
SENATE BILL 5677

State of Washington

63rd Legislature

2013 Regular Session

By Senators Parlette, Hatfield, Honeyford, Chase, Brown, Bailey, Smith, and Hewitt

Read first time 02/07/13. Referred to Committee on Agriculture, Water & Rural Economic Development.

1 AN ACT Relating to authorizing the establishment of a water
2 management board in the Methow watershed; amending RCW 90.14.140,
3 90.03.380, and 90.44.100; adding a new chapter to Title 90 RCW; and
4 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 Methow
7 watershed planning unit created under the watershed planning act,
8 chapter 90.82 RCW, faces substantial challenges in planning for future
9 water use, and meeting and balancing the needs of people, farms, and
10 fish. The legislature further finds that the participants in the
11 Methow watershed planning process have demonstrated exceptional
12 cooperation in developing the Methow basin watershed management plan
13 and detailed implementation plan. The legislature also finds that
14 implementation of watershed planning in the Methow watershed needs to
15 continue into the future to preserve and enhance the gains of these
16 objectives and to protect the state's investment in watershed planning
17 and sustainable water management. Thus, it is important for the Methow
18 watershed planning unit to be able to become a water management board
19 capable of taking on the responsibilities to adequately manage its

1 water resource inventory area. This chapter is intended to enable
2 people in the Methow watershed to continue to work toward the goals of
3 the 2004 Chelan agreement to resolve competing needs between people and
4 the environment through local collaborative participation.

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

7 (1) "Basin" means WRIA 48.

8 (2) "Board" means the water management board created under this
9 chapter.

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

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

12 (5) "Instream flow" means a minimum flow under chapter 90.03 or
13 90.22 RCW or a base flow under chapter 90.54 RCW that has been set by
14 rule in chapter 173-548 WAC.

15 (6) "Local water management program" means the water banking
16 mechanism, any local water plans authorized by the board, and any other
17 activities authorized by this chapter.

18 (7) "Local water plan" means a voluntary water management plan
19 developed by the water management board and participating entities to
20 manage water use in a manner that maintains or enhances stream flows in
21 exchange for greater flexibility in exercising the water rights, and
22 provides flexibility in water management in the WRIA, consistent with
23 the watershed plan or any future watershed plan revisions.

24 (8) "Planning area" means the entirety or a subsection of WRIA 48
25 as identified in the creation of a board under this chapter.

26 (9) "Trust water right" means any water right acquired by the state
27 under chapter 90.42 RCW for management in the state's water rights
28 program.

29 (10) "Watershed plan" means a plan adopted under chapter 90.82 RCW.

30 (11) "WRIA" means water resource inventory area 48 established in
31 chapter 173-500 WAC as it existed on January 1, 1997.

32 NEW SECTION. **Sec. 3.** (1) An initiating entity in the Methow
33 watershed may petition the department to establish a water management
34 board.

35 (2) The department, in consultation with the initiating entity, is
36 authorized to create a board in the Methow watershed where:

1 (a) Community support exists for the adopted watershed management
2 plan and includes support from the affected federally recognized
3 tribes, local governments, and the general community;

4 (b) There is commitment on the part of the watershed planning unit
5 and the affected community to enhance stream flows for fish;

6 (c) An adequate monitoring network is in place, as determined by
7 the department;

8 (d) An instream flow rule for the WRIA has been adopted; and

9 (e) The watershed planning unit has completed a watershed
10 implementation plan adopted under chapter 90.82 RCW.

