
SENATE BILL 5934

State of Washington

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By Senators Rockefeller, Ranker, Chase, Fraser, and Nelson

Read first time 04/13/11. Referred to Committee on Environment, Water & Energy.

1 AN ACT Relating to funding and administering the processing of
2 water rights permits and applications including limiting the review
3 period in making tentative determinations and modifying relinquishment;
4 amending RCW 90.03.260, 90.03.470, 90.03.650, 90.03.380, 90.03.380,
5 90.44.100, 90.44.100, and 90.14.140; reenacting and amending RCW
6 90.14.140; adding new sections to chapter 90.03 RCW; creating a new
7 section; providing effective dates; and providing an expiration date.

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

9 **Sec. 1.** RCW 90.03.260 and 2003 1st sp.s. c 5 s 4 are each amended
10 to read as follows:

11 (1) Each application for permit to appropriate water or to change,
12 transfer, or amend an existing water right shall set forth the name and
13 post office address of the applicant, the source of water supply, the
14 nature and amount of the proposed use, the time during which water will
15 be required each year, the location and description of the proposed
16 ditch, canal, or other work, the time within which the completion of
17 the construction and the time for the complete application of the water
18 to the proposed use. The department shall post on its web site a

1 checklist of the information required in the application under this
2 subsection and subsections (2) through (8) of this section.

3 (2) If for agricultural purposes, the application shall give the
4 legal subdivision of the land and the acreage to be irrigated(~~(, as~~
5 ~~near as may be,)) and the amount of water expressed in acre feet to be
6 supplied per season. If for power purposes, it shall give the nature
7 of the works by means of which the power is to be developed, the head
8 and amount of water to be utilized, and the uses to which the power is
9 to be applied.~~

10 (3) If for construction of a reservoir, the application shall give
11 the height of the dam, the capacity of the reservoir, and the uses to
12 be made of the impounded waters.

13 (4) If for community or multiple domestic water supply, the
14 application shall give the projected number of service connections
15 sought to be served. However, for a municipal water supplier that has
16 an approved water system plan under chapter 43.20 RCW or an approval
17 from the department of health to serve a specified number of service
18 connections, the service connection figure in the application or any
19 subsequent water right document is not an attribute limiting exercise
20 of the water right as long as the number of service connections to be
21 served under the right is consistent with the approved water system
22 plan or specified number.

23 (5) If for municipal water supply, the application shall give the
24 present population to be served, and, as near as may be estimated, the
25 future requirement of the municipality. However, for a municipal water
26 supplier that has an approved water system plan under chapter 43.20 RCW
27 or an approval from the department of health to serve a specified
28 number of service connections, the population figures in the
29 application or any subsequent water right document are not an attribute
30 limiting exercise of the water right as long as the population to be
31 provided water under the right is consistent with the approved water
32 system plan or specified number.

33 (6) If for mining purposes, the application shall give the nature
34 of the mines to be served and the method of supplying and utilizing the
35 water; also their location by legal subdivisions.

36 (7) ~~((All))~~ If for industrial or commercial purposes, the
37 application shall describe how water is proposed to be used in the

1 production process and in ancillary uses including but not limited to
2 heat exchange, washing and cleaning, and domestic potable use.

3 (8) An application to change, transfer, or amend an existing water
4 right or claimed water right must also include the following
5 information:

6 (a) Identification of the water right or claim proposed to be
7 changed, including a legible copy of the right or claim proposed to be
8 changed;

9 (b) The existing and proposed points of diversion, withdrawal, or
10 storage of water as applicable if proposed to be changed;

11 (c) The location of the existing place where water is used and the
12 proposed place of use if the place is proposed to be changed;

13 (d) The existing purpose or purposes of use and the proposed
14 purpose or purposes of use if the purpose is proposed to be amended or
15 added to; and

16 (e) Any other information required by the department on the
17 application form prescribed by the department.

