
SENATE BILL 5977

State of Washington

55th Legislature

1997 Regular Session

By Senators Fraser, Loveland, Fairley, Rasmussen, Spanel, McAuliffe, Thibaudeau and Kohl

Read first time 02/24/97. Referred to Committee on Agriculture & Environment.

1 AN ACT Relating to water resource transfers; amending RCW
2 90.03.380, 90.44.100, 90.14.140, and 90.42.080; adding new sections to
3 chapter 90.03 RCW; adding a new section to chapter 90.44 RCW; adding a
4 new section to chapter 90.42 RCW; and creating new sections.

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

6 **I. POLICIES AND PURPOSES REGARDING WATER TRANSFERS**

7 NEW SECTION. **Sec. 1.** A new section is added to chapter 90.03 RCW
8 to read as follows:

9 DECLARATION OF POLICIES. The legislature declares that water
10 transfers meeting the standards and procedural requirements of chapter
11 . . . , Laws of 1997 (this act) are an important means of satisfying
12 existing and future water demands in the state. Voluntary water
13 transfers improve the administration of the state's existing water
14 resources by increasing the flexibility of water supply and allocation,
15 particularly during droughts and other water shortages.

16 The legislature also declares that short-term and long-term water
17 transfers serve the public interest by creating economic incentives to

1 use water more efficiently and by allowing market processes to direct
2 the distribution of developed water supplies.

3 The legislature further declares that the recognition and
4 protection of water rights are in the public interest and are necessary
5 to facilitate voluntary transfers of water.

6 The legislature recognizes that some water transfers may adversely
7 affect a variety of third parties, including other water right holders,
8 other lawful water users, municipal water supply entities, and other
9 persons who use the state's water resources for their livelihood,
10 recreation, and aesthetic enjoyment. To the extent that water
11 transfers cause injury to other water users, water quality, fish and
12 wildlife, other instream uses of water, ground water resources, and the
13 regional economics of areas from which water is transferred, these
14 third-party interests must be appropriately protected or compensated.

15 The legislature recognizes that Washington's water code, while
16 allowing for transfers and changes in water rights, is silent or
17 unclear on many subjects and may impede or prevent parties from
18 pursuing innovative transfer agreements. Therefore, the legislature
19 declares that it must take an active responsibility to eliminate unwise
20 doctrinal barriers to achieving water transfers while assuring that
21 other recognized water rights and uses are protected.

22 NEW SECTION. **Sec. 2.** LEGISLATIVE PURPOSE. In accordance with the
23 policies set forth in section 1 of this act, the legislature intends by
24 this act to enact a comprehensive set of laws to govern voluntary
25 transfers of and changes in water rights, including:

26 (1) Expressly authorizing additional types of transfers of and
27 changes in water rights in which the water code is silent or does not
28 allow before the effective date of this section;

29 (2) Providing more opportunity for compensatory and consensual
30 mechanisms in which third-party interests may be addressed and
31 transfers allowed that would otherwise be prevented by the water code's
32 no impairment rule;

33 (3) Improving the processing of applications for transfers and
34 providing for expedited decisions upon short-term transfers, and
35 ensuring that administrative functions relating to review of proposed
36 transfers are adequately funded and do not require shifting fiscal
37 resources from other important water resource management activities;

1 (4) Improving the collection, management, and accessibility of
2 information relating to water rights transfers; and

3 (5) Providing assistance locally and at the state level to
4 encourage water transfer transactions and the development of markets
5 for water transfers generally.

6 **II. ENCOURAGING TRANSFERS AND REDUCING UNCERTAINTY**

7 NEW SECTION. **Sec. 3.** A new section is added to chapter 90.03 RCW
8 to read as follows:

9 CHANGES IN SEASON. In addition to the changes authorized by RCW
10 90.03.380, the season of use may be changed to another season or to
11 year-round use where such change can be made without detriment or
12 injury to existing rights, including minimum flows adopted by rule by
13 the department or established as conditions upon the issuance of new
14 water withdrawals. A person seeking approval of such change shall file
15 an application with the department, which shall be processed as an
16 application for change under RCW 90.03.380.