11 NEW SECTION. **Sec. 4.** (1) The board is composed of the following
12 members:

13 (a) All affected federally recognized tribes within the planning
14 area will be invited to participate and may appoint one member each;

15 (b) The following entities may each appoint one member:

16 (i) The Okanogan county board of commissioners;

17 (ii) The city council of Twisp. The city council of other affected
18 towns in the WRIA may also be invited to sit on the board; and

19 (iii) The board of directors of the entity or the person who uses
20 the greatest quantity of water in the planning area. If this is an
21 entity other than an irrigation district, a representative of the
22 irrigation districts shall also appoint one member;

23 (c) The members under (a) and (b) of this subsection must appoint
24 a minimum of three but no more than five additional members of the
25 board. These members must be residents of the planning area. One
26 member must be a planning area water rights holder. One member must
27 represent environmental interests in the planning area. The other
28 members must be citizens at large and may represent other interests or
29 specific regions in the WRIA;

30 (d) If for any reason one of the required governments or entities
31 to be represented on the board declines to participate, the remaining
32 board members may invite another local government within the planning
33 area to join the board;

34 (e) The initial watershed board must be composed of members of the
35 present Methow watershed council for the remainder of each individual
36 term.

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

4 (3) The board must create a policy advisory and water resource
5 panel, or, if deemed necessary, the board may form two separate
6 subpanels: A policy advisory panel and a water resource panel.

7 (a) For the policy advisory and water resource panel, the board
8 must invite participation from the department and the department of
9 fish and wildlife, other affected state agencies and other interests as
10 appropriate. Each state agency with regulatory or other interests in
11 the WRIA shall assist the board in its duties and responsibilities to
12 the greatest extent practicable, recognizing any fiscal limitations.
13 In providing such assistance and to facilitate representation on the
14 policy advisory and water resource panel, state agencies may organize
15 and agree upon their representation on the panel.

16 (b) The board may also appoint members from local government
17 agencies, academia, watershed and salmon recovery entities, businesses,
18 and agricultural and environmental organizations, as the board deems
19 appropriate.

20 (c) The policy advisory and water resource panel must assist and
21 advise the board in coordinating and developing water resource-related
22 management programs, planning, and activities within the planning area,
23 including the coordination of efforts with all jurisdictions of the
24 planning area and development of the board's strategic actions.

25 (d) For the water resource aspect of the panel, the board must also
26 appoint members to the policy advisory and water resource panel who
27 have expertise and understanding regarding surface water and
28 groundwater monitoring and hydrological analysis, irrigation management
29 and engineering, water rights, fisheries habitat, and economic
30 development.

31 (e) The policy advisory and water resource panel must provide
32 technical assistance for the development of the local water plans and
33 provide advice to the board on the criteria for establishment of local
34 water plans and the approval, denial, or modification of the local
35 water plans and any implementations decided upon by the board.

36 (4) A board member, employee, or contractor may not engage in any
37 act that is in conflict with the proper discharge of their official

1 duties. Such a conflict of interest includes, but is not limited to,
2 holding a financial interest in a matter before the board.

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

5 (a) As required by RCW 90.82.060, assume the duties,
6 responsibilities, and all current activities of the watershed planning
7 unit and the initiating governments included in chapter 90.82 RCW;

8 (b) Develop strategic actions for the planning area to carry out
9 the detailed implementation plan developed under chapter 90.82 RCW and
10 revisions to the watershed plan;

11 (c) As the board deems necessary, develop and adopt modifications
12 to the watershed plan or obligations imposed by the watershed plan, in
13 consultation with the department;

14 (d) Adopt and revise criteria, guidance, and processes to
15 effectuate the purpose of this chapter;

16 (e) Administer the local water planning process;

17 (f) Oversee local water plan implementation;

18 (g) Manage banked water as authorized under this chapter;

19 (h) Acquire water rights by donation, purchase, or lease;

20 (i) Participate in local, state, tribal, federal, and multistate
21 basin water planning initiatives and programs; and

22 (j) Enter into agreements with water rights holders to not divert
23 water that becomes available as a result of local water plans, water
24 management, water banking activities, or other programs and projects
25 endorsed by the board and the department.

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

33 (3) When the board requires technical assistance with regard to a
34 subject matter over which the agency has jurisdiction, the board must
35 request that the state agency provide the assistance to the watershed
36 management board. If such a request is made, the state agency shall,

1 subject to the discretion of the director of the agency, provide the
2 assistance to the watershed management board.