18 (9) Upon receipt of an application containing the basic information
19 required in subsections (1) through (8) of this section, the
20 application must be time and date stamped by the department to
21 establish a priority date.

22 (10)(a) After an application to appropriate or store water or to
23 change, transfer, or amend a water right or claim is filed and prior to
24 the department initiating its investigation of the application under
25 this chapter or chapter 90.44 RCW, the department must provide in
26 writing to the applicant an initial assessment that estimates the
27 probable costs that the applicant will incur for processing the
28 application. The department shall also convey to the applicant the
29 scope of issues likely to be encountered in processing the application
30 as identified under RCW 90.03.380. To the extent possible, the
31 department shall perform this duty for groups of applications from the
32 same source or geographic area.

33 (b) The purpose of this initial assessment is to assist the
34 applicant in making a decision as to whether to proceed with having the
35 department make a formal determination on their water right
36 application. Such an assessment must be made with the department's
37 best professional judgment based on information available to the
38 department at that time. If additional information needs to be

1 collected or studies need to be conducted to answer the applicable
2 tests for rendering a decision on the application, the department must
3 disclose to the applicant the estimated time required to collect the
4 information or to conduct the studies and the estimated cost that the
5 applicant will incur. The department must establish a deadline by
6 which the information or studies must be submitted to the department.
7 If this deadline is not met, the department shall reject or cancel the
8 application. An applicant may withdraw an application after receiving
9 the initial assessment by providing written notice to the department.
10 Upon receiving such a notice, the department shall cancel the
11 application. The department's initial assessment is not an appealable
12 action or a final decision by the department and is not a guarantee of
13 a particular outcome on the application.

14 (11) Upon receipt of an application containing the basic
15 information required in subsections (1) through (8) of this section and
16 after the initial assessment required in subsection (9) of this
17 section, the department must schedule a conference with the applicant
18 to review any particular challenges involved in the proposed
19 appropriation of water from the proposed source. In the conference,
20 the department shall also discuss the nature and extent of any
21 additional information to be required from the applicant. The
22 conference may be held in person or by telephone. The department is
23 encouraged to hold conferences with groups of applicants with
24 applications from the same source and shall encourage the applicants to
25 coordinate information gathering to the extent practicable. An
26 applicant may withdraw an application after the conference by providing
27 written notice to the department. Upon receiving such a notice, the
28 department shall cancel the application.

29 (12) Applications shall be (~~accompanied~~) supplemented by such
30 surveys, investigations, and studies, including maps and drawings, in
31 duplicate, and such other data, as may be required by the department to
32 make the determination whether to approve an application for a permit
33 or a change under this chapter or chapter 90.44 RCW, and such
34 accompanying (~~data~~) information shall be considered as a part of the
35 application. The department shall reject or cancel an application for
36 failure to submit such accompanying information by the deadline
37 established in the initial assessment required in subsection (8) of
38 this section.

1 stakeholders an opportunity to comment upon proposals for
2 administrative or legislative changes to simplify procedures.

3 (2) The department of ecology shall implement changes for which it
4 has current administrative authority by January 1, 2012.

5 (3) The department of ecology shall provide a report to the water
6 resource policy and fiscal committees of the senate and house of
7 representatives by January 1, 2012. The report must summarize the
8 review conducted, the proposals considered by the department of
9 ecology, including those forwarded by stakeholders, the changes
10 implemented, and recommendations for legislation necessary to implement
11 additional changes.