17 NEW SECTION. **Sec. 4.** A new section is added to chapter 90.44 RCW
18 to read as follows:

19 CHANGES IN SEASON. In addition to the changes authorized by RCW
20 90.44.100, the season of use may be changed to another season or to
21 year-round use where such change can be made without detriment or
22 injury to existing rights, including minimum flows adopted by rule by
23 the department or established as conditions upon the issuance of new
24 water withdrawals. A person seeking approval of such a change shall
25 file an application with the department, which shall be processed as an
26 application for change under RCW 90.44.100.

27 NEW SECTION. **Sec. 5.** A new section is added to chapter 90.03 RCW
28 to read as follows:

29 CHANGES IN SOURCE OF WATER. (1) The source of water for an
30 existing water right or permit may be changed from a surface water
31 diversion to a ground water withdrawal or vice versa where the
32 following requirements are met:

- 33 (a) The two sources are in direct hydraulic continuity;
- 34 (b) The change will not result in enlargement of the original water
35 right; and

1 (c) The change can be made without detriment or injury to existing
2 water rights, including minimum flows adopted by rule by the department
3 or established as conditions upon the issuance of new water
4 withdrawals.

5 (2) The application for change shall be processed as an application
6 for change under RCW 90.03.380 if the new source is surface water, and
7 under RCW 90.44.100 if the new source is ground water.

8 (3) The new point of diversion shall retain the original date of
9 priority. However, if within five years after approving the change the
10 department finds that the change results in substantial interference
11 with existing water rights that would not have occurred in the absence
12 of the change, the new point of diversion shall be subordinate to any
13 existing right injured by the change.

14 (4) The department shall approve an application to return to the
15 last authorized point of diversion, while retaining the original
16 priority date, if a water right holder submits an application to the
17 department within five years after the department approves a change
18 under this section.

19 **Sec. 6.** RCW 90.03.380 and 1996 c 320 s 19 are each amended to read
20 as follows:

21 The right to the use of water which has been applied to a
22 beneficial use in the state shall be and remain appurtenant to the land
23 or place upon which the same is used: PROVIDED, HOWEVER, That said
24 right may be transferred to another or to others and become appurtenant
25 to any other land or place of use, including an instream use without
26 physical diversion of water, 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. Before any
31 transfer of such right to use water or change of the point of diversion
32 of water or change of purpose of use can be made, any person having an
33 interest in the transfer or change, shall file a written application
34 therefor with the department, and said application shall not be granted
35 until notice of said application shall be published as provided in RCW
36 90.03.280. The department shall make a summary of the record of review
37 of the application, and the proposed certificate, if the department
38 proposes to approve the application, available to the public and

1 provide a period of at least sixty days for the public to submit
2 comments thereon. The public comment period may be reduced to fifteen
3 days for short-term transfers of no more than two years in duration.
4 The department shall consider the comments received and the entire
5 record. If it shall appear that such transfer or such change may be
6 made without injury or detriment to existing rights, the department
7 shall issue to the applicant a certificate in duplicate granting the
8 right for such transfer or for such change of point of diversion or of
9 use. The certificate so issued shall be filed and be made a record
10 with the department and the duplicate certificate issued to the
11 applicant may be filed with the county auditor in like manner and with
12 the same effect as provided in the original certificate or permit to
13 divert water.

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

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

29 A person may change the place of use of a water right without the
30 requirement of approval under this section where the water is used on
31 land contiguous to the place of use of the water right, the land is
32 owned by the holder of the water right, and the total amount of land to
33 which the water is applied is not increased. Before making the change,
34 the water right holder shall notify the department of the change and
35 describe the land subject to the change in place of use.

36 This section shall not apply to trust water rights acquired by the
37 state through the funding of water conservation projects under chapter
38 90.38 RCW or RCW 90.42.010 through 90.42.070.