3 (4) The board constitutes an independently funded entity, and may
4 provide for its own funding as determined by the board. The board may
5 solicit and accept grants, loans, and donations and may adopt fees for
6 services it provides. The board may not impose taxes or acquire
7 property, including water rights, by the exercise of eminent domain.
8 The board may distribute available funds as grants or loans to local
9 water plans or other water initiatives and projects that will further
10 the goals of the board.

11 (5) The board may form a nonprofit corporation organized pursuant
12 to chapter 24.03 or 24.06 RCW for assistance in obtaining funding. The
13 funds of such a corporation are subject to audit in the manner provided
14 by law for the auditing of public funds.

15 (6) The ability of the board to fully meet its duties under this
16 chapter is dependent on the level of funding available to the board.

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

21 (8) Upon the creation of the board, and for the duration of the
22 board, the existing planning unit for the planning area, established
23 under RCW 90.82.040, is dissolved and all assets, funds, files,
24 planning documents, pending plans, and grant applications, and other
25 current activities of the planning unit are transferred to the board.

26 (9) Any watershed management board formed under this chapter is
27 eligible for any future funding provided for watershed planning under
28 chapter 90.82 RCW.

29 NEW SECTION. **Sec. 6.** The board, in collaboration with the
30 department, must provide a written report to the legislature prior to
31 December 1st each year. A copy of the report will also be provided to
32 the county where the WRIA is located.

33 NEW SECTION. **Sec. 7.** (1) The board may establish a mechanism to
34 bank water for the holders of water rights within the planning area to
35 voluntarily deposit the water rights on a temporary or permanent basis.

1 (2) The board has the following authority regarding banked water in
2 the planning area:

3 (a) The board may accept a surface water right or a groundwater
4 right on a permanent or temporary basis under terms and conditions
5 agreed upon by the water rights holder and the board.

6 (b) On a temporary or permanent basis, the board may accept a water
7 right, or portion thereof, that will be made available under local
8 water plans for stream flow enhancement under the terms of the local
9 water plan, as provided in this chapter.

10 (c) Except as provided in (d) of this subsection, the board must
11 accept a water right temporarily banked for instream flow without
12 conducting a review of the extent and validity of the water right.
13 Such a water right may not thereafter be authorized for any other
14 purposes while in the water bank. A banked water right that has not
15 been tentatively determined as to its extent and validity is not
16 entitled to be protected from impairment by another water right.

17 (d) The board may manage a water right that has been banked as
18 mitigation for impairment to instream flows and other existing water
19 rights. However, the water right may only be available for mitigation
20 to the extent the department determines the water right is valid and
21 use of the water right for mitigation will not cause detriment or
22 injury to existing water rights.

23 (3)(a) A water right banked on a temporary basis remains in the
24 ownership of the water rights holder and not the state or the board.

25 (b) A water right banked on a permanent basis must be transferred
26 to the state of Washington as a trust water right consistent with RCW
27 90.42.080.

28 (4) A water right or portion of a water right banked under this
29 chapter is not subject to loss by forfeiture under RCW 90.14.130
30 through 90.14.200. When a temporary water right is withdrawn from
31 banking, the time period that the water right was banked may not be
32 calculated as time water was not used for purposes of RCW 90.14.160,
33 90.14.170, and 90.14.180.

34 (5) When a temporarily deposited water right is withdrawn from
35 banking, the time period that the water right was banked may not be
36 included in the five years of prior water use for purposes of
37 applications to add acreage or purposes of water use under RCW
38 90.03.380(1).

1 (6) Nothing in this chapter forecloses or diminishes the rights of
2 any person to apply to the department to transfer a water right to the
3 state trust water rights program under the authority of chapter 90.42
4 RCW or to apply for a change of a water right to the department or to
5 a water conservancy board authorized under chapter 90.80 RCW.

6 NEW SECTION. **Sec. 8.** (1) If the board intends to develop one or
7 more local water plans, it shall adopt guidelines and criteria for
8 filing, review, and approval of a local water plan. The board shall
9 also develop a dispute resolution process that provides for water
10 users, the board, and the department to resolve disputes regarding the
11 implementation and enforcement of a local water plan.

