WASHINGTON STATE
DEPARTMENT OF
ECOLOGY

Report to the Legislature on Water Conservancy Boards

December 1998

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Washington State Department of Ecology
Water Resources Program

Report to the Legislature
on
Water Conservancy Boards

12/16/1998

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Background

Substitute House Bill 1272 was passed unanimously in the 1997 legislative session (chapter 90.80 RCW). Copies of the legislation and the law in revised code format are attached. The law encourages and is intended to expedite voluntary water right transfers by enabling county governments to initiate the establishment of water conservancy boards. These boards are empowered to consider and conditionally approve applications to transfer water. However, the final decision to approve, condition or deny the transfer remains with the Department of Ecology. Through this process a partnership is established between Ecology and the local boards to facilitate transfers and changes of water rights.

This report is in compliance with RCW 90.80.150, which requires Ecology to report biennially by December 31st of each even numbered year to the appropriate committees of the legislature. The report is to cover "the boards formed or sought to be formed under this law, the transfer applications reviewed, other activities conducted by the boards, and the funding of the boards".

Pilot Rule

Subsequent to the passing of the bill the department of Ecology received direction from Governor Locke to implement the bill in the form of a pilot rule. Pilot rules are a relatively new addition to the Administrative Procedures Act (Chapter 34.05.310 & 34.05.313 RCW) enabling state agencies to test a proposed rule prior to formal adoption using volunteers from the regulated community as pilot projects. The Governor directed Ecology to approve establishment of up to two conservancy boards to test the rules. A copy of the Governor's letter directing Ecology to use a pilot rule process is attached. Ecology plans to move toward final adoption of implementing rules in spring, 1999.

Authority Question

Some sections of the bill were vetoed. As a result of the vetos, the remaining language in the law primarily addresses water right transfers, but does not explicitly address water right changes. Technically speaking, transfers are only one of the several possible

types of water right changes. This caused some to question the authority of the water conservancy boards to address the full range of possible water right changes. However, it was clear that the intent of the law was to provide authority for water conservancy boards to process all types of changes to water rights. Ecology requested direction from Governor Locke to resolve the questions. The Governor clarified the intent of his vetos, stressing that it was not his intent to limit the board's authority to water right transfers and not water right changes. A copy of the letter clarifying his intent is attached. Ecology is proceeding on the assumption that the water conservancy boards can act on the full range of water right changes for which Ecology has authority (with the exception of entering water into or out of a state administered water right trust program).

Pilot Boards

Two counties, Benton and Lewis, submitted documents to the department supporting and requesting the creation of water conservancy boards. The two boards were both approved to operate and agreed to participate in the development and testing of the pilot rule. Both boards have appointed members and have begun operation. They will operate under the draft rule (proposed chapter 173-153 WAC) until the pilot project is complete, and a final rule is adopted. A copy of the draft rule is attached.

Training

Both counties have completed training on hydrology, state water law, state water policy, administrative and judicial case law developments, field practices, evaluation of existing water rights, and applied practical experience working with change or transfer of water right applications. Benton County board members completed their training on September 21 through 24, 1998. Lewis County board members completed the training on October 5 - 7, 1998. A written test was given at the completion of both training sessions. The intent of the test was to highlight and review principles that were communicated during the training while affording each board to problem solve basic water right related issues through open discussion amongst themselves. The results were collected, but not scored. Answers were discussed between the trainers and board members. A copy of the test is attached.

Provided to each board member were copies of statutes (RCW), rules (WAC), information concerning case law, and existing program policy. They also were provided with current draft policies concerning changes and the draft revised change application, and their comments were invited.

In each of the training sessions given to the two boards an assistant state attorney general began the training with an overview of current state water law and answered questions from the board members. She was careful to point out that neither she, nor the Attorney General's Office could act as attorney for the board.

Regional hydrogeologists presented information about the geologic and hydrologic setting of the two counties and surrounding areas. They also answered questions for the board members.

The administrative evaluation and decision-making involved in processing an application for change consumed most of the training period. Staff provided actual examples of change application decisions to illustrate key points in the training. The draft conservancy board rule, proposed chapter 173-153 WAC, was reviewed at both training sessions.

At the request of each board, the training included a review of their nearly identical draft bylaws. Ecology made some suggestions, for example, that they address what constitutes a quorum. The Lewis County board was receptive to the idea of including an option for the board to withdraw a recommendation for further work if it was clear that it included errors or new issues that required additional consideration.

Each training session became a free flowing discussion of the issues most important to each of the boards.

In attendance at each training session was at least one representative of county government.

It was originally intended that each training session would be 40 hours long, 20 hours of "classroom" style training and 20 hours of field or practical experience. It became clear that regional staff would have difficulty in providing meaningful practical experience in the

area local to the training under the so-called "Hillis Rule", chapter 175-150 WAC. Also the expectations of each board and the backgrounds of each board member were factors in adjusting the training strategy.

The Benton County Water Conservancy board did not want to focus on fieldwork and was interested in continued discussion of issues. Ecology did take them out to site and they seemed to find it valuable.

The Lewis County Water Conservancy board members all had extensive field experience since two were employed in the well drilling industry and the third was a retired forester and a farmer. Due to the difficulties in arranging meaningful practical experience on actual applications, fieldwork wasn't emphasized. The Lewis County board desired the training be 3 days long and wanted to leave by 3:30 daily so the training was 6 hour per day, about 18 hours in total.

Ecology's staff felt each training session was a success, imparting the information that staff believed board members should receive, addressing the issues that the boards considered important, and as a means to build relationships between the department and each board. The department believes that our staff and the various board members all left with the feeling that they could work together.

Follow-up training is going to be important. It should be on-going and tailored to the needs of each board to be effective. The Benton County board has requested a meeting with the Central Regional Office to discuss technical assistance. This type of assistance is going to constitute training and will be specific to the issues they find themselves facing. This type of training is probably essential to the success of a board. On the other hand, new developments in laws, or court rulings of statewide application should also be included in future training sessions.

Public Information and Workshops

The department of Ecology held joint public workshops with each of the new boards in the two participating counties to discuss the draft rule and the operation of the new water conservancy boards. A Focus Sheet explaining the new law, the pilot boards, and the draft rule, and providing information about the workshop in Benton County

was mailed to a list of approximately 1500 people. An additional meeting notice for the workshop in Lewis County was mailed to the same list. The list included those who had expressed an interest in water conservancy boards, city and county officials and planning departments, Indian Tribes, Ecology's Water Resources Advisory Committee and various interest groups. There have been four press releases from the department about water conservancy boards. Copies of the Focus Sheet and the meeting notice are attached.

Board activities

Both boards have signed a Memorandum of Agreement with the department regarding the respective roles in the pilot rule process. Copies of the Memoranda of Agreement are attached.

Each board has passed a set of bylaws, which are also attached. The content of the two sets of bylaws is very similar.

Because the boards have just completed their training and have just begun operation, information about applications received by them is minimal, and may not be reflective of longer tem operation.

The Benton County Water Conservancy Board has received twenty inquires to date. Of those inquiries, ten resulted in applications for changes to water rights. Three of the applications were returned because they did not qualify as a change application, but rather were applications for new permits. One application was returned because the application was not complete. Attached is a publication by the board describing the individual applications that are active.

As of this writing the Lewis County Water Conservancy Board has not begun reviewing applications. However, they have had at least 12 inquiries.

Funding

The pilot boards have differed in how they approach funding the board's operation. There are questions as to how to pay for administrative support, legal counsel, public notice, field investigations and mailings. There has been some discussion of whether the county governments that created these boards will absorb some of these costs.

In the case of the Lewis County Water Conservancy board, a commitment was made that the board would not cost the taxpayers any funds. So any assistance the county provides the board in getting started will be repaid. An office has not been established, and currently the county is keeping the files for the board. Funding has been provided from private sources totaling $700. Concern has been expressed by conservation groups that undue influence will be exerted over water conservancy boards in the form of grants or funding assistance.

The Benton County Water Conservancy board received $1000 in start up grant funds from Benton County. The majority of these funds have gone to satisfy public notice requirements. The county is also providing legal and administrative support, and private attorneys are providing some pro-bono legal advice. A board member is providing office space.

Both boards have made efforts to ensure that their fees reflect the full cost of board activities. The Lewis County Water Conservancy board has adopted a fee schedule that requires $100 for an application fee that is non-refundable. This pays for an initial examination of the application. An additional $400 dollars is required if the application is then accepted for processing. If the processing costs run beyond $400, the applicant will be charged for the additional costs.

The Benton County Water Conservancy board will be charging $250 per application, but a greater burden of information collection will fall on the applicant. The board believes that the $250 will cover public notice for the individual application, and will discourage nuisance requests.

Future Success

The operation of these boards appears to be beneficial, however there have been some costs for the department. An accounting in November 1998 of staff efforts supporting Water Conservancy Board activities for that year came to $70,000. While some of the staff efforts were one time start up costs, there will be significant future

costs associated with the training and support of the boards and technical expertise the department will be asked to provide. In addition, there has been interest expressed about starting Water Conservancy boards from many other counties. Interested counties include Chelan, Franklin, Grant, Jefferson, King, Kitsap, Kittitas, Klickitat, Okanogan, Snohomish, Spokane, Thurston, Walla Walla, and Yakima. Ecology expects to receive additional formal petitions to establish more conservancy boards at any time.

As the number of boards increases, so will the costs to Ecology. Each board is going to operate differently and will place different demands on the department. Ecology will need to make a management decision concerning the level of support we will be able offer multiple water conservancy boards.

Ecology did not receive any additional resources to support water conservancy boards when the bill passed in 1997. Because the law requires Ecology to respond to a petition to establish a water conservancy board within 45 days and to respond to a proposed board decision on a water right change within 45 days, the boards have and will continue to impact Ecology's water right processing priorities and workload. As more boards are established, this impact will increase.

For additional information about water conservancy boards, contact Ken Slattery at (360) 407-6603 and ksla461@ecy.wa.gov, or Peggy Clifford at (360) 407-7262and pcli461@ecy.wa.gov.

Attachments

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1272

Chapter 441, Laws of 1997

(partial veto)

55th Legislature
1997 Regular Session

WATER CONSERVANCY BOARDS

EFFECTIVE DATE: 7/27/97

Passed by the House April 19, 1997
Yeas 89 Nays 0

CLYDE BALLARD
Speaker of the House of Representatives

Passed by the Senate April 14, 1997
Yeas 47 Nays 0

BRAD OWEN
President of the Senate

Approved May 20, 1997, with the exception of sections 8, 10 and 14, which are vetoed.

GARY LOCKE
Governor of the State of Washington

CERTIFICATE

I, Timothy A. Martin, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1272** as passed by the House of Representatives and the Senate on the dates hereon set forth.

TIMOTHY A. MARTIN
Chief Clerk

FILED

May 20, 1997 - 4:24 p.m.

Secretary of State
State of Washington

SUBSTITUTE HOUSE BILL 1272

Passed Legislature - 1997 Regular Session

AS AMENDED BY THE SENATE

State of Washington **55th Legislature** **1997 Regular Session**

By House Committee on Agriculture & Ecology (originally sponsored by Representatives Delvin, Chandler, Robertson, McMorris, Honeyford and Mulliken)

Read first time 02/14/97.

AN ACT Relating to water transfers; and adding a new chapter to Title 90 RCW.

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

NEW SECTION. **Sec. 1.** The legislature finds:

(1) Voluntary water transfers between water users can reallocate water use in a manner that will result in more efficient use of water resources;

(2) Voluntary water transfers can help alleviate water shortages, save capital outlays, reduce development costs, and provide an incentive for investment in water conservation efforts by water right holders; and

(3) The state should expedite the administrative process for noncontested water transfers among water right holders, conveying greater operational control to water managers and water right holders.