1 **Sec. 7.** RCW 90.44.100 and 1987 c 109 s 113 are each amended to
2 read as follows:

3 After an application to, and upon the issuance by the department of
4 an amendment to the appropriate permit or certificate of ground water
5 right, the holder of a valid right to withdraw public ground waters
6 may, without losing his priority of right, construct wells or other
7 means of withdrawal at a new location in substitution for or in
8 addition to those at the original location, or he may change the manner
9 or the place of use of the water: PROVIDED, HOWEVER, That such
10 amendment shall be issued only after publication of notice of the
11 application and findings as prescribed in the case of an original
12 application. The department shall make a summary of the record of
13 review of the application, and the proposed amendment, if the
14 department proposes to approve the application, available to the public
15 and provide a period of at least sixty days for the public to submit
16 comments thereon. The public comment period may be reduced to fifteen
17 days for short-term transfers of no more than two years in duration.
18 The department shall consider the comments received and the entire
19 record. Such amendment shall be issued by the department only on the
20 conditions that: (1) The additional or substitute well or wells shall
21 tap the same body of public ground water as the original well or wells;
22 (2) use of the original well or wells shall be discontinued upon
23 construction of the substitute well or wells; (3) the construction of
24 an additional well or wells shall not enlarge the right conveyed by the
25 original permit or certificate; and (4) other existing rights shall not
26 be impaired. The department may specify an approved manner of
27 construction and shall require a showing of compliance with the terms
28 of the amendment, as provided in RCW 90.44.080 in the case of an
29 original permit.

30 NEW SECTION. **Sec. 8.** A new section is added to chapter 90.03 RCW
31 to read as follows:

32 RECLAIMED WATER. The holder of any water right may transfer any
33 reclaimed water, as defined in RCW 90.46.010(4), generated from the
34 underlying beneficial use to another party for some other beneficial
35 use that is in compliance with the standards and criteria adopted by
36 the department or by the department of health, or both pursuant to
37 chapter 90.46 RCW. Where such a transfer results in a change in the
38 place of use of such water, the holder of the right shall apply for a

1 change in place of use using the procedures in RCW 90.03.380. The
2 department shall approve such a transfer as consistent with the public
3 interest where such change can be made without detriment or injury to
4 existing rights, including minimum flows adopted by rule by the
5 department or established as conditions upon the issuance of new water
6 withdrawals.

7 NEW SECTION. **Sec. 9.** A new section is added to chapter 90.03 RCW
8 to read as follows:

9 CHANGED OF DIVERSION POINT IN RESPONSE TO CHANGED SURFACE WATER
10 LEVEL. In the event that government action results in or creates a
11 reasonable expectation of a change in the surface level of a surface
12 water source that impairs or threatens to impair access to a point of
13 diversion authorized by a water right permit, certificate, or decree,
14 the owner of the water right may change the point of diversion or add
15 an additional point of diversion in accordance with this section in
16 lieu of complying with the requirements of RCW 90.03.380. Before
17 changing the point of diversion, the water right owner shall provide
18 written notice of the proposed change to the department. Within thirty
19 days after the department receives notice from the owner, the
20 department shall, by order, approve the change unless the director
21 finds the changes will result in injury to other existing water rights,
22 including minimum flows adopted by rule by the department or
23 established as conditions upon the issuance of new water withdrawals.
24 Where the point of diversion is located within one thousand feet of the
25 existing point of diversion, there shall be a rebuttable presumption
26 that such rights will not be impaired. All other terms and conditions
27 of the water right shall remain in effect.

28 No fee may be charged for the department's review under this
29 section.

30 **Sec. 10.** RCW 90.14.140 and 1987 c 125 s 1 are each amended to read
31 as follows:

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

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

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

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

4 (d) The operation of legal proceedings;

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

9 (f) The temporary transfer of the water right to another who
10 applies the water to beneficial use during the transfer.

11 (2) Notwithstanding any other provisions of RCW 90.14.130 through
12 90.14.180, there shall be no relinquishment of any water right:

13 (a) If such right is claimed for power development purposes under
14 chapter 90.16 RCW and annual license fees are paid in accordance with
15 chapter 90.16 RCW, or

16 (b) If such right is used for a standby or reserve water supply to
17 be used in time of drought or other low flow period so long as
18 withdrawal or diversion facilities are maintained in good operating
19 condition for the use of such reserve or standby water supply, or

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

23 (d) If such right is claimed for municipal water supply purposes
24 under chapter 90.03 RCW, or

25 (e) If such waters are not subject to appropriation under the
26 applicable provisions of RCW 90.40.030 as now or hereafter amended.