12 (2) A water user or group of water users within the planning area,
13 organized as provided in guidelines adopted by the board, may submit a
14 proposed local water plan to the board.

15 (3) A local water plan must include:

16 (a) A determination by the board of the baseline water use for all
17 water rights involved in the local water plan, based on the guidelines
18 adopted by the board, and in consultation with the water resource
19 panel. The baseline documents regarding water use that are submitted
20 by the water users may not be used by the department to determine the
21 validity of the water rights in any future administrative or regulatory
22 actions;

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

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

27 (d) Performance measures and options for achieving reductions in
28 total water use from the baseline;

29 (e) Performance measures for tracking improved stream flows either
30 long term or during critical flow periods for fish; and

31 (f) Measurement, tracking, and monitoring measures and procedures
32 that ensure the implementation and enforcement of the measures for
33 flexibility of water use, enhancement of the stream flows, and other
34 elements, terms, and conditions in the local water plan.

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

1 (a) The ability to use the quantity of water defined as baseline in
2 subsection (3)(a) of this section on new or additional places of use,
3 from new or additional points of diversion or withdrawal, and at
4 different times of the year;

5 (b) The ability to change or add a source of water supply including
6 the use of groundwater to supplement surface water rights and the
7 ability to implement the conjunctive use of the groundwater and surface
8 water; and

9 (c) The storage of water and infiltration of the water to the
10 groundwater to supplement shallow groundwater withdrawals or for the
11 purpose of replenishing the aquifer.

12 (5) To participate in a local water plan, water rights holders
13 must: (a) Agree to allow a portion or all of their baseline water use
14 to remain instream, as specified in the approved local water plan; (b)
15 have existing operable water conveyance infrastructure in place and
16 available for use; (c) agree that any water made available for stream
17 flow enhancement may not be diverted from the water source and used
18 during the term of the local water plan, but instead must be deposited
19 into the water bank or, upon request by the water rights holder,
20 transferred to the trust water rights program consistent with chapter
21 90.42 RCW; (d) measure and monitor their water use, stream flows
22 upstream and downstream of the boundaries of the plan, and groundwater
23 levels within the boundaries of the plan; and (e) commit to staying in
24 the program consistent with criteria established by the board.

25 (6) Unless agreed upon by the water rights holder, nothing in this
26 chapter diminishes or changes existing water rights.

27 (7) The water users must submit annual reports to the department
28 and the board regarding contract performance, consistent with the
29 guidelines adopted by the board.

30 (8) A local water plan may be effective for a term of one to ten
31 years.

32 NEW SECTION. **Sec. 9.** (1) The board must provide a thirty day
33 public notice period for the proposal for a local water plan and accept
34 comments from any interested persons during that period.

35 (2) To become effective, the local water plan must be approved by
36 both the board and the department. A proposed local water plan must

1 not be approved if the board and the department determine the local
2 water plan will not substantially enhance instream flow conditions.

3 (3) The approved local water plan must be signed by the executive
4 director of the board, by the director, and by all water users
5 participating in the local water plan. The local water plan is a
6 contract among the board, the department, and the water users in which
7 all parties agree to abide by all terms and conditions of the local
8 water plan.

9 (4) If an approved local water plan is not in compliance with its
10 terms and conditions, the board shall, consistent with the dispute
11 resolution process adopted by the board, seek compliance. If the board
12 revokes a local water plan due to noncompliance, the water users in the
13 local water plan must thereafter exercise the water rights only as the
14 water rights were authorized and conditioned prior to the approval of
15 the local water plan, and all rights and duties that were terms in the
16 local water plan lapse and are not valid or enforceable.

17 NEW SECTION. **Sec. 10.** (1) Any person not party to the local water
18 plan and aggrieved by the director's decision may appeal the decision
19 to the pollution control hearings board as provided under RCW
20 43.21B.230.