NEW SECTION. **Sec. 2.** The following definitions apply throughout this chapter, unless the context clearly requires otherwise.

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

(2) "Commissioner" means a member of a water conservancy board.

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

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

NEW SECTION. **Sec. 3.** (1) The county legislative authority of a county may create a water conservancy board, subject to approval by the director, for the purpose of expediting voluntary water transfers within the county.

(2) A water conservancy board may be initiated by: (a) A resolution of the county legislative authority; (b) a resolution presented to the county legislative authority calling for the creation of a board by the legislative authority of an irrigation district, public utility district that operates a public water system, a reclamation district, a city operating a public water system, or a water-sewer district that operates a public water system; (c) a resolution by the governing body of a cooperative or mutual corporation that operates a public water system serving one hundred or more accounts; (d) a petition signed by five or more water rights holders, including their addresses, who divert water for use within the county; or (e) any combination of (a) through (d) of this subsection. The resolution or petition must state the need for the board, include proposed bylaws or rules and procedures that will govern the operation of the board, identify the geographic boundaries where there is an initial interest in transacting water sales or transfers, and describe the proposed method for funding the operation of the board.

(3) After receiving a resolution or petition to create a board, a county legislative authority shall determine its sufficiency. If the county legislative authority finds that the resolution or petition is sufficient, or if the county is initiating the creation of a board upon its own motion, it shall hold at least one public hearing on the proposed creation of the board. Notice of the hearing shall be published at least once in a newspaper of general circulation in the county not less than ten days nor more than thirty days before the date of the hearing. The notice shall describe the time, date, place, and purpose of the hearing, as well as the purpose of the board. Following the hearing, the county legislative authority may adopt a resolution approving the creation of the board if it finds that the board's creation is in the public interest.

NEW SECTION. **Sec. 4.** (1) The county legislative authority shall forward a copy of the resolution or petition calling for the creation of the board, a copy of the resolution approving the creation of the board, and a summary of the public testimony presented at the public hearing to the director following the adoption of the resolution calling for the board's creation.

(2) The director shall approve or deny the creation of a board within forty-five days after the county legislative authority has submitted all information required under subsection (1) of this section. The director must determine whether the creation of the board would further the purposes of this chapter and is in the public interest. The director shall include a description of the necessary training requirements for commissioners in the notice of approval sent to the county legislative authority.

NEW SECTION. **Sec. 5.** The director of the department may, as deemed necessary by the director, adopt rules in accordance with chapter 34.05 RCW necessary to carry out this chapter, including minimum requirements for the training and continuing education of commissioners. Training courses for commissioners shall include an overview of state water law and hydrology. Prior to commissioners taking action on proposed water right transfers, the commissioners shall comply with training requirements that include state water law and hydrology.

NEW SECTION. **Sec. 6.** A water conservancy board constitutes a public body corporate and politic and a separate unit of local government in the state. Each board shall consist of three commissioners appointed by the county legislative authority for six-year terms. The county legislative authority shall stagger the initial appointment of commissioners so that the first commissioners who are appointed shall serve terms of two, four, and six years, respectively, from the date of their appointment. All vacancies shall be filled for the unexpired term. The county legislative authority shall consider, but is not limited in appointing, nominations to the board by people or entities petitioning or requesting the creation of the board. However, the county legislative authority shall ensure that individual water right holders who divert water for use within the county are represented on the board. In making appointments to the board, the

county legislative authority shall choose from among persons who are residents of the county or a county that is contiguous to the county that the water conservancy board is to serve. No commissioner may participate in board decisions until he or she has successfully completed the necessary training required under section 5 of this act. Commissioners shall serve without compensation, but are entitled to reimbursement for necessary travel expenses in accordance with RCW 43.03.050 and 43.03.060 and costs incident to training.

NEW SECTION. **Sec. 7.** (1) A water conservancy board may acquire, purchase, hold, lease, manage, occupy, and sell real and personal property or any interest therein, enter into and perform all necessary contracts, appoint and employ necessary agents and employees and fix their compensation, employ contractors including contracts for professional services, sue and be sued, and do any and all lawful acts required and expedient to carry out the purposes of this chapter.

(2) A board constitutes an independently funded entity, and may provide for its own funding as determined by the commissioners. The board may accept grants and may adopt fees for processing applications for transfers of water rights to fund the activities of the board. A board may not impose taxes or acquire property by the exercise of eminent domain.

***NEW SECTION.** Sec. 8. A board shall operate on a county-wide basis, and shall have the following powers, in addition to any others granted in this chapter:*

(1) A board may establish a water transfer exchange through which all or part of the water that any person is entitled to use by reason of owning or holding a water right may be listed for sale or transfer. The board may approve water transfers involving a change in place of use, point of diversion or withdrawal, purpose of use, time of use, source of supply, quantity of use permitted, and the place of storage. Any water transfer approved by the board is subject to final approval by the director pursuant to section 11 of this act.

(2) The board may approve the transfer of a water right or a water right claim filed under chapter 90.14 RCW that has not been adjudicated. The board shall make a tentative determination as to the validity and extent of the existing right, and may only approve transfers of those rights to the extent they are deemed valid by the

board. Neither the board's approval of a transfer, nor the director's approval of the board's action constitutes an adjudication of the validity, priority, or quantity of the transferor's water right as between the transferor or the transferee and the state, or as between the transferor or the transferee and one or more water use claimants, and such approvals do not preclude or prejudice a subsequent challenge to the validity, priority, or quantity of the right in an adjudicatory proceeding. The tentative determination of a water right by a board does not preclude a different conclusion in a subsequent adjudication.

(3) Water transfers approved by the board must remain within an existing category of beneficial use, and a transfer of water that is being used for agricultural applications is restricted to short-term or long-term leases.

(4) Each board shall maintain and publish all information made available to it concerning water rights listed with the board and any application to the board for approval of a water transfer. Each board shall establish policies and procedures, consistent with applicable law, for the administration of a system of timely local approvals for water transfers under this chapter. The administration shall be performed exclusively by the board, but the department may provide technical assistance to the board.

***Sec. 8 was vetoed. See message at end of chapter.**

NEW SECTION. **Sec. 9.** (1) Applications to the board for transfers shall be made on a form provided by the department, and shall contain such additional information as may be required by the board in order to review and act upon the application. At a minimum, the application shall include information sufficient to establish to the board's satisfaction of the transferor's right to the quantity of water being transferred, and a description of any applicable limitations on the right to use water, including the point of diversion or withdrawal, place of use, source of supply, purpose of use, quantity of use permitted, time of use, period of use, and the place of storage.

(2) The transferor and the transferee of any proposed water transfer may apply to a board for approval of the transfer if the water proposed to be transferred is currently diverted or used within the geographic boundaries of the county, or would be diverted or used within the geographic boundaries of the county if the transfer is approved. In the case of a proposed water transfer in which the water

is currently diverted or would be diverted outside the geographic boundaries of the county, the board shall hold a public hearing in the county of the diversion or proposed diversion. The board shall provide for prominent publication of notice of such hearing in a newspaper of general circulation published in the county in which the hearing is to be held for the purpose of affording an opportunity for interested persons to comment upon the application.

(3) After an application for a transfer is filed with the board, the board shall publish notice of the application in accordance with the publication requirements and send notice to state agencies as provided in RCW 90.03.280. Any person may submit comments to the board regarding the application. Any water right holder claiming detriment or injury to an existing water right may intervene in the application before the board pursuant to subsection (4) of this section. If a majority of the board determines that the application is complete, in accordance with the law and the transfer can be made without injury or detriment to existing water rights in accordance with RCW 90.03.380, the board shall issue the applicant a certificate conditionally approving the transfer, subject to review by the director.

(4) If a water right holder claims a proposed transfer will cause an impairment to that right, the water right holder is entitled to a hearing before the board. The board shall receive such evidence as it deems material and necessary to determine the validity of the claim of impairment. If the party claiming the impairment establishes by a preponderance of the evidence that his or her water right will be impaired by the proposed transfer, the board may not approve the transfer unless the applicant and the impaired party agree upon compensation for the impairment.

***NEW SECTION.** Sec. 10. (1) If an application for a transfer is proposed to transfer water from one irrigation district to another, approval of the transfer shall be conditioned upon receipt of the concurrence from each of the irrigation districts that the transfer will not adversely affect the ability to deliver water to other landowners or impair the financial integrity of either of the districts.*

(2) A transfer involving a change in place or use or a nonconsumptive use by an individual water user or users of water provided by an irrigation district need only receive the approval for

the transfer from the board of directors of the irrigation district if the water continues within the irrigation district.

***Sec. 10 was vetoed. See message at end of chapter.**

NEW SECTION. **Sec. 11.** (1) If a transfer is approved by the board, the board shall submit a copy of the proposed certificate conditionally approving the transfer to the department for review. The board shall also submit a report summarizing any factual findings on which the board relied in deciding to approve the proposed transfer. The board shall also transmit notice by mail to any person who objected to the transfer or who requested notice.

(2) The director shall review each proposed transfer conditionally approved by a board for compliance with state water transfer laws including RCW 90.03.380, 90.03.390, and 90.44.100, rules and guidelines adopted by the department, and other applicable law.

(3) Any party to a transfer or a third party who alleges his or her water right will be impaired by the proposed transfer may file objections with the department. If objections to the transfer are filed with the department, the board shall forward the files and records upon which it based its decision to the department.

(4) The director shall review the action of the board and affirm, reverse, or modify the action of the board within forty-five days of receipt. The forty-five day time period may be extended for an additional thirty days by the director, upon the consent of the parties to the transfer. If the director fails to act within this time period, the board's action is final. Upon approval of a water transfer by the action or nonaction of the director, the conditional certificate issued by the board is final and valid.

NEW SECTION. **Sec. 12.** The decision of the director to approve an action to create a board, or to approve, deny, or modify a water transfer either by action or nonaction shall be appealable in the same manner as other water right decisions made pursuant to chapter 90.03 RCW.

NEW SECTION. **Sec. 13.** Neither the county nor the department shall be subject to any cause of action or claim for damages arising out of transfers approved by a board under this chapter.

1 ***NEW SECTION.** Sec. 14. A person who, in good faith and without*
2 *intent of circumventing water right relinquishment statutes, leases a*
3 *water right under this chapter may not lose any portion of that water*
4 *right by relinquishment due to the nonuse of the water by the lessee.*
5 ***Sec. 14 was vetoed. See message at end of chapter.**

6 NEW SECTION. **Sec. 15.** Nothing in this chapter eliminates or
7 lessens the requirements necessary for the approval of interties.

8 NEW SECTION. **Sec. 16.** (1) A commissioner of a water conservancy
9 board who has an ownership interest in a water right subject to an
10 application for approval of a transfer or change by the board, shall
11 not participate in the board's review or decision upon the application.
12 (2) A commissioner of a water conservancy board who also serves as
13 an employee or upon the governing body of a municipally owned water
14 system, shall not participate in the board's review or decision upon an
15 application for the transfer or change of a water right in which that
16 water system has or is proposed to have an ownership interest.

17 NEW SECTION. **Sec. 17.** Water conservancy board activities are
18 subject to the open public meetings act, chapter 42.30 RCW.

19 NEW SECTION. **Sec. 18.** Nothing in this chapter affects transfers
20 that may be otherwise approved under chapter 90.03 RCW.

21 NEW SECTION. **Sec. 19.** The department shall report biennially by
22 December 31st of each even-numbered year to the appropriate committees
23 of the legislature on the boards formed or sought to be formed under
24 the authority of this chapter, the transfer applications reviewed and
25 other activities conducted by the boards, and the funding of such
26 boards.