27 NEW SECTION. Sec. 11. A new section is added to chapter 90.03 RCW
28 to read as follows:

29 NOT EVIDENCE OF WASTE OR NONUSE. The offer of water or water
30 rights for transfer, the transfer negotiations, the agreement to
31 transfer water, and the application and supporting information for
32 approval of a water transfer shall not be used as evidence of the
33 transferor's waste or unreasonable use, or the nonuse, of the water or
34 water rights made available for transfer, nor may the transfer of water
35 cause, or be the basis of, an abandonment of any water rights or other
36 right to use water.

37 **III. STANDARDS FOR APPROVAL OF TRANSFERS AND CHANGES**

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

3 MITIGATION. (1) This section provides authority to the department
4 to approve a transfer or change in which the potential detriment,
5 injury, or impairment of existing rights as defined in RCW 90.03.380,
6 90.44.100, and sections 3 through 5 of this act, will be fully
7 mitigated by the applicant through compensation, a substitute source of
8 water, conditions upon the transfer, or other means of mitigation.

9 (2) The department may approve a transfer or change providing for
10 mitigation of existing rights only where the applicant demonstrates the
11 detriment, injury, or impairment will be fully mitigated. The
12 applicant has the initial burden of demonstrating such mitigation.

13 (3) The department may not deny a transfer or change based upon
14 detriment or injury to a party who has entered a mitigation agreement
15 with the applicant.

16 (4) The department may not deny a transfer or change on the basis
17 of the applicant's refusal to undertake mitigation that is not directly
18 related to the potential detriment or injury to existing rights by the
19 proposed transfer or change.

20 (5) The department may approve a transfer or change with conditions
21 that will prevent detriment or injury to existing water rights,
22 including minimum flows adopted by rule by the department or
23 established as conditions upon the issuance of new water withdrawals.
24 The department shall not impose conditions on the approval of a
25 transfer or change to mitigate the detriment or injury to such existing
26 water rights or to mitigate harm to the economy in the area from which
27 the water is to be transferred, that would be caused by factors other
28 than the proposed water transfer.

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

31 TRANSFER OF CONSUMPTIVE USE. (1) This section applies to the
32 circumstances or types of transfers specified in this section for
33 purposes of determining whether existing rights may be injured under
34 RCW 90.03.380 and 90.44.100.

35 (2) The department shall accord the applicant a rebuttable
36 presumption of no injury where the transfer or change will not increase
37 the consumptive use under the water right. In determining the amount,
38 the applicant shall provide evidence of the use during the five years

1 preceding the application for transfer or change. For purposes of this
2 section, "consumptive use" means that quantity of water consumed by the
3 use such that reclamation or recycling of the water is not possible,
4 the water does not return to instream use, and the water is not
5 available for subsequent use by other water right holders in the basin.

6 (3) For water made available for transfer by changes in the acreage
7 or type of crop irrigated by the transferor or by land fallowing or
8 retirement, the applicant may choose to have the consumptive use under
9 the right determined by application of the State of Washington
10 Irrigation Guide published by Washington State University where the
11 guide covers the soil, crop, and regional characteristics of the water
12 use. There shall be a rebuttable presumption that the amount so
13 determined may be transferred without detriment or injury to existing
14 rights. The university shall update the guide at least once each
15 biennium by consulting with interested persons throughout the state and
16 by obtaining the comments of local, state, and federal agencies with
17 expertise in hydrology, agriculture, and related subjects.

18 (4) For water transfer proposals no longer than two years in
19 duration, the applicant has the initial burden of producing prima facie
20 evidence that the transfer will not be detrimental to existing water
21 rights. The establishment of a prima facie case shifts the burden of
22 proof to those parties, if any, that have filed protests under the
23 procedures of RCW 90.03.380 or 90.44.100, as applicable. The standard
24 of proof under this subsection shall be a preponderance of the
25 evidence.

26 **IV. TRANSFERS OF CONSERVED WATER MADE AVAILABLE**
27 **BY EFFICIENT IRRIGATION PRACTICES**

28 NEW SECTION. **Sec. 14.** A new section is added to chapter 90.03 RCW
29 to read as follows:

30 **DEFINITIONS.** The definitions in this section apply throughout this
31 chapter unless the context clearly requires otherwise.

32 (1) "Contract" means a written legal instrument that provides for
33 the transfer of a portion of a water right from an existing water right
34 holder to another person for consideration.

35 (2) "Department" means the department of ecology.

36 (3) "Net water savings" has the same meaning as defined in RCW
37 90.42.020.