21 (2) A water rights holder who believes the holder's water rights
22 have been impaired by any action under this chapter may request that
23 the department review the impairment claim. If the department
24 determines that some action under this chapter is impairing existing
25 rights, the department, the board, and the water users must amend the
26 local water plan to eliminate the impairment. Any decision of the
27 department to alter or not alter a local water plan is appealable to
28 the pollution control hearings board under RCW 43.21B.230.

29 NEW SECTION. **Sec. 11.** (1) A local water plan expires by its
30 terms, by withdrawal of one or more water users to the local water
31 plan, or upon agreement by all parties to the contract. Upon the
32 expiration of a local water plan that has been operating for five or
33 more years, the water users may request that the board and the
34 department make the elements of the local water plan, including water
35 deposited to the water bank for placement in the trust water rights

1 program, permanent authorizations and conditions for use of the water
2 rights.

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

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

7 (b) Whether there is injury or detriment to other existing water
8 rights; or

9 (c) The written approval obtained from the holder of an impaired
10 water right is continued or renewed.

11 (3) If the board and the department approve the request under
12 subsection (1) of this section, the department shall issue superseding
13 water rights consistent with the management and uses of the water under
14 the local water plan. That portion of the water rights deposited in
15 the water bank for placement in the trust water rights program must be
16 made permanent and transferred in accordance with chapter 90.42 RCW.

17 (4) If the local water plan expires and the water management and
18 uses under the local water plan are not granted approval to be
19 permanent, the water users in the local water plan must thereafter
20 exercise the water rights only as the water rights were authorized and
21 conditioned prior to the local water plan, and all rights and duties
22 that were terms in the local water plan lapse and are not valid or
23 enforceable.

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

27 (a) Not subject to either the approval of the department under RCW
28 90.03.380 through 90.03.390, 90.44.100, and 90.44.105, or a tentative
29 determination of the validity and extent of the water rights;

30 (b) Not subject to loss by forfeiture under RCW 90.14.130 through
31 90.14.200 during the period of time from when the local water plan is
32 approved to the expiration or nullification of the local water plan as
33 provided in section 11 of this act; and

34 (c) Not to be exercised in a manner that would result in injury or
35 detriment to other existing water rights unless express written
36 approval is obtained from the holder of the impaired water right. To

1 allow impacts to existing instream flow rights, the board and the
2 department must agree that the flow benefits provided by a local water
3 plan outweigh the impacts on existing instream flow rights.

4 (2) The years during the period of time when the local water plan
5 is operational may not be considered or calculated as a period of time
6 that the water was not applied to use for purposes of RCW 90.14.130
7 through 90.14.200. Further, the years during this period of time may
8 not be considered or calculated as a period of time that the water was
9 not applied to use and for purposes of future applications to change
10 the water right for additional purposes or acreage under RCW 90.03.380.

11 **Sec. 13.** RCW 90.14.140 and 2012 c 7 s 1 are each amended to read
12 as follows:

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

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

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

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

21 (d) The operation of legal proceedings;

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

25 (f) Federal laws imposing land or water use restrictions either
26 directly or through the voluntary enrollment of a landowner in a
27 federal program implementing those laws, or acreage limitations, or
28 production quotas;

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

35 (h) Temporarily reduced diversions or withdrawals of irrigation
36 water directly resulting from the provisions of a contract or similar
37 agreement in which a supplier of electricity buys back electricity from

1 the water right holder and the electricity is needed for the diversion
2 or withdrawal or for the use of the water diverted or withdrawn for
3 irrigation purposes;

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

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

12 (k) The reduced use of irrigation water resulting from crop
13 rotation. For purposes of this subsection, crop rotation means the
14 temporary change in the type of crops grown resulting from the exercise
15 of generally recognized sound farming practices. Unused water
16 resulting from crop rotation will not be relinquished if the remaining
17 portion of the water continues to be beneficially used; or

18 (l) Waiting for a final determination from the department of
19 ecology on a change application filed under RCW 90.03.250, 90.03.380,
20 or 90.44.100.