27 NEW SECTION. **Sec. 20.** If any provision of this act or its
28 application to any person or circumstance is held invalid, the
29 remainder of the act or the application of the provision to other
30 persons or circumstances is not affected.

31 NEW SECTION. **Sec. 21.** Sections 1 through 19 of this act
32 constitute a new chapter in Title 90 RCW.

Passed the House April 19, 1997.
Passed the Senate April 14, 1997.
Approved by the Governor May 20, 1997, with the exception of certain items that were vetoed.
Filed in Office of Secretary of State May 20, 1997.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval sections 8, 10, and 14 of Substitute House Bill No. 1272 entitled:

"AN ACT Relating to water transfers;"

I have approved most sections of Substitute House Bill No. 1272 because it provides new ways to better use our existing water supplies. A water conservancy board will provide a county-wide mechanism for changing and exchanging water rights.

The Legislature authorized the Department of Ecology to adopt rules necessary to carry out this newly created chapter in the water code, including minimum requirements for the training and continuing education of board commissioners. This will be crucial for effective utilization of this new tool, and necessary before the Department can accept and approve the creation of any water conservancy board. Accordingly, I direct the Department of Ecology to initiate rule-making as soon as possible.

Subsections (1) and (3) of section 8 contain conflicting directions to a water conservancy board relating to its authority in approving water transfers.

Section 10 of SHB 1272 conflicts with RCW 90.03.380, which it was intended to mirror, and would likely create confusion in interpretation of the statutes and disagreement in the management of the resource.

Section 14 establishes a subjective standard for protection against relinquishment, requiring the Department of Ecology to prove that a person intended to circumvent the relinquishment statute in order to relinquish a leased water right. Because it is particularly difficult to prove a person's intent in this context, section 14 could lead to questionable leases to preserve unused water rights from relinquishment for non-use.

For these reasons, I have vetoed sections 8, 10, and 14 of Substitute House Bill No. 1272.

With the exception of sections 8, 10, and 14, Substitute House Bill No. 1272 is approved."

CHAPTER 90.80 RCW
WATER CONSERVANCY BOARDS

Sections

90.80.005	Findings.
90.80.010	Definitions.
90.80.020	Water conservancy boards—Creation.
90.80.30	Petition for board creation—Required information—Approval or denial—
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90.80.110	Approval of interties.
90.80.120	Conflicts of interest.
90.80.130	Application of open public meetings act.
90.80.140	Transfers approved under chapter 90.03 RCW not affected.
90.80.150	Reports to legislative committees.
90.80.900	Severability—1997 c 441.

RCW 90.80.005 Findings. The legislature finds:

(1) Voluntary water transfers between water users can reallocate water use in a manner that will result in more efficient use of water resources;

(2) Voluntary water transfers can help alleviate water shortages, save capital outlays, reduce development costs, and provide an incentive for investment in water conservation efforts by water right holders; and

(3) The state should expedite the administrative process for noncontested water transfers among water right holders, conveying greater operational control to water managers and water right holders. [1997 c 441 § 1.]

RCW 90.80.010 Definitions. The following definitions apply throughout this chapter, unless the context clearly requires otherwise.

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

(2) "Commissioner" means a member of a water conservancy board.

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

(4) "Director" means the director of the department of ecology. [1997 c 441 § 2.]

RCW 90.80.020 Water conservancy boards--Creation.

(1) The county legislative authority of a county may create a water conservancy board, subject to approval by the director, for the purpose of expediting voluntary water transfers within the county.

(2) A water conservancy board may be initiated by: (a) A resolution of the county legislative authority; (b) a resolution presented to the county legislative authority calling for the creation of a board by the legislative authority of an irrigation district, public utility district that operates a public water system, a reclamation district, a city operating a public water system, or a water-sewer district that operates a public water system; (c) a resolution by the governing body of a cooperative or mutual corporation that operates a public water system serving one hundred or more accounts; (d) a petition signed by five or more water rights holders, including their addresses, who divert water for use within the county; or (e) any combination of (a) through (d) of this subsection. The resolution or petition must state the need for the board, include proposed bylaws or rules and procedures that will govern the operation of the board, identify the geographic boundaries where there is an initial interest in transacting water sales or transfers, and describe the proposed method for funding the operation of the board.

(3) After receiving a resolution or petition to create a board, a county legislative authority shall determine its sufficiency. If the county legislative authority finds that the resolution or petition is sufficient, or if the county is initiating the creation of a board upon its own motion, it shall hold at least one public hearing on the proposed creation of the board. Notice of the hearing shall be published at least once in a newspaper of general circulation in the county not less than ten days nor more than thirty days before the date of the hearing. The notice shall describe the time, date, place, and purpose of the hearing, as well as the purpose of the board. Following the hearing, the county legislative authority may adopt a resolution approving the creation of the board if it finds that the board's creation is in the public interest. [1997 c 441 § 3.]

RCW 90.80.030 Petition for board creation--Required information--Approval or denial--Description of training requirements.

(1) The county legislative authority shall forward a copy of the resolution or petition calling for the creation of the board, a copy of the resolution approving the creation of the board, and a summary of the public testimony presented at the public hearing to the director following the adoption of the resolution calling for the board's creation.

(2) The director shall approve or deny the creation of a board within forty-five days after the county legislative authority has submitted all information required under subsection (1) of this section. The director must determine whether the creation of the board would further the purposes of this chapter and is in the public interest. The director shall include a description of the necessary training requirements for commissioners in the notice of approval sent to the county legislative authority. [1997 c 441 § 4.]

RCW 90.80.040 Rules--Minimum training requirements and continuing education. The director of the department may, as deemed necessary by the director, adopt rules in accordance with chapter 34.05 RCW necessary to carry out this chapter, including minimum requirements for the training and continuing education of commissioners. Training courses for commissioners shall include an overview of state water law and hydrology. Prior to commissioners taking action on proposed water right transfers, the commissioners shall comply with training requirements that include state water law and hydrology. [1997 c 441 § 5.]

RCW 90.80.050 Corporate powers--Board composition--Members' terms, expenses. A water conservancy board constitutes a public body corporate and politic and a separate unit of local government in the state. Each board shall consist of three commissioners appointed by the county legislative authority for six-year terms. The county legislative authority shall stagger the initial appointment of commissioners so that the first commissioners who are appointed shall serve terms of two, four, and six years, respectively, from the date of their appointment. All vacancies shall be filled for the unexpired term. The county legislative authority shall consider, but is not limited in appointing, nominations to the board by people or entities petitioning or requesting the creation of the board. However, the county legislative authority shall ensure that individual water right holders who divert water for use within the county are represented on the board. In making appointments to the board, the county legislative authority shall choose from among persons who are residents of the county or a county that is contiguous to the county that the water conservancy board is to serve. No commissioner may participate in board decisions until he or she has successfully completed the necessary training required under RCW 90.80.040. Commissioners shall serve without compensation, but are entitled to reimbursement for necessary travel expenses in accordance with RCW 43.03.050 and 43.03.060 and costs incident to training. [1997 c 441 § 6.]

RCW 90.80.060 Board powers--Funding.

(1) A water conservancy board may acquire, purchase, hold, lease, manage, occupy, and sell real and personal property or any interest therein, enter into and perform all necessary contracts, appoint and employ necessary agents and employees and fix their compensation, employ contractors including contracts for professional services, sue and be sued, and do any and all lawful acts required and expedient to carry out the purposes of this chapter.

(2) A board constitutes an independently funded entity, and may provide for its own funding as determined by the commissioners. The board may accept grants and may adopt fees for processing applications for transfers of water rights to fund the activities of the board. A board may not impose taxes or acquire property by the exercise of eminent domain. [1997 c 441 § 7.]

RCW 90.80.070 Applications for water transfers--Notice.

(1) Applications to the board for transfers shall be made on a form provided by the department, and shall contain such additional information as may be required by the board in order to review and act upon the application. At a minimum, the application shall include information sufficient to establish to the board's satisfaction of the transferor's right to the quantity of water being transferred, and a description of any applicable limitations on the right to use water, including the point of diversion or withdrawal, place of use, source of supply, purpose of use, quantity of use permitted, time of use, period of use, and the place of storage.

(2) The transferor and the transferee of any proposed water transfer may apply to a board for approval of the transfer if the water proposed to be transferred is currently diverted or used within the geographic boundaries of the county, or would be diverted or used within the geographic boundaries of the county if the transfer is approved. In the case of a proposed water transfer in which the water is currently diverted or would be diverted outside the geographic boundaries of the county, the board shall hold a public hearing in the county of the diversion or proposed diversion. The board shall provide for prominent publication of notice of such hearing in a newspaper of general circulation published in the county in which the

hearing is to be held for the purpose of affording an opportunity for interested persons to comment upon the application.

(3) After an application for a transfer is filed with the board, the board shall publish notice of the application in accordance with the publication requirements and send notice to state agencies as provided in RCW 90.03.280. Any person may submit comments to the board regarding the application. Any water right holder claiming detriment or injury to an existing water right may intervene in the application before the board pursuant to subsection (4) of this section. If a majority of the board determines that the application is complete, in accordance with the law and the transfer can be made without injury or detriment to existing water rights in accordance with RCW 90.03.380, the board shall issue the applicant a certificate conditionally approving the transfer, subject to review by the director.

(4) If a water right holder claims a proposed transfer will cause an impairment to that right, the water right holder is entitled to a hearing before the board. The board shall receive such evidence as it deems material and necessary to determine the validity of the claim of impairment. If the party claiming the impairment establishes by a preponderance of the evidence that his or her water right will be impaired by the proposed transfer, the board may not approve the transfer unless the applicant and the impaired party agree upon compensation for the impairment. [1997 c 441 § 9.]

RCW 90.80.080 Transfers—Review—Approval.

(1) If a transfer is approved by the board, the board shall submit a copy of the proposed certificate conditionally approving the transfer to the department for review. The board shall also submit a report summarizing any factual findings on which the board relied in deciding to approve the proposed transfer. The board shall also transmit notice by mail to any person who objected to the transfer or who requested notice.

(2) The director shall review each proposed transfer conditionally approved by a board for compliance with state water transfer laws including RCW 90.03.380, 90.03.390, and 90.44.100, rules and guidelines adopted by the department, and other applicable law.

(3) Any party to a transfer or a third party who alleges his or her water right will be impaired by the proposed transfer may file objections with the department. If objections to the transfer are filed with the department, the board shall forward the files and records upon which it based its decision to the department.

(4) The director shall review the action of the board and affirm, reverse, or modify the action of the board within forty-five days of receipt. The forty-five day time period may be extended for an additional thirty days by the director, upon the consent of the parties to the transfer. If the director fails to act within this time period, the board's action is final. Upon approval of a water transfer by the action or nonaction of the director, the conditional certificate issued by the board is final and valid. [1997 c 441 § 11.]

RCW 90.80.090 Appeals from director's decisions. The decision of the director to approve an action to create a board, or to approve, deny, or modify a water transfer either by action or nonaction shall be appealable in the same manner as other water right decisions made pursuant to chapter 90.03 RCW. [1997 c 441 § 12.]

RCW 90.80.100 Damages arising from board-approved transfers—Immunity of county and department. Neither the county nor the department shall be subject to any cause of action or claim for damages arising out of transfers approved by a board under this chapter. [1997 c 441 § 13.]

RCW 90.80.110 Approval of interties. Nothing in this chapter eliminates or lessens the requirements necessary for the approval of interties. [1997 c 441 § 15.]

RCW 90.80.120 Conflicts of interest. (1) A commissioner of a water conservancy board who has an ownership interest in a water right subject to an application for approval of a transfer or change by the board, shall not participate in the board's review or decision upon the application.