1 (4) "Person" means a person, corporation, quasi-municipal
2 corporation, municipal corporation, or state or federal agency.

3 (5) "Reduction in evaporative loss" means the amount of water that
4 was needed to grow an orchard or other crops using conventional
5 irrigation systems minus the quantity of water needed to grow the crops
6 with the use of a water-efficient irrigation system. "Reduction in
7 evaporative loss" includes the reduction in the amount of water used
8 through transpiration by nonproductive plants such as cover crops.

9 (6) "Trust water right" means a water right transferred to and
10 managed by the department for the benefit of instream flows or for the
11 allocation to new uses as provided in chapter 90.38 or 90.42 RCW.

12 (7) "Water-efficient irrigation system" means a system that,
13 through technological modifications, results in water savings.

14 NEW SECTION. **Sec. 15.** A new section is added to chapter 90.03 RCW
15 to read as follows:

16 CONTRACTS FOR WATER TRANSFERS. (1) A person holding a valid water
17 right may enter into a contract with another person for the transfer of
18 water saved through installation of a qualifying water-efficient
19 irrigation system. In determining the amount that is transferrable,
20 the department shall allow the transfer of an amount equal to the
21 reduction in the evaporative loss. The reduction in evaporative loss
22 is a readily transferrable component of net water savings.

23 (2) In addition, the department shall evaluate whether there are
24 additional net water savings that could be transferred to the purchaser
25 without detriment to other existing water users. The department may
26 not delay making a decision on the transfer of the water that
27 constitutes the reduction in evaporative loss because of decisions on
28 the determination of additional net water savings.

29 (3) A person wishing to make application for a transfer of a water
30 right under this chapter shall comply with RCW 90.03.380. The
31 transferred portion has the same date of priority as the water right
32 from which it originated, but between them the transferred portion of
33 the right is inferior in priority unless otherwise provided by the
34 parties in the contract.

35 (4) The department shall maintain a record of contracts with the
36 certificate of water right for the transferred water.

37 (5) The department may establish streamlined procedures to quantify
38 the reduction in the evaporative loss. In developing streamlined

1 procedures, the department may use data from the United States soil
2 conservation service or the Washington state cooperative extension
3 service to base calculations of reduction in evaporative loss in
4 various regions of the state. The procedures may address making
5 preliminary findings that can be used as an initial basis for
6 developing contracts by applicants.

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

9 WATER-EFFICIENT IRRIGATION SYSTEM--TRANSFER OF REDUCTION IN
10 EVAPORATIVE LOSS. A holder of a valid water right who installs a
11 water-efficient irrigation system may apply for a transfer of the
12 reduction in evaporative loss, plus any additional net water savings,
13 for the irrigation of an additional parcel of previously unirrigated
14 land, to land with less senior water rights, or to land that lacks a
15 full and sufficient supply. The application must be processed based
16 upon the same criteria as if the transfer were to be made to another
17 person by contract under section 15 of this act.

18 **V. TRANSFERS TO INSTREAM USES**

19 NEW SECTION. **Sec. 17.** A new section is added to chapter 90.03 RCW
20 to read as follows:

21 NOTICE OF TRANSFER. (1) A person transferring a right to the
22 beneficial use of water for instream purposes shall file a notice of
23 the transfer with the department stating the name and address of the
24 person or governmental unit to whom the right has been transferred.

25 (2) Such a transfer for instream purposes may be permanent or
26 temporary. A temporary transfer may remain in effect for any length of
27 time as determined by the water right holder. The holder of the water
28 right temporarily transferred to instream purposes may transfer all or
29 part of the water right to the use for which the water right was
30 initially granted at any time the holder chooses.

31 (3) An instream use right receives the same priority date as the
32 water right from which it originated. The department shall identify
33 the stream reach or reaches to which the right applies.

34 **Sec. 18.** RCW 90.42.080 and 1993 c 98 s 4 are each amended to read
35 as follows:

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

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

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

14 (4) The provisions of RCW 90.03.380 and 90.03.390 apply to
15 transfers of water rights under this section.