12 **Sec. 4.** RCW 90.03.470 and 2005 c 412 s 2 are each amended to read
13 as follows:

14 The fees specified in this section shall be collected by the
15 department in advance of the requested action.

16 (1) For the ~~((examination))~~ filing of an application for a permit
17 to appropriate water for a single domestic use that has a single
18 purpose, a ~~((minimum))~~ filing fee of ~~((fifty))~~ one hundred twenty-five
19 dollars must be remitted with the application. For ~~((an amount of~~
20 ~~water exceeding one-half cubic foot per second, the examination fee~~
21 ~~shall be assessed at the rate of one dollar per one hundredth cubic~~
22 ~~foot per second. In no case will the examination fee be less than~~
23 ~~fifty dollars or more than twenty-five thousand dollars))~~ the filing of
24 an application for a permit to appropriate water other than for a
25 single domestic use that has a single purpose, a filing fee of two
26 hundred fifty dollars for each purpose of use proposed must be remitted
27 with the application. No fee is required under this subsection (1) for
28 an application filed by a party to a cost-reimbursement agreement made
29 under RCW 90.03.265.

30 (2) For the ~~((examination))~~ filing of an application to store
31 water, a fee of two hundred fifty dollars ~~((for each acre foot of~~
32 ~~storage proposed shall be charged, but a minimum fee of fifty dollars))~~
33 must be remitted with the application. ~~((In no case will the~~
34 ~~examination fee for a storage project be less than fifty dollars or~~
35 ~~more than twenty-five thousand dollars.))~~ No fee is required under
36 this subsection (2) for an application filed by a party to a
37 cost-reimbursement agreement made under RCW 90.03.265.

1 (3)(a) For the ~~((examination))~~ filing of an application to
2 transfer, change, or amend a water right or storage certificate,
3 permit, or claim as authorized by RCW 90.44.100, 90.44.105, or
4 90.03.380, a ~~((minimum))~~ filing fee of ~~((fifty))~~ two hundred fifty
5 dollars for each type of change, transfer, or amendment must be
6 remitted with the application. ~~((For an application for change~~
7 ~~involving an amount of water exceeding one cubic foot per second, the~~
8 ~~total examination fee shall be assessed at the rate of fifty cents per~~
9 ~~one hundredth cubic foot per second. For an application for change of~~
10 ~~a storage water right, the total examination fee shall be assessed at~~
11 ~~the rate of one dollar for each acre foot of water involved in the~~
12 ~~change. The fee shall be based on the amount of water subject to~~
13 ~~change as proposed in the application, not on the total amount of water~~
14 ~~reflected in the water right certificate, permit, or claim. In no case~~
15 ~~will the examination fee charged for a change application be less than~~
16 ~~fifty dollars or more than twelve thousand five hundred dollars.))~~

17 (b) The filing and examination fee for a temporary or seasonal
18 change under RCW 90.03.390 or a drought-related change or emergency
19 water approval under RCW 43.83B.410 is ~~((fifty))~~ one hundred twenty-
20 five dollars and must be remitted with the application.

21 ~~((e))~~ (4) No filing fee is required under ~~((this))~~ subsection (3)
22 of this section for:

23 ~~((i))~~ (a) An application to process a change relating to donation
24 of a trust water right to the state;

25 ~~((ii) An)~~ (b) That portion of an application ~~((to process))~~ for
26 a change ~~((when))~~, transfer, or amendment under which the department
27 ~~((otherwise))~~ acquires a trust water right for purposes of improving
28 instream flows or for other public purposes;

29 ~~((iii))~~ (c) An application filed with a water conservancy board
30 according to chapter 90.80 RCW ~~((or for the review of a water~~
31 ~~conservancy board's record of decision submitted to the department~~
32 ~~according to chapter 90.80 RCW))~~; or

33 ~~((iv))~~ (d) An application filed by a party to a
34 cost-reimbursement agreement made under RCW 90.03.265.

35 ~~((d))~~ (5) For a change, transfer, or amendment involving a single
36 project operating under more than one water right, including related
37 secondary diversion rights, or involving the consolidation of multiple

1 water rights, only one ((examination)) filing fee and one certificate
2 fee are required to be paid.