(2) A commissioner of a water conservancy board who also serves as an employee or upon the governing body of a municipally owned water system, shall not participate in the board's review or decision upon an application for the transfer or change of a water right in which that water system has or is proposed to have an ownership interest. [1997 c 441 § 16.]

RCW 90.80.130 Application of open public meetings act. Water conservancy board activities are subject to the open public meetings act, chapter 42.30 RCW. [1997 c 441 § 17.]

RCW 90.80.140 Transfers approved under chapter 90.03 RCW not affected. Nothing in this chapter affects transfers that may be otherwise approved under chapter 90.03 RCW. [1997 c 441 § 18.]

RCW 90.80.150 Reports to legislative committees. The department shall report biennially by December 31st of each even-numbered year to the appropriate committees of the legislature on the boards formed or sought to be formed under the authority of this chapter, the transfer applications reviewed and other activities conducted by the boards, and the funding of such boards. [1997 c 441 § 19.]

RCW 90.80.900 Severability—1997 c 441. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1997 c 441 § 20.]

STATE OF WASHINGTON
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DEPARTMENT OF ECOLOGY
OLYMPIA WA 98504
'97 MAR -9 A10:13

March 4, 1998

Mr. Tom Fitzsimmons, Director
Washington State Department of Ecology
P.O. Box 47600
Olympia, Washington 98504-7600

Dear Tom:

When I signed Substitute House Bill 1272 (regarding water conservancy boards) into law in 1997, my veto message included a requirement that the Department of Ecology adopt implementing rules before accepting and approving the creation of any water conservancy boards.

It is my understanding that in this case the Department of Ecology would like to use the new pilot rule-making procedure authorized by the Administrative Procedure Act. I agree that pilot rule-making is a desirable approach in a case like this where an agency has had no prior experience with a new approach to permitting. Pilot rule-making should allow the department to get valuable experience and thus make the final rule a better product.

To facilitate use of pilot rule-making, I am rescinding my previous directions regarding rule-making and establishment of conservancy boards. I am directing the Department of Ecology to authorize establishment of up to two conservancy boards for the purpose of testing the pilot rule. I direct the department to establish the pilot rule as soon as possible and to adopt a final rule no later than December 31, 1998.

Sincerely,

Gary Locke
Governor

cc: The Honorable Clyde Ballard
The Honorable Brad Owen
The Honorable Jerome Delvin

GARY LOCKE
Governor

STATE OF WASHINGTON
OFFICE OF THE GOVERNOR

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September 23 1998

Mr. Tom Fitzsimmons, Director
Department of Ecology
P.O. Box 47600
Olympia, WA 98504

Dear Mr. Fitzsimmons: Tom

I wish to clarify my veto message pertaining to Substitute House Bill No. 1272 entitled "AN ACT Relating to water transfers" passed in 1997. Specifically, I will respond to your questions regarding the intent of my veto of section 8.

Section 8 of this bill had a total of four subsections. Unfortunately, two of these subsections were in direct conflict with each other. Subsection 1 had language that would have allowed a Water Conservancy Board to approve water transfers involving a change in "purpose of use," while subsection 3 had language which would have prevented such decisions. Additionally, subsection 1 would have given the Water Conservancy Boards authority to approve changes in "source of supply" and the "quantity of use permitted," in essence giving the boards the authority to grant new water rights.

In line with my veto authority and the intent of Substitute House Bill No. 1272, I chose to veto section 8 to ensure that the boards' authority did not extend to the ability to create new water rights, and to address the conflict between subsections 1 and 3.

In doing so, it was not my intent to limit the Water Conservancy Boards' authority to merely transfers involving change in "place of use." Indeed as I mentioned in my veto message, "A Water Conservancy Board will provide a county-wide mechanism for changing and exchanging water rights." To be effective in this role will require that the boards be trained by and work cooperatively with the Department of Ecology. It will also require that the boards evaluate a range of transfer situations, including changes in "place of use," "point of diversion or withdrawal," and "purpose of use."

I trust this response clarifies your questions regarding this matter.

Sincerely,

Gary Locke

Gary Locke
Governor

DRAFT RULE

Water Conservancy Boards

Chapter 173-153 WAC

November 6, 1998

WAC 173-153-010 Purpose and authority. The purpose of this chapter is to establish procedures the Department of Ecology (Ecology) and water conservancy boards will follow in implementing chapter 90.80 RCW which authorizes establishment of county water conservancy boards and vests them with certain powers relating to water right changes and transfers.

WAC 173-153-020 Applicability. These procedures apply to the establishment of water conservancy boards (established in accordance with chapter 90.80 RCW) and to how applications to change or transfer a water right which are filed with a water conservancy board will be processed.

WAC 173-153-030 Definitions. For the purposes of this chapter, the following definitions apply:

(1) "Change in water right" means a change, in whole or in part, in the point of diversion or withdrawal, purpose of use, or a transfer of water right, or other limitation or circumstance of water use.

(2) "Transfer of water right" means to modify, in whole or in part, the place of use of a water right.

(3) "Consumptive use" means use of water whereby there is a diminishment of the water source.

WAC 173-153-040 Creation of a water conservancy board. (1) Ecology will approve or deny creation of a water conservancy board within forty-five days of receiving:

(a) A copy of a resolution or petition to the county legislative authority calling for the formation of a water conservancy board;

(b) A dated copy of the public notice that appeared in a newspaper of general circulation in the county not less than ten days nor more than thirty days before the date of the public hearing on the proposed creation of the board. The notice shall describe the time, date, place and purpose of the hearing, as well as the purpose of the board;

(c) A summary of the public testimony presented during the public hearing conducted by the county legislative authority in response to the resolution or petition to from a water conservancy board;

(d) A copy of the resolution by the county legislative authority approving the creation of a water conservancy board;

(e) a copy of the board's proposed bylaws, and

(f) A discussion of how the new board will be funded.

(2) Ecology will determine if the creation of a water conservancy board would further the purposes of the law and will be in the public interest. Based on its determination, Ecology will approve, or deny the formation of the water conservancy board. If formation of a water conservancy board is approved, Ecology will include a description of the training requirements as outlined in section 050 for water conservancy board members in its approval.

WAC 173-153-050 Training requirements. (1) Prior to participating in any water right change or transfer recommendations of a water conservancy board, every member is required to complete a training program provided by Ecology. The training program will consist of:

(a) Completing at least 18hours of instruction regarding hydrology, state water law, state water policy, administrative and judicial case law developments, field practices, the evaluation of existing water rights, and applied practical experience working with

change or transfer of water right proposals applications with an assigned Ecology staff person;

(b) Demonstrating mastery of the training curriculum by passing an examination given by an Ecology employee upon completion of the minimum training; and

(c) Completing eight hours of continuing education directed or approved by Ecology each year, after one year of service on a water conservancy board. Continuing education may include readings, seminar or field experience on state water law, state water policy, administrative and judicial case law developments, field practices, the evaluation of existing water rights, or hydrology.

(2) Ecology will certify in writing to the appropriate county legislative authority the successful completion of the training program for water conservancy board members and staff.

WAC 173-153-060 Scope of authority of water conservancy boards. (1) A water conservancy board may accept for processing an application for change or transfer of water right if the water identified in the existing water right is currently used within or if the change or transfer is approved will be used within the boundaries of the county in which the board has jurisdiction. The application may be for a permanent or seasonal (temporary) change or transfer. The board shall investigate the application and make a determination whether the proposed change or transfer should be approved or denied, and if approved, under what conditions the approval should be granted.

(2) Applications for changes or transfers proposing to use water from the same source must generally be processed in the order in which they were filed. However, there are exceptions as outlined in chapter 173-152 WAC. Furthermore, a water right applicant has a right to their place in line which may not be impaired by an application that is filed at a later time. A conservancy board must take into full account any applications for new water rights, as well as applications for changes or transfers that were previously filed with Ecology if any such application seeks or addresses water from the same source as the change application under consideration by the board. To the extent that its staffing resources allow, Ecology will cooperate with conservancy boards to resolve the problem

of conflicting applications. The rights of senior applicants, including those applicants who have filed applications with Ecology rather than a conservancy board, must be satisfied and not impaired, regardless of the order in which applications might be processed.

(3) The quantity of water appropriated under a water right may not be expanded and, in the case of agricultural use, the acreage irrigated, may not be expanded, except in limited circumstances allowed in RCW 90.03.380 if the consumptive use under the water right is not increased.

(4) Any water right or portion of a water right that has not previously been put to actual beneficial use cannot be changed or transferred, except as authorized under limited circumstances by RCW 90.44.100.

(5) No applicant can be compelled to apply for a change or transfer with a conservancy board, and all applicants have the option of applying directly to Ecology rahter than the conservancy board.

WAC 173-153-070 Application for change or transfer of water right. (1) Water conservancy boards may accept applications for change or transfer of water rights. Ecology will provide water right change application forms and applicant instructions to water conservancy boards, which will make them available to prospective applicants. All applications to the water conservancy board must be made using the water right change form supplied by Ecology. The decision to file a change application with a conservancy board rather than directly with Ecology is solely at the discretion of the applicant. The conservancy board will inform any prospective applicants that they have the option of filing either with the board or directly with Ecology.

(2) The board shall insure that the application is complete and legible and is accompanied by the statutory state application fee, as required in RCW 90.03.470(1). The board may establish and charge additional fees in accordance with 90.80.060(2).

(3) The original application form and the statutory state application fee must be forwarded by the conservancy board to the appropriate Ecology regional office within five working days from the date of receipt. Within thirty working days from the date of

notice from the Board, Ecology will assign a state water right control number to the application, and inform the water conservancy board of the assigned number. Ecology will open a file relating to the application that will be maintained for permanent record keeping. Ecology will inform the applicant if additional fees are due.

(4) If an applicant makes a request to a water conservancy board that an application previously filed with Ecology be reviewed by that conservancy board, the conservancy board must determine whether it will review the application. If the conservancy board determines that it will review that application, the board shall make a request to Ecology, and Ecology shall forward a copy of the application and all relevant documents to the conservancy board.

(5) A board may decline at any time to process or continue processing an application for change or transfer. In such cases, the board will inform the applicant in writing of its recommendation within fourteen working days. If a board decides it will not process or continue processing an application, it must forward the working file for the specific transfer or change, and any state application fees that have not previously been forwarded to Ecology. The board must also provide a letter to the department explaining its decision to not process or finish processing the application.

(6) The board must ensure that copies of the application are properly distributed to cooperating or interested parties in compliance with existing laws, Ecology memoranda of understanding, policies and other guidance. To assist the Board, Ecology will provide a list of potentially interested parties.

WAC 173-153-080 Public notice. (1) The water conservancy board shall have a public notice of the proposed change or transfer of a water right be published once a week for two consecutive weeks in the legal notice section of a newspaper of general circulation in at least the county or counties of proposed water use, diversion and storage of water. Ecology must provide the board with a list of newspapers acceptable for this purpose. Additional public notice may be required in areas that may be affected by the change or transfer proposal. The public notice of the application for change or transfer must include the following information:

(a) Applicant's name and city or county of residence;

(b) Description of the water right to be changed or transferred, including any identifying number;

(c) Proposed changes or transfers to be made; and

(d) Manner and time limit for filing protests with Ecology under 90.03.470 RCW;

(e) Manner and time limit for intervening before the board pursuant to 90.80.070(4) RCW.

(2) Before acting on an application, the board must first receive a notarized affidavit of publication from each newspaper in which notice was published verifying that publication correctly occurred. The board must also allow the 30-day period for the filing of protests or objections following the last date of publication of the notice to expire before acting on the application.