21 (2) Notwithstanding any other provisions of RCW 90.14.130 through
22 90.14.180, there shall be no relinquishment of any water right:

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

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

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

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

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

37 (f) If such right or portion of the right is leased to another
38 person for use on land other than the land to which the right is

1 appurtenant as long as the lessee makes beneficial use of the right in
2 accordance with this chapter and a transfer or change of the right has
3 been approved by the department in accordance with RCW 90.03.380,
4 90.03.383, 90.03.390, or 90.44.100;

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

8 (h) If such right is a trust water right under chapter 90.38 or
9 90.42 RCW;

10 (i) If such a right is involved in an approved local water plan
11 created under RCW 90.92.090 or section 9 of this act, provided the
12 right is subject to an agreement not to divert under RCW 90.92.050 or
13 section 5 of this act, or provided the right is banked under RCW
14 90.92.070 or section 7 of this act.

15 (3) In adding provisions to this section by chapter 237, Laws of
16 2001, the legislature does not intend to imply legislative approval or
17 disapproval of any existing administrative policy regarding, or any
18 existing administrative or judicial interpretation of, the provisions
19 of this section not expressly added or revised.

20 **Sec. 14.** RCW 90.03.380 and 2011 c 112 s 2 are each amended to read
21 as follows:

22 (1) The right to the use of water which has been applied to a
23 beneficial use in the state shall be and remain appurtenant to the land
24 or place upon which the same is used: PROVIDED, HOWEVER, That the
25 right may be transferred to another or to others and become appurtenant
26 to any other land or place of use without loss of priority of right
27 theretofore established if such change can be made without detriment or
28 injury to existing rights. The point of diversion of water for
29 beneficial use or the purpose of use may be changed, if such change can
30 be made without detriment or injury to existing rights. A change in
31 the place of use, point of diversion, and/or purpose of use of a water
32 right to enable irrigation of additional acreage or the addition of new
33 uses may be permitted if such change results in no increase in the
34 annual consumptive quantity of water used under the water right. For
35 purposes of this section, "annual consumptive quantity" means the
36 estimated or actual annual amount of water diverted pursuant to the
37 water right, reduced by the estimated annual amount of return flows,

1 averaged over the two years of greatest use within the most recent
2 five-year period of continuous beneficial use of the water right.
3 Before any transfer of such right to use water or change of the point
4 of diversion of water or change of purpose of use can be made, any
5 person having an interest in the transfer or change, shall file a
6 written application therefor with the department, and the application
7 shall not be granted until notice of the application is published as
8 provided in RCW 90.03.280. If it shall appear that such transfer or
9 such change may be made without injury or detriment to existing rights,
10 the department shall issue to the applicant a certificate in duplicate
11 granting the right for such transfer or for such change of point of
12 diversion or of use. The certificate so issued shall be filed and be
13 made a record with the department and the duplicate certificate issued
14 to the applicant may be filed with the county auditor in like manner
15 and with the same effect as provided in the original certificate or
16 permit to divert water. The time period that the water right was
17 banked under RCW 90.92.070 or section 7 of this act, in an approved
18 local water plan created under RCW 90.92.090 or section 9 of this act,
19 or the water right was subject to an agreement to not divert under RCW
20 90.92.050 or section 5 of this act will not be included in the most
21 recent five-year period of continuous beneficial use for the purpose of
22 determining the annual consumptive quantity under this section. If the
23 water right has not been used during the previous five years but the
24 nonuse of which qualifies for one or more of the statutory good causes
25 or exceptions to relinquishment in RCW 90.14.140 and 90.44.520, the
26 period of nonuse is not included in the most recent five-year period of
27 continuous beneficial use for purposes of determining the annual
28 consumptive quantity of water under this section.

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

35 (3) A change in place of use by an individual water user or users
36 of water provided by an irrigation district need only receive approval
37 for the change from the board of directors of the district if the use
38 of water continues within the irrigation district, and when water is

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

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

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

12 (b) Applications relating to existing surface or ground water
13 rights may be processed and decisions on them rendered independently of
14 processing and rendering decisions on pending applications for new
15 water rights within the same source of supply without regard to the
16 date of filing of the pending applications for new water rights.