3 ~~((4) The fifty-dollar minimum fee payable with the application
4 shall be a credit to the total amount whenever the examination fee
5 totals more than fifty dollars under the schedule specified in
6 subsections (1) through (3) of this section and in such case the
7 further fee due shall be the total computed amount, less the amount
8 previously paid. Within five working days from receipt of an
9 application, the department shall notify the applicant by registered
10 mail of any additional fees due under subsections (1) through (3) of
11 this section.~~

12 ~~(5) The fees specified in subsections (1) through (3) of this
13 section do not apply to any filings for emergency withdrawal
14 authorizations or temporary drought-related water right changes
15 authorized under RCW 43.83B.410 that are received by the department
16 while a drought condition order issued under RCW 43.83B.405 is in
17 effect.)~~

18 (6) The following fees must be paid in advance of the department's
19 examination and determination on an application:

20 (a) For an application to permanently appropriate surface or
21 groundwater or for a permanent change, transfer, or amendment of an
22 existing surface or groundwater right or claimed right, a fee of twelve
23 dollars per one-hundredth cubic foot per second, but not less than one
24 thousand dollars and not more than thirty-five thousand dollars is
25 required. For the department's review and determination on a draft
26 report of examination submitted under RCW 90.03.260(13), a fee of four
27 dollars per one-hundredth cubic foot per second, but not less than
28 three hundred dollars and not more than twelve thousand dollars.

29 (b) For reviewing an application to store water for beneficial use
30 in a surface reservoir, an underground vault, or an underground
31 geological formation where the storage capacity would exceed ten acre
32 feet in volume, a fee of five dollars per acre foot of active storage,
33 but not less than one thousand dollars and not more than thirty-five
34 thousand dollars is required. For the department's review and
35 determination on a draft report of examination submitted under RCW
36 90.03.260(13), a fee of two dollars per acre foot of water, but not
37 less than three hundred dollars and not more than twelve thousand
38 dollars.

1 (c) For reviewing and making a final decision on an application to
2 change, transfer, or amend an existing water right or claim that was
3 filed with and processed by a conservancy board, a fee of four dollars
4 per one-hundredth cubic foot per second, but not less than three
5 hundred dollars and not more than four thousand dollars is required.

6 (d) No fee for examination and determination is required under this
7 subsection for:

8 (i) An application to process a change relating to donation of a
9 trust water right to the state;

10 (ii) That portion of an application for a change, transfer, or
11 amendment under which the department acquires a trust water right for
12 purposes of improving instream flows or for other public purposes;

13 (iii) An application filed by a party to a cost-reimbursement
14 agreement made under RCW 90.03.265; or

15 (iv) An application for a secondary use permit for the use of
16 stored water if it is filed jointly with the application to store
17 water.

18 (7) For applying for each extension of time for beginning
19 construction work under a permit to appropriate water, for completion
20 of construction work, or for completing application of water to a
21 beneficial use, a fee of ~~((fifty))~~ one hundred twenty-five dollars is
22 required. These fees also apply to similar extensions of time
23 requested under a change or transfer authorization.

24 ~~((+7))~~ (8) For the inspection of any hydraulic works to ~~((insure))~~
25 ensure safety to life and property, a fee based on the actual cost of
26 the inspection, including the expense incident thereto, is required
27 except as follows: (a) For any hydraulic works less than ten years
28 old, that the department examined and approved the construction plans
29 and specifications as to its safety when required under RCW 90.03.350,
30 there shall be no fee charged; or (b) for any hydraulic works more than
31 ten years old, but less than twenty years old, that the department
32 examined and approved the construction plans and specifications as to
33 its safety when required under RCW 90.03.350, the fee charged shall not
34 exceed the fee for a significant hazard dam.

35 ~~((+8))~~ (9) For the examination of plans and specifications as to
36 safety of controlling works for storage of ten acre feet or more of
37 water, a minimum fee of ~~((ten))~~ one hundred dollars, or a fee equal to
38 the actual cost, is required.