(3) Circumstances under which publication must be republished. When an applicant amends the application for a change or transfer of a water right subsequent to publication of the notice, or when a substantive error or omission occurs in the publication, the public notice must be republished, and reviewing agencies must be informed.

WAC 173-153-090 Protests. (1) A protest of the application must be received by Ecology with the $2.00 protest fee within 30 days of the last date of publication of the public notice. Persons inquiring of the board or Ecology regarding protest procedures will be directed to file the protest with Ecology. Ecology will provide a copy of the protest to the board.

(2) A valid protest must include the name, address and phone number (if any) of the protesting party, identification of the change or transfer proposal that is being protested, and a statement of the basis for the protest. A proper basis for protest must relate to the impacts of the proposed change or transfer on other water rights or the public interest or be a challenge to the potential extent and validity of the water right proposed to be changed or transferred.

(3) The board must immediately forward any protests that it receives in error, accompanied by a $2.00 protest fee to the department.

(4) Any protest received after 30 days, or without the required fee, will be filed as a letter of concern.

WAC 173-153-100 State Environmental Policy Act compliance. A water conservancy board shall be the lead agency for the purpose of compliance with the State Environmental Policy Act (Chapter 43.21C RCW) for any applications for change or transfer filed with them and for which they will make a determination of approval or denial.

WAC 173-153-110 Examination of application. (1) The water conservancy board shall make its examination of and recommendations on a change or transfer application based on applicable state law, rules, policies, and Ecology guidance. Generally the board should conduct a field examination of the site of the proposal, clarify any unclear information by contacting the applicant, and discuss the concerns of protestants and objectors with the persons who filed them. All relevant information must be collected and considered in the examination. Detailed hydrological or hydrogeological information may need to be collected or other research conducted or compiled. A board may require the applicant to provide additional information at the applicant's expense if that information is necessary to render an informed recommendation on the application.

(2) A water conservancy board shall consult with Ecology if it encounters novel or controversial issues in the course of examining an application. Ecology will attempt to

provide assistance and advice as to how to proceed in accordance with state law, rule, policy and sound administrative practice.

(3) Where water rights are subject to an ongoing general water rights adjudication process, but if a Conditional Final Order or other order quantifying water rights has not been entered, the board will direct the applicant to the court conducting such adjudication for a pre-trail determination. The board will not start its' evaluation of the application until the pre-trail determination has been made. Where an adjudication is in progress and a Conditional Final Order or other order quantifying a water right has been entered, the board must rely on the court's order as a basis of quantifying the right for the purposes of change or transfer. The court conducting the adjudication may maintain management responsibility for water during the conduct of an adjudication, and if so, then approval of the board's recommendation by the court may be required. Approval by the court, if required, must be obtained by the applicant prior to review of the recommendation by Ecology.

WAC 173-153-120 Hearings on objections. (1) Any water right holder claiming detriment or injury to an existing water right may intervene in the application review process before the water conservancy board. Actions by the water conservancy board are independent from those of Ecology. Ecology's final decisions based upon water conservancy boards recommendations are subject to administrative and judicial review.

(2) Parties who intervene in a water conservancy board recommendation are not considered to be a protesting party pursuant to RCW 90.03.470(12) and 90.03.380 RCW. Protests may be filed with Ecology pursuant to RCW 90.03.470(12) and 90.03.380 RCW and shall be evaluated by Ecology concurrently with its review of the water conservancy boardrecommendation. Ecology will also consider other objections and comments in the record including the record of any hearings held by the board, when it makes its review of the board'srecommendation.

WAC 173-153-130 Recommendation by water conservancy board. (1) The water conservancy board must evaluate the change application, including the entire water rights record, and determine whether or not the change or transfer as proposed is in accordance with applicable laws, rules, policies and guidelines of the department. The board must also make a tentative determination as to the extent and validity of the water right proposed to be changed or transferred, whether the change or transfer can be made without injury or detriment to existing rights, and whether the proposed change or transfer is not detrimental to the public interest. The water conservancy board's determinations must be in writing and its record of recommendation becomes part of the public record.

(2) For applications for change or transfer of water right that are proposed to be denied, the water conservancy board will issue a record of recommendation conditionally denying the change or transfer, subject to review and final determination by Ecology.

(3) For affirmative recommendations, the water conservancy board will issue the applicant a certificate of conditional approval, subject to review and final approval by Ecology.

(4) The record of recommendationand the certificate of conditional approval will each address the following:

(a) A description of the water right proposed for change or transfer and the board's tentative determination as to the validity and quantification of the right, together with a description of the historical water use information that was considered by the board;

(b) A description of any protests, objections or comments including comments provided by other agencies, Indian Tribes, or interested parties and the board's analysis of each issue considered, including the name and address of individual interveners;

(c) A discussion explaining compliance with the State Environmental Policy Act;

(d) An analysis of the effect of the proposed transfer on other water rights, pending applications, and instream flows established under state law;

(e) A narrative description of any other water rights or other water uses associated with both the current and proposed place of use and an explanation of how those other

rights or uses will be exercised in harmony with the right proposed to be changed or transferred;

(f) An analysis of the effect of the change or transfer on the public interest;

(g) Any recommendation or conclusion that an existing water right or portion of a water right has been forfeited or abandoned due to non-use;

(h) A description of the results of any geologic/hydrogeologic investigations that were considered by the board;

(i) A list of conclusions that the board drew from the information related to the change or transfer proposal and a complete description of the board'srecommmendation;

(j) Conditions and limitations recommended for inclusion in an approval or other corrective action necessary to maintain the water use in compliance with state laws or rules;

(k) A description of any requirement to mitigate adverse effects on other water rights, the water source, or the public interest; and

(l) A schedule for development and completion of the change or transfer, if approved in part or in whole, that includes a definite date for completion of the change or transfer and the application of water to authorized beneficial use.

(5) A water conservancy board's determination and certificate is not a final authorization to change or transfer the water right. Only after Ecology has approved the recommendation and has issued an order authorizing the change or transfer, or has waived its opportunity to render a final decision by not responding with in the timeframe established in RCW 90.80, is the applicant allowed to initiate the change or transfer of the water right.

WAC 173-153-140 Notification of recommendation. (1) The water conservancy board shall send notice of its recommendation by mail to the applicant, Ecology, and to any person who protested or objected to the change or transfer, to any persons who requested notice of its recommendation, and to any commenting agency or Tribe. The board shall transmit notification of its recommendations to all parties on the

same day, and will note that it has gone to Ecology. Ecology shall identify the location designated for submission of the board's determination.

(2) All original public documents received or developed by the water conservancy board and used during its deliberations for decision making for each application for change or transfer of a water right must be sent along with a clear copy of the recommendation to Ecology at the location designated by the department for permanent record keeping within seven working days after the board has rendered it's recommendation. The board must retain a copy of all documents.

(3) Any comments or objections that are received by the water conservancy board on its determination within 30 days after a final decision is issued by Ecology shall be forwarded to Ecology within 5 working days, at the location designated for submission of the board's determination.

WAC 173-153-150 Ecology's review of the board'srecommendation. (1) Upon receipt of a recommendation made by a water conservancy board, Ecology will review the recommendation for compliance with state water laws and rules, policies or guidelines. Ecology will also consider agency or Tribal comments and any protests or objections filed by parties alleging that one or more of their water rights would be impaired by the change or transfer. Ecology may affirm, reverse, or modify the recommendation of the board. Ecology's decision will be made in the form of a written administrative order and must be issued within forty-five days of receipt of the board's recommendation. If Ecology fails to act within the forty-five day time period, the board's recommendation becomes final. The forty-five day time period may be extended an additional thirty days by the Director upon the consent of the parties to the transfer.

(2) Ecology will send notice of its decision to all parties on the same day. Notice of Ecology's decision will be sent by mail within five working days to the water conservancy board, the applicant, any person who protested or intervened before the board, persons who requested notice of its decision, the Washington Department of Fish and Wildlife, and any Indian tribes.

WAC 173-153-160 Perfection of a change or transfer approval. (1) The person authorized to change or transfer a water right must submit evidence showing the change or transfer has been completed in accordance with the order authorizing the change or transfer of water right Ecology will issue a change certificate or a superseding certificate to the water right holder(s) to document that the approved change or transfer was accomplished upon verification of the extent of development as authorized. When the document is issued, Ecology may provide a copy to the conservancy board for its records as requested. The document will also be recorded at the applicant's expense by the county in which the use of water is made.

(2) If development of the approved change or transfer is not completed in accordance with the development schedule that accompanies the approval, extensions may be requested and will be processed under standard procedures by Ecology.

(3) If the person authorized to change or transfer a water right fails to accomplish the change or transfer in accordance with the authorization, Ecology will cancel the change or transfer authorization and the water right will revert to the original configuration, less any quantity that was relinquished for non-use.

WAC 173-153-170 Appeals. Any person aggrieved by a decision of the department to approve or disapprove the establishment of a conservancy board, or Ecology's decision to affirm, reverse or modify the determination of a conservancy board on an application for change or transfer of a water right, may appeal the decision to the state Pollution Control Hearings Board in accordance with Chapter 43.21B RCW.

WAC 173-153-180 Savings. Nothing in this chapter is intended to impair any existing water rights.

WAC 173-153-190 Review of chapter. This chapter shall be reviewed by Ecology whenever new information, changing conditions, or statutory modifications make it necessary to consider revisions.

Conservancy Board Examination

The following questions serve as a review and evaluation of your understanding of the material presented by Ecology.

1) What are some of the key issues, which must be addressed before considering a water right change or transfer? (mark all that apply)

   a) If a water right exists administratively; i.e., does the applicant have a valid claim, permit, or certificate?

   b) Has the water right been perfected; i.e., is there evidence of current and historic use as authorized in the claim, permit, or certificate.

   c) What is the actual quantity of water which has been put to the beneficial use.

   d) The date the water right was granted.

2) True or False - The quantity of water listed on the claim, permit or certificate is always the amount of water that is available for change or transfer.

3) The scope of authority for the Water Conservancy Board includes changes involving the following: (mark all that apply)

   a) Purpose of use

   b) Source of water

   c) Point of diversion or withdrawal

   d) Quantity of water

   e) Place of use

4) Which water rights may not be impaired by an approval of a change or transfer request?

   a) Senior right holders

   b) Junior right holders

   c) Parties that have an application on file with Ecology

5) True or False – The Water Conservancy Board can conditionally approve transfer of water outside the geographic boundaries of their county.

6) True or False – With consent of the parties to a transfer, Ecology's review period can be extended from 45 to 75 days.

7) True or False – For applications filed with the Water Conservancy Board, the Board shall publish notice of application in accordance with RCW 90.03.280.

8) True or False – Ecology's interpretation is that a water right is based upon the beneficial use of water.

9) True or False – A Water Right Claim represents a water right.

10) True or False – The state water right permit system was established in 1917.

11) True or False – A change decision does not consider impacts on rights junior to the one to be changed.

12) True or False – Some water rights are not documented in the state water right record.

13) True or False – The water source for a ground water right may be changed from one distinct aquifer to another.

14) True or False – A change to a water right is a good way to increase the instantaneous rate of appropriation.

15) True or False – A water right involved in an on-going adjudication may not be changed.

16) True or False – Public notice of a change application is published once per week for 2 consecutive weeks.

17) True or False – Change applications are normally exempt from the State Environmental Policy Act.

18) True or False – Relinquishment of a water right might occur after 5 years of non-use.

19) True or False – A water right holder is required to complete a change after it has been approved.