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

19 NEW SECTION. Sec. 19. The department of ecology shall prepare a
20 report that reviews the trust water rights program under chapter 90.46
21 RCW and identify administrative and statutory barriers to obtaining
22 greater use of trust water rights to augment stream flows and to
23 provide a mechanism for meeting both offstream and instream water
24 demands identified in local watershed plans or other water resource
25 management plans. The report shall make recommendations for
26 administrative and statutory modifications to encourage greater use of
27 the program, to provide more timely review and approval of proposed
28 trust water rights, and to provide a greater range of circumstances in
29 which the program may be employed to meet identified instream and
30 offstream water needs consistent with applicable watershed plans. The
31 report shall be provided to the appropriate standing committees of the
32 legislature by December 15, 1997.

33 NEW SECTION. Sec. 20. A new section is added to chapter 90.42 RCW
34 to read as follows:

35 PURCHASE OF WATER SAVINGS. The department may use funds available
36 from chapter 43.99E RCW to purchase water savings from willing sellers
37 or lessors made available by installation of a water-efficient

1 irrigation system as defined in section 14 of this act, or other rights
2 to water made available through changes in agricultural practices
3 including conservation measures. The determination of the amount
4 available for transfer and the protection of existing rights shall be
5 made as provided in RCW 90.03.380 and section 13 of this act.

6 Water rights acquired under this section shall be administered as
7 a trust water right by the department under chapter 90.42 RCW.

8 **VI. WATER BANKING**

9 NEW SECTION. **Sec. 21.** A new section is added to chapter 90.03 RCW
10 to read as follows:

11 REGIONAL WATER BANKS. (1) Local water agencies, cities, counties,
12 other local governmental agencies, and other interested parties may
13 establish regional water banks. A regional water bank may be
14 established by a single party or by agreement between two or more
15 parties. A regional bank may be established on a temporary or
16 permanent basis. The purpose of regional water banks is to facilitate
17 voluntary transfers of water within the region.

18 (2) Regional water banks may take any action to facilitate
19 voluntary transfers of water, including but not limited to:

20 (a) Establishment of a list of current offers to sell and to
21 purchase water and water rights;

22 (b) Acquisition of water for subsequent sale or distribution to
23 members of the water bank or for sale to willing buyers outside the
24 water bank;

25 (c) Acquisition and storage of water during periods of surplus for
26 sale and distribution during periods of shortage;

27 (d) Acquisition and sale of water transfer options, water futures,
28 subordination agreements, and other types of arrangements to transfer
29 water for the benefit of the members of the water bank;

30 (e) Establishment of a local or regional program for the
31 conjunctive management and use of surface and ground water supplies
32 owned or controlled by members of the water bank;

33 (f) Augmentation of water supplies to wetlands, fish and wildlife,
34 and other instream uses;

35 (g) Facilitation of transfers by management of water storage, water
36 delivery, accounting, financing, or other matters relevant to the
37 interests of the members of the water bank; and

1 (h) Provision of assistance to potential transferors and
2 transferees in the negotiation and implementation of transfer
3 agreements.

4 (3) All transfers or changes of water rights by or through regional
5 water banks are governed by the applicable provisions of chapters 90.03
6 and 90.44 RCW.

7 (4) Regional water banks shall not have exclusive jurisdiction over
8 water transfers. Any person or entity may transfer water without the
9 involvement of a regional water bank.

10 **VII. STREAMLINING REVIEW OF TRANSFERS**

11 NEW SECTION. **Sec. 22.** A new section is added to chapter 90.03 RCW
12 to read as follows:

13 PRIORITY PROCESSING OF TRANSFERS. (1) To further the policies in
14 section 1 of this act, the department shall accord priority to the
15 processing of applications for transfers and changes in water rights.
16 The department shall adopt a goal of making decisions upon applications
17 for changes limited to a single season within sixty days of receipt of
18 the application, and for other changes within ninety days of receipt.
19 Only in exceptional circumstances may a decision be made later than one
20 hundred eighty days after receipt of a complete application.

21 (2) The department may process applications for transfers or
22 changes regarding water uses in a basin independently of the order of
23 processing or priority placed upon processing applications for new
24 withdrawals within the same basin.