1 ((+9)) (10) For recording an assignment either of a permit to
2 appropriate water or of an application for such a permit, a fee of
3 fifty dollars is required.

4 ((+10)) (11) For preparing and issuing all water right
5 certificates, a fee of ((fifty)) one hundred twenty-five dollars is
6 required.

7 ((+11)) (12) For filing and recording a formal protest against
8 granting any application, a fee of ((fifty)) one hundred dollars is
9 required. No fee is required to submit a comment, by mail or
10 otherwise, regarding an application.

11 ((+12)) (13) For filing an application to amend a water right
12 claim filed under chapter 90.14 RCW, a fee of ((fifty)) one hundred
13 twenty-five dollars is required.

14 ((+13)) (14) An application or request for an action as provided
15 for under this section is incomplete unless accompanied by the fee ((~~or~~
16 ~~the minimum fee~~)). If no fee or an amount less than the ((minimum))
17 prescribed fee accompanies an application or other request for an
18 action as provided under this section, the department shall return the
19 application or request to the applicant with advice as to the fee that
20 must be remitted with the application or request for it to be accepted
21 for processing. If additional fees are due, the department shall
22 provide timely notification by certified mail with return receipt
23 requested to the applicant. No action may be taken by the department
24 until the fee is paid in full. Failure to remit fees within sixty days
25 of the department's notification is grounds for rejecting the
26 application or request or canceling the permit. Cash shall not be
27 accepted. Fees must be paid by check or money order and are
28 nonrefundable.

29 ((+14)) (15) For purposes of calculating fees for groundwater
30 filings, one cubic foot per second shall be regarded as equivalent to
31 four hundred fifty gallons per minute.

32 ((+15) ~~Eighty percent of the fees collected by the department under~~
33 ~~this section shall be deposited in the state general fund. Twenty~~
34 ~~percent of the fees collected by the department under this section~~
35 ~~shall be deposited in the water rights tracking system account~~
36 ~~established in RCW 90.14.240.))~~

37 (16) Except for the fees relating to the inspection of hydraulic
38 works and the examination of plans and specifications of controlling

1 works provided for in subsections (8) and (9) of this section, fees
2 collected by the department under this section must be deposited in the
3 water rights processing account established in RCW 90.03.650. Fees
4 collected under subsections (8) and (9) of this section must be
5 deposited in the state general fund.

6 (17) Except for the fees relating to the inspection of hydraulic
7 works and the examination of plans and specifications of controlling
8 works provided for in subsections (~~((7) and~~) (8) and (9) of this
9 section, nothing in this section is intended to grant authority to the
10 department to amend the fees in this section by adoption of rules or
11 otherwise.

12 (18) The fees required in subsection (6) of this section apply to
13 all examinations and determinations on applications that are initiated
14 by the department after January 1, 2012, and are intended to apply to
15 water right appropriation and storage applications and change,
16 transfer, and amendment applications pending on that date for which the
17 department has not initiated its examination and determination.

18 **Sec. 5.** RCW 90.03.650 and 2010 c 285 s 4 are each amended to read
19 as follows:

20 The water rights processing account is created in the state
21 treasury. All receipts from the fees collected under RCW 90.03.655,
22 90.03.665, (~~and~~) 90.44.540, and 90.03.470, except the dam safety fees
23 collected under RCW 90.03.470 (8) and (9), must be deposited into the
24 account. Money in the account may be spent only after appropriation.
25 Expenditures from the account may only be used to support the
26 processing of water right applications for a new appropriation, change,
27 transfer, or amendment of a water right or claim as provided in this
28 chapter and chapters 90.42 and 90.44 RCW or for the examination,
29 certification, (~~and~~) renewal of certification of water right
30 examiners as provided in RCW 90.03.665.