17 (c) Notwithstanding any other existing authority to process
18 applications, including but not limited to the authority to process
19 applications under WAC 173-152-050 as it existed on January 1, 2001, an
20 application relating to an existing surface or ground water right may
21 be processed ahead of a previously filed application relating to an
22 existing right when sufficient information for a decision on the
23 previously filed application is not available and the applicant for the
24 previously filed application is sent written notice that explains what
25 information is not available and informs the applicant that processing
26 of the next application will begin. The previously filed application
27 does not lose its priority date and if the information is provided by
28 the applicant within sixty days, the previously filed application shall
29 be processed at that time. This subsection (5)(c) does not affect any
30 other existing authority to process applications.

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

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

37 (7) In revising the provisions of this section and adding
38 provisions to this section by chapter 237, Laws of 2001, the

1 legislature does not intend to imply legislative approval or
2 disapproval of any existing administrative policy regarding, or any
3 existing administrative or judicial interpretation of, the provisions
4 of this section not expressly added or revised.

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

11 (9) This section does not apply to a water right involved in an
12 approved local water plan created under RCW 90.92.090 or section 9 of
13 this act, a water right that is subject to an agreement not to divert
14 under RCW 90.92.050 or section 5 of this act, or a banked water right
15 under RCW 90.92.070 or section 7 of this act.

16 (10)(a) The department may only approve an application submitted
17 after July 22, 2011, for an interbasin water rights transfer after
18 providing notice electronically to the board of county commissioners in
19 the county of origin upon receipt of an application.

20 (b) For the purposes of this subsection:

21 (i) "Interbasin water rights transfer" means a transfer of a water
22 right for which the proposed point of diversion is in a different basin
23 than the proposed place of beneficial use.

24 (ii) "County of origin" means the county from which a water right
25 is transferred or proposed to be transferred.

26 (c) This subsection applies to counties located east of the crest
27 of the Cascade mountains.

28 **Sec. 15.** RCW 90.44.100 and 2009 c 183 s 16 are each amended to
29 read as follows:

30 (1) After an application to, and upon the issuance by the
31 department of an amendment to the appropriate permit or certificate of
32 groundwater right, the holder of a valid right to withdraw public
33 groundwaters may, without losing the holder's priority of right,
34 construct wells or other means of withdrawal at a new location in
35 substitution for or in addition to those at the original location, or
36 the holder may change the manner or the place of use of the water.

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

20 (3) The construction of a replacement or new additional well or
21 wells at the location of the original well or wells shall be allowed
22 without application to the department for an amendment. However, the
23 following apply to such a replacement or new additional well: (a) The
24 well shall tap the same body of public groundwater as the original well
25 or wells; (b) if a replacement well is constructed, the use of the
26 original well or wells shall be discontinued and the original well or
27 wells shall be properly decommissioned as required under chapter 18.104
28 RCW; (c) if a new additional well is constructed, the original well or
29 wells may continue to be used, but the combined total withdrawal from
30 the original and additional well or wells shall not enlarge the right
31 conveyed by the original water use permit or certificate; (d) the
32 construction and use of the well shall not interfere with or impair
33 water rights with an earlier date of priority than the water right or
34 rights for the original well or wells; (e) the replacement or
35 additional well shall be located no closer than the original well to a
36 well it might interfere with; (f) the department may specify an
37 approved manner of construction of the well; and (g) the department

1 shall require a showing of compliance with the conditions of this
2 subsection (3).

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

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

13 (6) This section does not apply to a water right involved in an
14 approved local water plan created under RCW 90.92.090 or section 9 of
15 this act or a banked water right under RCW 90.92.070 or section 7 of
16 this act.

17 NEW SECTION. **Sec. 16.** Sections 13, 14, and 15 of this act expire
18 June 30, 2019.

19 NEW SECTION. **Sec. 17.** Sections 1 through 12 of this act
20 constitute a new chapter in Title 90 RCW.

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