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WASHINGTON STATE DEPARTMENT OF ECOLOGY

Focus

Pilot Rule for Creation and Operation of Water Conservancy Boards

Overview

The Washington Department of Ecology is developing a rule to guide the creation and operation of county water conservancy boards. The 1997 legislature created conservancy boards under *Chapter 90.80 RCW.* The legislation allows counties to establish local water conservancy boards to process water right transfer and change applications, subject to Ecology approval. It also directs Ecology to establish minimum requirements for training conservancy board members. The Governor directed Ecology to initiate pilot rule making for the new chapter of the water code and authorized the establishment of up to two conservancy boards during development of the pilot rule.

Under the new law, Ecology has 45 days to approve/deny the formation of a water conservancy board upon receipt of a copy of the approved resolution or petition submitted by a county. The petition must include a summary of public testimony presented during a public hearing conducted by the county commissioners/council, in response to the petition to form a water conservancy board.

Ecology received proposals from Benton and Lewis counties to establish conservancy boards under the pilot rule. Ecology's Director approved both county proposals, subject to the rule-making process. The pilot rule will be tested in both counties, and Ecology expects the final rule to be adopted in approximately one year.

Ecology's Water Resources Program will provide training for the new board members. The training will consist of a minimum of 40 hours of initial instruction to include learning about state water law, hydrology, and applied practical experience processing applications for change or transfer of water rights.

The Application Process Under the Pilot Rule

An existing water right that is eligible to be changed or transferred may be represented by one of a variety of documents, usually a water right permit, certificate or claim. Elements of these water right documents that may be changed are:

- Place of use;
- Point(s) of withdrawal or diversion;
- Additional point(s) of withdrawal or diversion; and
- Purpose of use.

Certain aspects of an existing water right document may not be changed. These include increasing the withdrawal rate or annual quantity of water currently permitted. For more information on changing an existing water right document, contact Ecology's Publication

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Publication No. 98-1815-WR

Printed on recycled paper

Center at (360) 407-7472 and request publication #98-1802-WR, "Changing an Existing Water Right or Water Right Claim," or visit Ecology's publication web site at: http://www.wa.gov/ecology/

Under the new law, to change or transfer an existing water right, the water right holder must complete and submit to the water conservancy board an application for water right change, attaching a minimum $10 fee. The original application and application fee will be forwarded to Ecology. Ecology will assign a water right application control number and inform the board of the assigned number. Potentially, the boards may charge the applicant an additional fee.

The water conservancy board will evaluate the application and determine whether or not the change, as proposed, can be made without affecting existing water rights. The board would oversee both the process of the applicant publishing a public notice and the filing of subsequent protests by the public.

The board will investigate the application and render a decision to approve, deny or condition the approval. If an application is approved, the water conservancy board will issue the applicant a certificate conditionally authorizing the change or transfer, subject to approval by Ecology. Only after Ecology has concurred with the determination, or waived its review, is a transfer or change of the water right authorized. A superseding certificate or certificate of change (in the case of a claim) will be issued by Ecology once verification of the change has occurred. For denied applications, the board will issue an order conditionally denying the transfer or change, subject to approval by Ecology.

Public Workshops

Immediately following the water resource training for the boards, Ecology will be hosting public workshops to discuss the pilot rule establishing water conservancy boards. Water conservancy board members from Benton and Lewis counties will also participate in the workshops to answer questions about their involvement in the pilot rule process. Copies of the draft pilot rule will be available at the workshops, or you may visit Ecology's laws and rules web site: http://www.wa.gov/ecology/leg/laws-etc.html

The public workshop in Benton County will be held September 30, 1998, from 7:00 - 9:00 p.m. at the following location:

Department of Ecology
1315 4th Avenue
Kennewick, WA

Lewis County has not yet confirmed their training dates in October, so a public workshop date and location will be announced at a later date.

For more information

To request a map showing Ecology's Kennewick office location, call Ann Shipley at (360) 407-6624. For more information on the pilot rule, contact Peggy Clifford (360) 407-7262, Department of Ecology, Water Resources Program, PO Box 47600, Olympia, WA 98504-7600 or email at pcli461@ecy.wa.gov

If you have special accommodation needs, please contact Paula Smith at (360) 407-6607 or (360) 407-6006 TDD.

WASHINGTON STATE DEPARTMENT OF ECOLOGY

Meeting Notice

Second Workshop Scheduled To Discuss Pilot Rule for Creation and Operation of Water Conservancy Boards

Ecology will be hosting a public workshop to discuss the pilot rule establishing water conservancy boards. Water conservancy board members from Lewis County will also participate in the workshop to answer questions about their involvement in the pilot rule process and the development of the board's by-laws. Copies of the draft pilot rule will be available at the workshop, or you may obtain a copy on the Water Resources Program's homepage: http://www.wa.gov/ecology/wr/rights/cbrule3.html

The public workshop in Lewis County will be held November 12, 1998, from 7:00 - 9:00 p.m. at the following location:

Lewis County Courthouse Annex
Meeting Room #2
351 NW North Street
Chehalis, WA

Overview

The Washington Department of Ecology is developing a rule to guide the creation and operation of county water conservancy boards. The 1997 legislature created conservancy boards under *Chapter 90.80 RCW.* The legislation allows counties to establish local water conservancy boards to process water right change applications, subject to Ecology approval. It also directs Ecology to establish minimum requirements for training conservancy board members. The Governor directed Ecology to initiate pilot rule making for the new chapter of the water code and authorized the establishment of up to two conservancy boards during development of the pilot rule.

Under the new law, Ecology has 45 days to approve/deny the formation of a water conservancy board upon receipt of a copy of the approved resolution or petition submitted by a county. The petition must include a summary of public testimony presented during a public hearing conducted by the county commissioners/council, in response to the petition to form a water conservancy board.

Ecology received proposals from Benton and Lewis counties to establish conservancy boards under the pilot rule. Ecology's Director approved both county proposals, subject to the rule-making process. The pilot rule will be tested in both counties, and Ecology expects the final rule to be adopted in approximately one year.

Ecology's Water Resources Program will provide training for the new board members. The training will consist of a minimum of 30 hours of initial instruction to include learning about

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state water law, hydrology, and applied practical experience processing applications for change or transfer of water rights.

The Application Process Under the Pilot Rule

An existing water right that is eligible to be changed or transferred may be represented by one of a variety of documents, usually a water right permit, certificate or claim. Elements of these water right documents that may be changed are:

- Place of use;
- Point(s) of withdrawal or diversion;
- Additional point(s) of withdrawal or diversion; and
- Purpose of use.

Certain aspects of an existing water right document may not be changed. These include increasing the withdrawal rate or annual quantity of water currently permitted. For more information on changing an existing water right document, contact Ecology's Publication Center at (360) 407-7472 and request publication #98-1802-WR, "Changing an Existing Water Right or Water Right Claim," or visit Ecology's publication web site at: http://www.wa.gov/ecology/

Under the new law, to change an existing water right, the water right holder must complete and submit to the water conservancy board an application for water right change, attaching a minimum $10 fee. The original application and application fee will be forwarded to Ecology. Ecology will assign a water right application control number and inform the board of the assigned number. Potentially, the boards may charge the applicant an additional fee.

The water conservancy board will evaluate the application and determine whether or not the change, as proposed, can be made without impairing existing water rights or the public interest. The board would oversee both the process of the applicant publishing a public notice and the filing of subsequent protests by the public.

The board will investigate the application and render a decision to approve, deny or condition the approval. If an application is approved, the water conservancy board will issue the applicant a certificate conditionally authorizing the change or transfer, subject to approval by Ecology. Ecology has 45 days to concur with the determination and authorize the change, or waive its review. A superseding certificate or certificate of change (in the case of a claim) will be issued by Ecology once verification of the change has occurred. For denied applications, the board will issue an order conditionally denying the transfer or change, subject to approval by Ecology.

For More Information

For directions to the meeting location, call Barb Tovrea at (360) 407-6604. For more information on the pilot rule, contact Peggy Clifford (360) 407-7262, Department of Ecology, Water Resources Program, PO Box 47600, Olympia, WA 98504-7600 or email at pcli461@ecy.wa.gov

If you have special accommodation needs, please contact Paula Smith at (360) 407-6607 or (360) 407-6006 TDD.

Memorandum of Agreement
Between
Washington Department of Ecology
and
Benton County Water Conservancy Board
October 28, 1998

The Department of Ecology and the Benton County Water Conservancy Board agree to participate in a pilot process for the development of the draft rule for Water Conservancy Boards.

The Department of Ecology intends to work with the Board in a cooperative manner, and to aid in its success. The department will provide a high level of involvement in training and technical assistance from both staff and agency management. Ecology will use its authority to review and where appropriate, approve proposed certificates from the Board

In agreeing to be a part of this project the Benton County Water Conservancy Board has committed to test the pilot rule, attempt to meet the requirements of the draft rule, report periodically to the department of Ecology on the extent of their ability to meet the requirements of the draft rule, and make recommendations for improving the draft rule.

11/10/98

Daryll Olsen
Board member
Benton County Water Conservancy Board

Tom Fitzsimmons
Director
Washington Department of Ecology

11/10/98

Matt Berg
Board member
Benton County Water Conservancy Board

11/10/98

John Jaksch
Board member
Benton County Water Conservancy Board

Memorandum of Agreement
between
Washington Department of Ecology
and
Lewis County Water Conservancy Board
October 28, 1998

The Department of Ecology and the Lewis County Water Conservancy Board agree to participate in a pilot process for the development of the draft rule for Water Conservancy Boards.

The Department of Ecology intends to work with the Board in a cooperative manner, and to aid in its success. The department will provide a high level of involvement in training and technical assistance from both staff and agency management. Ecology will use its authority to review and where appropriate, approve proposed certificates from the Board

In agreeing to be a part of this project the Lewis County Water Conservancy Board has committed to test the pilot rule, attempt to meet the requirements of the draft rule, report periodically to the department of Ecology on the extent of their ability to meet the requirements of the draft rule, and make recommendations for improving the draft rule.

Ed Moerke
Board member
Lewis Conuty Water Conservancy Board

Tom Fitzsimmons
Director
Washington Department of Ecology

Mike McDermitt
Board member
Lewis County Water Conservancy Board

Lyle Hojem
Board member
Lewis County Water Conservancy Board

Bylaws of the Benton County Water Conservancy Board

Section 1.0 Authorization for Benton County Conservancy Board.

1.1 As approved by Resolution of the Benton County Commissioners, the Benton County Water Conservancy Board (hereafter referred to as the Water Board) is established as a public body corporate and politic, a separate unit of local government in Washington State, as authorized under Chapter 441, Laws of Washington 1997. Conduct and operations of the Water Board shall be in compliance with Chapter 441, Laws of 1997, and are subject to review by the Director of the Washington State Department of Ecology.

Section 2.0 Water Board Purpose and Objectives.

2.1 The Water Board shall expedite the administrative process for noncontested or voluntary water right transfers among water right holders and shall convey greater operational control to local water managers and water right holders.

2.2 Voluntary water right transfers between water users can reallocate water use in a manner that will result in more efficient management of water resources; it can reduce water shortages, save capital outlays, and reduce development costs; and it will provide an incentive for investment in water conservation efforts by water right holders.

Section 3.0 Water Board Members and Funding.

3.1 The Benton County Water Conservancy Board is created through approval by the Benton County Commissioners and the Department of Ecology as required by Chapter 441, Laws of Washington 1997.

3.2 The Water Board shall consist of three commissioners appointed by the Benton County Commissioners to serve six-year terms, with an initial Water Board chairman selected by the Board of Commissioners and subsequently elected by its members annually. The terms for initial appointments to the Water Board shall be staggered to serve as two, four, and six-year terms, respectively, from the date of appointment. Water Board appointments are within the discretion of the Benton County Commissioners, but at least one Water Board commissioner shall be an individual water right holder who diverts water for use within Benton County.