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

33 (1) By January 1, 2012, the department must prepare preliminary
34 assessments for each water resource inventory area as established in
35 chapter 173-500 WAC with pending applications for new water rights and
36 for changes, transfers, and amendments. Upon completion of this work,

1 the department must publish available information on its web site,
2 including maps, regarding the location of those applications and the
3 factors affecting water availability and the potential impairment of
4 senior water rights.

5 (2) Upon completion of the work required in subsection (1) of this
6 section, the department must gather and inventory existing information
7 related to water availability for those subbasins and aquifer units
8 within water resource inventory areas where there are more than fifty
9 applications pending. The department must identify any information
10 gaps that effectively block the department's ability to make decisions
11 on the pending applications in those areas. The department must make
12 this information available on its web site and bring the information to
13 the attention of local governments and stakeholders within each water
14 resource inventory area.

15 (3) The department must develop and make public a proposed strategy
16 for addressing the pending applications in each of the water resource
17 inventory areas assessed in subsection (2) of this section. The
18 department must solicit public comments on a proposed strategy before
19 implementing the strategy. The strategies developed under this
20 subsection are the basis for filling any information gaps and for
21 making decisions on pending and future applications.

22 (4) The department must publish on its web site the schedule for
23 its future assessment and strategy development work and its intended
24 timing for addressing pending applications in water resource inventory
25 areas and discrete water sources. Development and implementation of
26 the assessments and strategies and the scheduling of work by geographic
27 areas under this section do not require the adoption of rules under
28 chapter 34.05 RCW or RCW 90.54.050.

29 (5) For water sources for which the department determines that no
30 water remains available for further appropriation, the department shall
31 issue denials of applications to appropriate water unless the
32 applicants propose a feasible mitigation plan, a storage or
33 augmentation plan for the source, or other resource management
34 technique under RCW 90.03.255 or 90.44.055.

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

37 (1) In making a tentative determination of the extent and validity

1 of a water right under this chapter and chapters 90.14, 90.38, 90.42,
2 and 90.44 RCW, the department shall only evaluate the exercise of the
3 water right during the most recent twenty-year period prior to the
4 commencement of the department's tentative determination at issue.

5 (2) For the purposes of appeal, the department's tentative
6 determination under this section does not alone constitute an agency
7 action. Aggrieved parties must appeal the primary action of the
8 department under which the evaluation under this section applies.

9 (3) Notwithstanding subsection (1) of this section, water right
10 determinations during a general adjudication, under RCW 90.03.110
11 through 90.03.245 and 90.03.620 through 90.03.645, are not limited to
12 a twenty-year period of review.

13 (4) Nothing in this section limits a superior court's authority in
14 determining the extent and validity of a water right.

15 **Sec. 8.** RCW 90.03.380 and 2009 c 183 s 15 are each amended to read
16 as follows:

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

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

23 (2) The department's determination of the extent and validity of
24 water rights under this section shall be consistent with section 7 of
25 this act.

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

32 ((+3)) (4) A change in place of use by an individual water user or
33 users of water provided by an irrigation district need only receive
34 approval for the change from the board of directors of the district if
35 the use of water continues within the irrigation district, and when
36 water is provided by an irrigation entity that is a member of a board
37 of joint control created under chapter 87.80 RCW, approval need only be

1 received from the board of joint control if the use of water continues
2 within the area of jurisdiction of the joint board and the change can
3 be made without detriment or injury to existing rights.

4 ~~((+4))~~ (5) This section shall not apply to trust water rights
5 acquired by the state through the funding of water conservation
6 projects under chapter 90.38 RCW or RCW 90.42.010 through 90.42.070.

7 ~~((+5))~~ (6)(a) Pending applications for new water rights are not
8 entitled to protection from impairment, injury, or detriment when an
9 application relating to an existing surface or ground water right is
10 considered.

