read as follows:

29 The department shall establish and maintain up-to-date records of
30 the entities that hold water rights and claimed rights. It is the
31 responsibility of all water right holders and claimants to inform the
32 department when there is a change in ownership or contact information.
33 The department shall make forms available, including electronically,
34 for use by persons reporting a change in this information.

35 NEW SECTION. **Sec. 503.** A new section is added to chapter 90.42
36 RCW to read as follows:

1 After notice and opportunity for public hearing, the department may
2 issue general permits on a watershed or subwatershed basis for new uses
3 of water relying on water rights accepted into the trust water rights
4 program. Any general permit issued shall: (1) Be based on
5 requirements adopted by the department under chapter 173-539A WAC as it
6 exists on the effective date of this section; and (2) set forth the
7 requirements and standards that apply to any activity authorized by
8 such a general permit.

9 **PART 6**

10 **ADMINISTRATIVE PROVISIONS**

11 NEW SECTION. **Sec. 601.** Section 202 of this act expires June 30,
12 2019.

13 NEW SECTION. **Sec. 602.** Section 203 of this act takes effect June
14 30, 2019.

--- END ---