3.3 Appointees to the Water Board shall be legal residents of Benton County or a county contiguous to Benton County. The Water Board Commissioners shall serve without compensation.

3.4 No Water Board Commissioner may participate in Water Board decisions to approve water transfers until he or she has successfully completed the necessary training (workshops) related to water transfers within the state, as provided by the Washington State Department of Ecology. At least two Board members are required for making transfer decisions.

3.5 A Water Board Commissioner who has an ownership interest in a water right subject to an application for transfer before the Water Board shall not participate in the review process or the Water Board's certification decision, for that application. A Water Board Commissioner, who is an employee of a public or private water purveyor who has an ownership interest in a water right subject to an application for transfer before the Board, shall not participate in the review process or the Water Board's certification decision, for that application.

3.6 The Water Board constitutes an independently funded entity and shall provide for its own funding as determined by the Water Board Commissioners. The Board may accept grants or stipends, and it may adopt fees for processing applications for transfers of water rights; or provide for funding under other lawful means, as approved by the Water Board. The Water Board may not impose taxes or acquire property by the exercise of eminent domain. All financial transactions, including funding for Water Board operations, will be approved during a board meeting and be carried out by the Water Board or its designees.

Section 4.0 Water Board Operations.

4.1 The Water Board will determine a schedule for meetings and the conduct of business, with public notice of meetings published within County newspapers; Water Board activities are subject to the open public meetings act under Title 42 RCW. Water Board meetings will be recorded, and the minutes made available to the public upon request.

The Water Board may acquire, purchase, hold, lease, manage, occupy, and sell real and personal property or interest therein, enter into and perform all necessary contracts; it may enter into contracts with or appoint necessary agents for professional services, or perform lawful acts required to carry out its management obligations; and the Water Board may sue or be sued.

4.2 The Water Board provides a water transfer exchange through which water right holders may seek a formal water right transfer of all or part of their legitimately established water right. The Water Board may review water right transfer proposals that involve all types of water transfers, including intra- and inter-sector transfers (within or between different beneficial uses), short-term or long-term transfers (leases), or permanent water transfers. The Water Board may make decisions on (conditionally approve) transfers involving a change in place of use, point of diversion or withdrawal, and purpose of use.

4.3 The Water Board may make decisions on (conditionally approve) the transfer of a water right or claim filed under RCW Chapter 90 that has not been adjudicated. But neither the Water Board's approval of a transfer, nor the Director's (Department of Ecology) approval of the Water Board's action constitutes an adjudication of the validity, priority, or quantity of the

transferor's water right, and such approvals do not preclude or prejudice a subsequent challenge to the transferor's water right.

4.4 The Water Board shall maintain all information made available to it concerning water rights before the Water Board. Approval by the Water Board of an application for a water right transfer functions as an open water exchange. The Water Board will establish policies and procedures for administration of a system of timely conditional decisions for water transfers, consistent with its water exchange function. The Board will be guided by the review procedures list contained within the existing draft pilot rule developed by the Department of Ecology.

4.5 Application to the Water Board for water transfers shall be made on a form provided by, or reviewed and approved by, the Washington State Department of Ecology, and shall contain sufficient information required by the Water Board to act upon the application. The application shall include information sufficient to establish to the Water Board's satisfaction the transferor's right to the quantity of water being transferred, a description of any applicable limitations on the right to use water, including the point of diversion or withdrawal, place of use, source of supply, purpose of use, quantity of use permitted, time of use, period of use, and place of storage.

The decision by a water right transfer applicant to apply to the Water Board, as opposed to seeking direct review by the Department of Ecology, is solely at the discretion of the applicant.

4.6 With the filing of an application to the Water Board, the Water Board shall publish and send notice of the filing as required by RCW 90.03.280; this will include notice to the Director of the Department of Fish and Wildlife. Any person or entity may submit comments to the Water Board concerning the notice of the water transfer application.

4.7 The transferor and transferee of any proposed water transfer may apply to the Water Board for conditional decision of the transfer if the proposed water to be transferred is currently diverted or used within Benton County, or if it would be used within Benton County with transfer approval. In the case of a proposed water transfer in which water that is currently diverted or would be diverted outside of the geographic boundaries of Benton County, the Water Board shall hold a public hearing on the transfer within such other county, and it may hold a public hearing within Benton County. The Water Board shall publish notice of such hearings in a newspaper of general circulation in such other county at least 14 days prior to such hearing for the purpose of affording an opportunity for interested persons to comment on the transfer proposal.

4.8 Any water right holder claiming detriment or injury (impairment) to an existing water right as a result of a proposed water transfer may formally intervene in the application process before the Water Board. When such intervention occurs, the Water Board shall hold a formal public hearing concerning the transfer and notify the intervenor. The Water Board shall receive, or request from the party claiming injury, such evidence as it deems necessary to determine the validity of the claim of impairment. If the intervenor establishes by a preponderance of the evidence that his or her water right will be injured by the transfer, the

Water Board may not approve the water transfer, unless the applicant and the impaired party agree on compensation for the impairment.

4.9 Following water right transfer application review, if a majority of the Water Board determines that the application is complete and the transfer can be made without impairment to existing water rights, the Water Board shall issue the applicant a conditional certificate approving the transfer, subject to review by the Director of the Washington State Department of Ecology. The conditional certificate formally conveys the Water Board's approval for transfer.

The Water Board's conditional certificate is not final and does not authorize the applicant to make the transfer until it also is approved or approval is waived by the Director of the Department of Ecology.

4.10 If the Water Board approves (after the Board renders a decision) a water right transfer application that is formally challenged as creating an impairment under the Water Board's review process, then the Water Board shall submit notice of the Board's decision, by mail, to the party claiming impairment; and the Water Board will inform the party claiming impairment of the right to object to the Water Board's decision to the Director of the Department of Ecology.

4.11 If the Water Board decides not to approve a water right transfer application, then the applicant is notified of the decision. The Water Board's decision does not prejudice an applicant's option to submit a water right transfer application to the Department of Ecology.

4.12 When a transfer is approved by the Water Board, the Water Board is required to submit a copy of the certificate conditionally approving the transfer to the Director of the Department of Ecology. The Water Board also shall submit a record of decision (ROD) to the Director summarizing the information and findings on which the Water Board relied on to approve of the water transfer, including any objections filed to the water right transfer. The Director is required to review the certificate and ROD provided by the Water Board and has forty-five days to affirm, reverse, or modify the Water Board's decision; if no action is taken by the Director within forty-five days of receipt of the certificate and ROD (or extension as provided under RCW 90.80.080), the Water Board's decision is final. Upon the Director's affirmation, the conditional certificate issued by the Water Board is final.

4.13 The Water Board will keep a complete record of water transfer filings, and associated documents and information described in the above sections; and it will provide a copy of the same record to the regional office of the Department of Ecology, and include it in the ROD.

Section 5.0 Amendments to the Bylaws.

5.1 These bylaws may be altered, amended, or repealed by a majority of the Water Board at a regular or special meeting of the Water Board.

Section 6.0 Effective Date.

6.1 These Bylaws shall take effect immediately after approval by the initiating Water Board, subject to prior review by the Director of the Department of Ecology, with the Director's review to be completed within forty-five days of receipt of the Benton County Commissioners' Resolution to form the Benton County Water Conservancy Board.

The Benton County Water Conservancy Board Bylaws have been reviewed and approved by the initiating Benton County Water Conservancy Board Commissioners.

_____, Chairman

10-27-98
Date Approved

_____, Commissioner

_____, Commissioner

Bylaws of the Lewis County
Water Conservancy Board

Section 1.0 Authorization for the Lewis County Water Conservancy Board.

1.1 As approved by Resolutions 98-465 and 98-516 of the Lewis County Commissioners, the Lewis County Water Conservancy Board ("the Water Board") is established as a public body corporate and politic, a separate unit of local government in Washington State, as authorized under chapter 90.80 RCW - Water Conservancy Boards. Conduct and operations of the Water Board shall be in compliance with chapter 90.80 RCW - Water Conservancy Boards, and are subject to review by the Director of the Washington State Department of Ecology ("Ecology").

Section 2.0 Water Board Purpose and Objectives.

2.1 The Water Board shall expedite the administrative process for the voluntary water right changes and transfers among water right holders and shall convey greater operational control to local water managers and water right holders.

2.2 Voluntary water right changes and transfers between water users can reallocate water use in a manner that will result in more efficient management of water resources; it can reduce water shortages, save capital outlays, and reduce development costs; and it will provide an incentive for investment in water conservation efforts by water right holders.

Section 3.0 Water Board Members and Funding.

3.1 The Lewis County Water Conservancy Board is created through approval by the Lewis County Commissioners and Ecology as required by chapter 90.80 RCW - Water Conservancy Boards.

3.2 The Water Board shall consist of three commissioners appointed by the Lewis County Board of Commissioners ("BOCC") to serve six-year terms, with an initial Water Board chairman selected by the BOCC and subsequently elected by its members annually. The initial chairman term begins upon adoption of resolution by the BOCC and shall terminate December 31, 1999. Each subsequent chairman shall serve an annual term from January 1 through December 31 from each year. The terms for the initial appointments to the Water Board shall be staggered to serve as two, four, and six-year term, respectively, from the date of appointment. Water Board appointments are within the discretion of the Lewis County Commissioners, but at least one Water Board Member commissioner shall be an individual water right holder who diverts water for use within Lewis County.

3.3 Appointees to the Water Board shall be legal residents of Lewis County . The Water Board Commissioners shall serve without compensation.

3.4 No Water Board Commissioner may participate in Water Board decisions to approve water right changes and transfers until he or she has successfully completed the necessary training (workshops) related to water right changes and transfers within the state, as provided by Ecology.

3.5 A Water Board Commissioner who has an ownership interest in a water right subject to an application for change or transfer before the Water Board shall not participate in the review process or the Water Board's recommendation and/or certification decision. A Water Board Commissioner, who is an employee of a public or private water purveyor who has an ownership interest in a water right subject to an application for transfer before the Board, shall not participate in the review process or the Water Board's recommendation and/or certification decision.

3.6 The Water Board constitutes an independently funded entity and shall provide for its own funding as determined by the Water Board Commissioners. The Board may accept grants or stipends, and it may adopt fees for processing applications for changes or transfers of water rights; or provide for funding under other lawful means, as approved by the Water Board. The Water Board may not impose taxes or acquire property by the exercise of eminent domain. All financial transactions, including funding for Water Board operations, will be approved during a board meeting and be carried out by the Water Board or its designees.

Section 4.0 Water Board Operations.

4.1 The Water Board will determine a schedule for meetings and the conduct of business, with public notice of meetings published within the Lewis County Chronicle and/or the East County Journal newspapers; Water Board activities are subject to the open public meetings act under chapter 42.30 RCW - Open Public Meetings Act. Water Board meetings will be recorded, and the minutes made available to the public upon request as outlined under chapter 42.17 RCW - Disclosure, Campaign Finances, Lobbying and Records.

The Water Board may acquire, purchase, hold, lease, manage, occupy, and sell real and personal property or interest therein; it may enter into and perform all necessary contracts; it may enter into contracts with, or appoint necessary agents for professional services, or perform lawful acts required to carry out it's management obligations; and the Water Board may sue or be sued.

4.2 The Water Board may provides for a water right change or transfer exchange, through which water right holders may seek formal water right transfer of all, or part of their legally established water right. The Water Board may review water right change or transfer proposals that involve all types of water transfers, including different beneficial uses, short-term or long-term changes or transfers (leases), or permanent water changes or transfers. The Water Board may make decisions on (conditionally approve or deny) water right change or transfer applications involving place of use, point of diversion or withdrawal, purpose of use, and amount to be changed or transferred, as outlined in RCW Chapter 90.80 and draft rule chapter 173-153 WAC.