25 NEW SECTION. **Sec. 23.** A new section is added to chapter 90.03 RCW
26 to read as follows:

27 FUNDING OF REGULATORY REVIEW. (1) The department may enter into a
28 voluntary written agreement with an applicant for a transfer or change
29 to recover from the applicant the reasonable costs incurred by the
30 department in conducting regulatory review of the application. The
31 agreement shall specify the staffing and other resources to be
32 committed by the department in processing the application, and shall
33 establish deadlines for completing each of the major steps in
34 conducting regulatory review. The agreement shall normally establish
35 a deadline of making a decision no more than one hundred eighty days
36 from the filing with the department of a complete application. The

1 applicant's refusal to enter an agreement under this section shall not
2 be the basis for otherwise delaying the processing of the application.

3 (2) The costs remitted under this section shall be in addition to
4 the fees required by RCW 90.03.470.

5 (3) The water transfers account is created in the state treasury.
6 All receipts from costs collected under this section shall be deposited
7 into the account. Expenditures from the account may be used only for
8 the department's costs in the review of applications for transfers or
9 changes covered by agreements under subsection (1) of this section.
10 Only the director of the department or the director's designee may
11 authorize expenditures from the account. The account is subject to
12 allotment procedures under chapter 43.88 RCW, but an appropriation is
13 not required for expenditures.

14 NEW SECTION. **Sec. 24.** A new section is added to chapter 90.03 RCW
15 to read as follows:

16 TRANSFERS--RESPONSE TO SINKING CREEK CASE. For the purpose of
17 reviewing applications for transfer and changes under this chapter and
18 chapter 90.44 RCW, the department may make tentative determinations of
19 the validity of the water right that is the subject of the application
20 and of water rights that may be impaired by the transfer or change.
21 This section does not authorize the department to conduct a general
22 adjudication of water rights or the substantial equivalent of a general
23 adjudication. The exclusive procedure for accomplishing a general
24 adjudication of water rights is under RCW 90.03.110 through 90.03.245
25 or 90.44.220.

26 **VIII. TRANSFER RECORDS AND DATA MANAGEMENT**

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

29 DATA COMPILATION. (1) The department shall create and maintain a
30 water transfer registry of all final agreements concerning water rights
31 transfers. The registry shall include the names of the parties to the
32 transfer, the consideration paid for the transfer, a brief description
33 of the transfer, and an explanation of changes in water storage, timing
34 and point of diversion, place and purpose of use, consumption, and
35 timing and point of return flow caused by the transfer. The department
36 shall ensure that the registry is available in print form and over the

1 internet. Other state and local agencies receiving information
2 pertinent to such transactions, such as tax affidavits, shall cooperate
3 with the department in maintaining the registry and making the
4 information available locally to prospective water marketing
5 participants.

6 (2) This section is intended to make accessible information that is
7 otherwise in the public domain and does not require the disclosure of
8 proprietary information that is protected from disclosure under any
9 other law or authority.

10 NEW SECTION. Sec. 26. A new section is added to chapter 90.03 RCW
11 to read as follows:

12 TRANSFERS OF LAND WITH WATER RIGHTS. Upon closing of a land
13 transaction involving the transfer of a water right appurtenant to the
14 land, the seller shall also deliver to the purchaser evidence of any
15 permit, transfer approval, or certificate of water rights if the
16 permit, transfer approval, or certificate is available. In addition,
17 the seller shall notify the department on a form prescribed by the
18 department of: (1) The real estate transaction; and (2) the water
19 right involved in the transaction. The notice shall also be provided
20 in the case of the sale of parcels of land from a subdivision or short
21 subdivision of land to which a water right is appurtenant to each
22 resulting parcel.

23 NEW SECTION. Sec. 27. A new section is added to chapter 90.03 RCW
24 to read as follows:

25 KEEPING ADJUDICATION DECREES CURRENT. The department, acting
26 through the office of the attorney general, shall use the information
27 included in the water transfer registry authorized under section 25 of
28 this act and other pertinent information to provide periodic summaries
29 of transfers and changes in water rights in a basin in which a general
30 adjudication decree has been entered within twenty years before the
31 effective date of this section. The summary shall be filed with the
32 superior court that entered the decree and entered of record in the
33 proceeding for the purpose of advising interested persons of changes
34 occurring since entry of the decree.

35 **IX. MISCELLANEOUS**

1 NEW SECTION. **Sec. 28.** PART HEADINGS AND CAPTIONS NOT LAW. Part
2 headings and captions used in this act are not any part of the law.

--- END ---