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

16 (c) Notwithstanding any other existing authority to process
17 applications, including but not limited to the authority to process
18 applications under WAC 173-152-050 as it existed on January 1, 2001, an
19 application relating to an existing surface or ground water right may
20 be processed ahead of a previously filed application relating to an
21 existing right when sufficient information for a decision on the
22 previously filed application is not available and the applicant for the
23 previously filed application is sent written notice that explains what
24 information is not available and informs the applicant that processing
25 of the next application will begin. The previously filed application
26 does not lose its priority date and if the information is provided by
27 the applicant within sixty days, the previously filed application shall
28 be processed at that time. This subsection ~~((+5))~~ (6)(c) does not
29 affect any other existing authority to process applications.

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

32 ~~((+6))~~ (7) No applicant for a change, transfer, or amendment of a
33 water right may be required to give up any part of the applicant's
34 valid water right or claim to a state agency, the trust water rights
35 program, or to other persons as a condition of processing the
36 application.

37 ~~((+7))~~ (8) 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))~~ (9) The development and use of a small irrigation
6 impoundment, as defined in RCW 90.03.370(8), does not constitute a
7 change or amendment for the purposes of this section. The exemption
8 expressly provided by this subsection shall not be construed as
9 requiring a change or transfer of any existing water right to enable
10 the holder of the right to store water governed by the right.

11 ~~((+9))~~ (10) This section does not apply to a water right involved
12 in an approved local water plan created under RCW 90.92.090, a water
13 right that is subject to an agreement not to divert under RCW
14 90.92.050, or a banked water right under RCW 90.92.070.

15 **Sec. 9.** RCW 90.03.380 and 2003 c 329 s 2 are each amended to read
16 as follows:

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

1 written application therefor with the department, and the application
2 shall not be granted until notice of the application is published as
3 provided in RCW 90.03.280. If it shall appear that such transfer or
4 such change may be made without injury or detriment to existing rights,
5 the department shall issue to the applicant a certificate in duplicate
6 granting the right for such transfer or for such change of point of
7 diversion or of use. The certificate so issued shall be filed and be
8 made a record with the department and the duplicate certificate issued
9 to the applicant may be filed with the county auditor in like manner
10 and with the same effect as provided in the original certificate or
11 permit to divert water.

12 (2) The department's determination of the extent and validity of
13 water rights under this section shall be consistent with section 7 of
14 this act.

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

21 ~~((+3))~~ (4) A change in place of use by an individual water user or
22 users of water provided by an irrigation district need only receive
23 approval for the change from the board of directors of the district if
24 the use of water continues within the irrigation district, and when
25 water is provided by an irrigation entity that is a member of a board
26 of joint control created under chapter 87.80 RCW, approval need only be
27 received from the board of joint control if the use of water continues
28 within the area of jurisdiction of the joint board and the change can
29 be made without detriment or injury to existing rights.

30 ~~((+4))~~ (5) This section shall not apply to trust water rights
31 acquired by the state through the funding of water conservation
32 projects under chapter 90.38 RCW or RCW 90.42.010 through 90.42.070.

33 ~~((+5))~~ (6)(a) Pending applications for new water rights are not
34 entitled to protection from impairment, injury, or detriment when an
35 application relating to an existing surface or ground water right is
36 considered.

37 (b) Applications relating to existing surface or ground water
38 rights may be processed and decisions on them rendered independently of

1 processing and rendering decisions on pending applications for new
2 water rights within the same source of supply without regard to the
3 date of filing of the pending applications for new water rights.

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

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

20 (~~(+6+)~~) (7) No applicant for a change, transfer, or amendment of a
21 water right may be required to give up any part of the applicant's
22 valid water right or claim to a state agency, the trust water rights
23 program, or to other persons as a condition of processing the
24 application.

25 (~~(+7+)~~) (8) In revising the provisions of this section and adding
26 provisions to this section by chapter 237, Laws of 2001, the
27 legislature does not intend to imply legislative approval or
28 disapproval of any existing administrative policy regarding, or any
29 existing administrative or judicial interpretation of, the provisions
30 of this section not expressly added or revised.