4.3 The Water Board may make decisions on (conditionally approve or deny) the change or transfer of a water right or claim filed under RCW Chapter 90.80 and draft rule chapter 173-153 WAC, that has not been adjudicated. But neither the Water Board's approval of a change or transfer, nor Ecology's approval of the Water Board's action constitutes an adjudication of the validity, priority, or quantity of the transferor's water right, and such approvals do not preclude or prejudice a subsequent challenge to the transferor's water right.

4.4 The Water Board shall maintain all information made available to it concerning water rights before the Water Board. Approval by the Water Board of an application for a water right change or transfer functions as an open water exchange. The Water board will establish policies and procedures for the administration of a system of timely conditional approvals for water transfers, consistent with it's water exchange function.

4.5 Applications to the Water board for water changes or transfers shall be made on a form provided by, or reviewed by, Ecology and shall contain sufficient information required by the Board to act upon the application. The application shall include information sufficient to establish to the Water Board's satisfaction the transferor's right to the quantity of water being transferred, a description of any applicable limitations on the right to use water, including point of diversion or withdrawal, place of use, source of supply, purpose of use, quantity of use permitted, time of use, period of use, and place of storage.

The decision by a water right change or transfer applicant to apply to the Water Board, as opposed to seeking direct review by Ecology, is solely at the discretion of the applicant.

4.6 The transferor and transferee of any proposed water change or transfer may apply to the Water Board for conditional approval of the change or

transfer if the proposed water to be changed or transferred is currently diverted or used within Lewis County, or if it would be used within Lewis County with change or transfer approval. In the case of a proposed change or transfer in which water that is currently diverted or would be diverted outside of the geographic boundaries of Lewis County, the Water Board shall hold a public hearing on the change or transfer within such other county, and it may hold a public hearing within Lewis County if the Board so desires. The Water Board shall publish notice of such hearings in a newspaper of general circulation in such other county at least 14 days prior to such hearing for the purpose of affording an opportunity for interested persons to comment on the change or transfer proposal.

4.7 With the filing of an application to the Water Board, the Water Board shall publish and send notice of the filing as required by RCW 90.03.280; this will include notice to the Director of the Department of Fish and Wildlife. Any person or entity may submit comments to the Water Board, for consideration, concerning the notice of the water right change or transfer application.

4.8 Any water right holder claiming detriment or injury (impairment) to an existing water right as a result of a proposed water change or transfer may formally intervene in the application process before the Water Board. When such intervention occurs, the Water Board shall hold a formal public hearing concerning the change or transfer. The Water Board shall receive from the party claiming injury, such evidence as it deems necessary to determine the validity of the claim of impairment, including evidence demonstrating complainant is a water right holder. If the intervenor establishes by a preponderance of the evidence that his or her water right will be injured by the change or transfer, the Water Board may not approve the water right change or transfer, unless the applicant and the impaired party agree on compensation for the impairment. All costs incurred by the Water Board for the review and the hearing of the intervention shall be reimbursed by either the intervenor, or the water right change/transfer applicant, whomever the final decision is against.

4.9 Following water right change or transfer application review, if the Water Board determines that the application is complete and the transfer can or cannot be made without impairment to existing water rights, then the Water Board shall issue or deny the applicant the change or transfer, subject to review by Ecology. For approvals, the Board shall issue a conditional certificate, which formally conveys the approval for change or transfer. All final Board actions shall be forwarded to Ecology.

The Water Board's Conditional certificate is not final and does not authorize the applicant to make the change or transfer until it also is approved, denied or waived by Ecology.

4.10 If the Water board approves a water right change or transfer application that is formally challenged as creating an impairment under the Water Board's review process, then the Water Board shall submit notice of the Board's decision, by mail, to the party claiming impairment; and the Water Board will inform the party claiming impairment of the right to object to the Water Board's decision to Ecology.

4.11 When a change or transfer is approved or denied by the Water Board, the Board is required to submit a copy of the certificate conditionally approving or denying the change or transfer to Ecology. The Water Board also shall submit a record of decision (ROD) to Ecology summarizing the information and findings on which the Water Board relied on to approve or deny the water right change or transfer, including any objections filed to the water right change or transfer. Ecology is required to review the certificate and the ROD provided by the Water Board and has forty-five days to affirm, reverse, or modify the Water Board's decision. If no action is taken by Ecology within forty-five days of receipt of the certificate and ROD, the Water Board's decision is final. Upon Ecology's affirmation, the conditional certificate issued by the Water Board is final.

4.12 The Water Board will keep a complete record of water change or transfer filings, and associated documents and information described in the above sections; and it will provide a copy of the same record to the regional office of Ecology.

Section 5.0 Amendments to the Bylaws.

5.1 These bylaws may be altered, amended, or repealed by a majority of the Water Board at a regular or special meeting of the Water Board.

Section 6.0 Effective Date.

6.1 These bylaws shall take effect immediately after approval by the initiating Water Board, subject to prior review by Ecology, with their review to be completed within forty-five days of receipt of the Lewis County Commissioner's Resolution to form the Lewis county Water Conservancy Board.

The Lewis County Water Conservancy Board Bylaws have been reviewed and approved by the initiating Lewis County Water Conservancy Board Commissioners.

WATER CONSERVANCY BOARD
LEWIS COUNTY, WASHINGTON

_____
Chairman

_____
Member

_____
Member

APPROVED AS TO FORM:

By: _____
, Attorney

Benton County
Water Conservancy Board

10/27/98

PUBLIC NOTIFICATION

ACTIVE WATER RIGHT TRANSFER APPLICATIONS

Public notice is hereby given that the Benton County Water Conservancy Board has formally received applications for water right transfer/change and has designated such applications active for Water Board review.

Active application by: Stimsom-Lane,Ltd., Benton County, application no. G3-20643, certificate no. G3-20643C. Application change request: purpose of use; existing use is domestic, stockwater; irrigation for 12 acres for continuous use and irrigation season; well 105 gpm. Location: section 35, township 5, range 24E, Benton County (SW1/2, SW1/4, SW1/4). Change request: commercial, domestic, irrigation for continuous use; for 105 gpm.

Active application by: Milo B. Bauder, Benton County, application no. G4-30254, permit no. G4-30254P. Application change request: place of use; existing use is irrigation and frost protection, seasonal use; well 2,250 gpm. Location: section 17, township 7, range 31E, Benton County (N1/2,SE1/4,NE1/4) (SE1/4,SE1/4,NE1/4) and section 20 (E1/2,E1/2,SE1/4); location change, SW 1/4 and that portion of the N1/2 section 17 lying southwesterly of the canal and railroad right-of-ways, and the W1/2,N1/4 section 20, all within township 7N, range 31. Change request: irrigation place of use, 60 acres.

Active application by: Kiona Vineyards and Winery, Benton County, application no. G4-23460, certificate no. G4-23460C. Application change request: place of use; existing use is irrigation, seasonal use; well 200gpm. Location: section 9, township 9N, range 27E (N1/2,SW1/4); location change, section 9, township 9N, range 27E (N1/2,SW1/4), township 9N, range 27E (E1/4,S1/2). Change request: irrigation place of use, 20 acres.

Active application by: WA State Dept. of Natural Resources, Southest Region, Ellensburg, WA, application no. G4-28833, permit no. G4-28833P. Application change request: place of use; existing use is irrigation, seasonal use; well 6,720 gpm. Location: section 23, township 9N, range 27E (NE1/4,NE1/4), section 24 (W1/2), section 25 (S1/2,SE1/4) (SE1/4, SW1/4); section 30, township 9N, range 28E (W1/2) (W1/2,SE1/4) W. of Interstate 82; location change, section 26, township 9N, range 27E (SW1/4,NE1/4) (NW1/4,NW1/4) (S1/2,NW1/4). Change request: irrigation place of use, existing gpm use.

Active application by: WA State Dept. of Natural Resources, Southeast Region, Ellensburg, WA, permit no. G4-28834P. Application change request: place of use; existing use is irrigation, seasonal use; well 3600 gpm. Location: section 22, township 9N, range 27E (N1/2) (NE1/4,SE1/4); location change, section 22, township 9N, range 27E (N1/2) (NE1/4, SE1/4) (S1/2,SE1/4) (NW1/4,SE1/4). Change request: irrigation place of use, existing gpm.

Active application by: WA State Dept. of Natural Resources, Southeast Region, Ellensburg, WA, permit no. S4-25639P(A). Application change request: place of use, additional withdrawal points, existing use is irrigation, seasonal use, John Day Pool, Columbia River 112.58 cfs. Location (W1/2) (NE1/4) section 15; section 16; section 21; (W1/2,SE1/4) section 26; (E1/2,SW1/4) section 28; (W1/2,SE1/4) section 30; (W1/2,SE1/4) section 32; (W1/2,SE1/4 section 34; section 36; all in township 7N, range 25E. Section 36, township 7N, range 24E. Section 16; section 36; (NE1/4) section 34; (SW1/4) section 24, township 6N, range 24E. All in Benton County, WA. Location change: section 16, township 7N, range 27E; sections 16 and 36, township 7N, range 26E. (W1/2,SE1/4) section 32; (W1/2,SE1/4) section 34; section 36; all in township 7N, range 25E. Section 16; (SW1/4) section 24; (NE1/4) section 34; section 36; all in township 6N, range 24E. Part of section 16, township 5N, range 25E. All in Benton County, WA. Section 36, township 6N, range 23E. Part of section 36, township 5N, range 23E. Section 16, township 5N, range 23E. All in Klickitat County, WA. Change request: irrigation place of use, existing cfs.

Part B, permit no. S4-25639P. Application change request: point of withdrawal, existing point of withdrawal: 100 ft. W, 250 ft. S, NE corner of section 4, township 4N, range 24E (NE1/4, NE1/4). Change request: point of withdrawal, 740 ft. W, 225 ft. SW, NE corner of section 6, township 4, range 24E, Benton County, WA.

Part C, permit no. S4-25639P. Application change request: point of withdrawal, existing point of withdrawal, same as Part B. Change request: point of withdrawal, 50 ft. S, 600 ft. E, NW corner of section 18, township 5, range 26E, Benton County, WA.

Part D, permit no. S4-25639P. Application change request: point of withdrawal, existing point of withdrawal, same as Part B. Change request: point of withdrawal, 1100 ft. E, 200 ft. S, NW corner of section 18, township 5N, 26E, Benton County, WA.

Part E, permit no. S4-25639P. Application change request: point of withdrawal, existing point of withdrawal, same as Part B. Change request: point of withdrawal, 600 ft. S., 400 ft. W, NE corner of section 28, township 5N, range 25E, Benton County, WA.

Under Draft Rule WAC 173-153 (in review), a protest of an application should be sent to the WA State Dept. of Ecology, Water Resources, P.O. Box 47600, Olympia, WA 98504-7600, within 30 days of the last date of public notice ($2.00 protest fee required). A valid protest must include: name, adress, phone number of protesting party; identification of the transfer/change being protested; and basis for protest, water right impairment or public interest challenge.

Under Draft Rule WAC 173-153 (in review), any water right holder claiming detriment or injury to an existing water right may intervene in the application review process before the Water Board by contacting the Benton County Water Conservancy Board, Attention Dr. Darryll Olsen, 3030 W. Clearwater, Suite 205-A, Kennewick, WA 99336, and requesting intervener status; water right holder proof required. Intervener requests should be received by the Water Board within 30 days of the last date of public notice.