31 (~~(+8+)~~) (9) The development and use of a small irrigation
32 impoundment, as defined in RCW 90.03.370(8), does not constitute a
33 change or amendment for the purposes of this section. The exemption
34 expressly provided by this subsection shall not be construed as
35 requiring a change or transfer of any existing water right to enable
36 the holder of the right to store water governed by the right.

1 **Sec. 10.** RCW 90.44.100 and 2009 c 183 s 16 are each amended to
2 read 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 RCW 90.92.090 or a banked water
23 right under RCW 90.92.070.

24 (7) The department's tentative determination of the extent and
25 validity of water rights under this section must be consistent with
26 section 7 of this act.

27 **Sec. 11.** RCW 90.44.100 and 2003 c 329 s 3 are each amended to read
28 as follows:

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

36 (2) An amendment to construct replacement or a new additional well
37 or wells at a location outside of the location of the original well or

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

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

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

5 (5) 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 an amendment of any
9 existing water right to enable the holder of the right to store water
10 governed by the right.

11 (6) The department's tentative determination of the extent and
12 validity of water rights under this section must be consistent with
13 section 7 of this act.

14 **Sec. 12.** RCW 90.14.140 and 2009 c 183 s 14 are each amended to
15 read as follows:

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

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

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

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

25 (d) The operation of legal proceedings;

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

29 (f) Federal laws imposing land or water use restrictions either
30 directly or through the voluntary enrollment of a landowner in a
31 federal program implementing those laws, or acreage limitations, or
32 production quotas;

33 (g) Temporarily reduced water need for irrigation use where such
34 reduction is due to varying weather conditions, including but not
35 limited to precipitation and temperature, that warranted the reduction
36 in water use, so long as the water user's diversion and delivery

1 facilities are maintained in good operating condition consistent with
2 beneficial use of the full amount of the water right;

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

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

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

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

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

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

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

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

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

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

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

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

10 (h) If such right is a trust water right under chapter 90.38 or
11 90.42 RCW;

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

16 (j) If such a right or portion of a right is included in a change
17 or transfer application awaiting final determination from the
18 department of ecology, provided that during the waiting period
19 relinquishment is tolled and the nonuse of water is not included in
20 calculating whether five or more years of nonuse has occurred.

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

26 **Sec. 13.** RCW 90.14.140 and 2001 c 240 s 1, 2001 c 237 s 27, and
27 2001 c 69 s 5 are each reenacted and amended to read as follows:

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

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

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

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

37 (d) The operation of legal proceedings;

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

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

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

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

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

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

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

34 (2) Notwithstanding any other provisions of RCW 90.14.130 through
35 90.14.180, there shall be no relinquishment of any water right:

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

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

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

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

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

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

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

21 (h) If such right is a trust water right under chapter 90.38 or
22 90.42 RCW; or

23 (i) If such a right or portion of a right is included in a change
24 or transfer application awaiting final determination from the
25 department of ecology, provided that during the waiting period
26 relinquishment is tolled and the nonuse of water is not included in
27 calculating whether five or more years of nonuse has occurred.

28 (3) In adding provisions to this section by chapter 237, Laws of
29 2001, the legislature does not intend to imply legislative approval or
30 disapproval of any existing administrative policy regarding, or any
31 existing administrative or judicial interpretation of, the provisions
32 of this section not expressly added or revised.

33 NEW SECTION. **Sec. 14.** If any provision of this act or its
34 application to any person or circumstance is held invalid, the
35 remainder of the act or the application of the provision to other
36 persons or circumstances is not affected.

1 NEW SECTION. **Sec. 15.** Sections 8, 10, and 12 of this act expire
2 June 30, 2019.

3 NEW SECTION. **Sec. 16.** (1) Section 4 of this act takes effect
4 January 1, 2012.

5 (2) Sections 9, 11, and 13 of this act take effect June 30, 2019.

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