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**SENATE BILL 6092**

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**State of Washington**

**56th Legislature**

**1999 Regular Session**

**By** Senators Fraser and Swecker

Read first time 04/02/1999. Referred to Committee on Environmental Quality & Water Resources.

1 AN ACT Relating to public water systems; amending RCW 90.03.330;  
2 reenacting and amending RCW 43.21B.110; adding new sections to chapter  
3 90.03 RCW; and creating a new section.

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

5 NEW SECTION. **Sec. 1.** In order to assist in the recovery of  
6 salmonid species that are listed or proposed for listing under the  
7 federal endangered species act while maintaining the economic vitality  
8 of the state of Washington, it is the intent of the legislature to  
9 improve water resource management laws. The intent of this act is to:  
10 (1) Provide clarity and certainty regarding the legal status of  
11 public water system water rights that document a combination of water  
12 that has been put to beneficial use and water that has not been put to  
13 beneficial use. Clarity and certainty is necessary for purposes of  
14 planning for water supply, land use, watershed management, and growth  
15 management;  
16 (2) Provide for the concurrent development of public water system  
17 inchoate water right permits and the restoration and protection of  
18 instream flows in geographic areas with salmonid stocks listed or  
19 proposed for listing as threatened or endangered under the federal

1 endangered species act, or with salmonid stocks listed as critical or  
2 depressed under the state salmon and steelhead stock inventory;

3 (3) Encourage municipal water supply management to occur on a  
4 regionally coordinated basis, where practicable, in a fashion that  
5 balances the use of currently developed and future municipal water  
6 resources with protection of the natural environment and instream  
7 resources, including fisheries. Regional integrated management areas  
8 and regional water supply utilities are encouraged as an alternative  
9 means to achieve many of the objectives of this act. The objectives of  
10 preserving and enhancing the natural environment, including fishery  
11 resources, and of providing reliable and efficient water supplies to  
12 expanding populations, especially in urban areas, can be met in a  
13 complementary manner through the use of regional integrated management  
14 areas or by regional water supply utilities;

15 (4) Provide more flexibility for the movement of water from where  
16 it is available to where it is needed and provide a more certain future  
17 municipal water supply; and

18 (5) Promote an increase in the conservation and efficient use of  
19 water by public water systems.

20 **Sec. 2.** RCW 90.03.330 and 1987 c 109 s 89 are each amended to read  
21 as follows:

22 (1) Upon a showing satisfactory to the department that any  
23 appropriation has been perfected in accordance with the provisions of  
24 this chapter, it shall be the duty of the department to issue to the  
25 applicant a certificate stating such facts in a form ~~((to be))~~  
26 prescribed by ~~((him))~~ the department, and such certificate shall  
27 ~~((thereupon))~~ be recorded with the department. Upon the request of a  
28 public water system, the department shall evaluate and issue if  
29 appropriate, incremental certificates of water right, not more than  
30 once every six years, that reflect either instantaneous or annual  
31 quantities of water, or both, perfected by actual beneficial use. The  
32 beneficial use of water must be demonstrated by pumping or diversion  
33 records, meter data, or other reasonable information showing the extent  
34 of actual beneficial use of water. Any original water right  
35 certificate issued, as provided by this chapter, shall be recorded with  
36 the department and thereafter, at the expense of the party receiving  
37 the ~~((same))~~ certificate, be transmitted by the department  
38 ~~((transmitted))~~ to the county auditor of the county or counties where

1 the distributing system or any part thereof is located(~~(, and)~~). The  
2 certificate shall be recorded in the office of such county auditor, and  
3 thereafter be transmitted to the (~~owner thereof~~) certificate holder.

4 (2) Certificates of water right held by public water systems that  
5 document a combination of water that has been put to beneficial use and  
6 water that has never been put to beneficial use, that have department  
7 of health approval for the source associated with the right, and for  
8 which the entity holding the certificate has constructed facilities in  
9 place to use the water authorized by the water right, shall be  
10 administered in the following manner:

11 (a) Any instantaneous or annual quantity of water that has been  
12 perfected by actual beneficial use of water before the effective date  
13 of this section shall remain a certificated right in good standing.

14 (b) Any instantaneous or annual quantity of water not perfected by  
15 beneficial use before the effective date of this section will be  
16 reinstated as a water right permit within the meaning of this chapter  
17 and the holder of the permit is authorized to continue development and  
18 use of water under the permit. The reinstated permit shall be  
19 administered by the department as an inchoate water right permit in  
20 good standing, with a priority date as of the original application,  
21 subject to the requirements of sections 4 and 5 of this act.

22 (3) For a permit held by a public water system reinstated by this  
23 section that has a department of health-approved number of connections  
24 and for which the original water right application filing was for a  
25 discrete number of connections, water use up to the department of  
26 health-approved number of connections as of the effective date of this  
27 section is allowed within the existing water service area of the public  
28 water system. If the public water system does not have an existing  
29 service area established under chapter 43.20 or 70.116 RCW, the place  
30 of use as authorized under the original certificate shall be the place  
31 of use for water that is reinstated to permit status under this  
32 section.

33 (4) For a permit held by a public water system reinstated by this  
34 section that has a department of health-approved number of equivalent  
35 residential units and for which the original water right application  
36 filing was made for a discrete number of connections, or for then-  
37 current population and future requirements of the municipality or  
38 community, water service shall be allowed up to the number of  
39 equivalent residential units approved by the department of health as of

1 the effective date of this section for the existing service area of the  
2 public water system as established under chapter 43.20 or 70.116 RCW.  
3 Water service provided through interties must comply with RCW  
4 90.03.383.

5 (5) For a permit held by a public water system reinstated by this  
6 section that has an unspecified number of connections in its department  
7 of health-approved water system plan and for which the original  
8 application filing was made for then-current population and future  
9 requirements of the municipality or community, water service shall be  
10 allowed to satisfy the water requirements of the existing service area  
11 as established under chapter 43.20 or 70.116 RCW. Water service  
12 provided through interties must comply with RCW 90.03.383.

13 NEW SECTION. Sec. 3. (1) Any public water system asserting that  
14 it holds a certificate of water right that documents a combination of  
15 water put to beneficial use and water not yet put to beneficial use  
16 shall provide evidence to the department demonstrating that the  
17 criteria in RCW 90.03.330(2) are met such that a superseding  
18 certificate and water right permit should be issued. A demonstration  
19 of meeting the criteria of RCW 90.03.330 shall be through existing  
20 planning programs and processes of the department of health or ecology  
21 to the extent practicable. All class A public water systems asserting  
22 they hold a certificate of water right water that documents a  
23 combination of water put to beneficial use and water not yet put to  
24 beneficial use shall initially document compliance with RCW 90.03.330  
25 not less than two years and not more than eight years from the  
26 effective date of this section. All other public water systems  
27 asserting they hold a certificate of water right water that documents  
28 a combination of water put to beneficial use and water not yet put to  
29 beneficial use shall initially document compliance with RCW 90.03.330  
30 not less than four years from the effective date of this section,  
31 unless requested by the department to do so sooner. If the department,  
32 upon reviewing a public water system plan or other applicable  
33 information, determines that the system has an inchoate water right as  
34 provided in RCW 90.03.330, the department shall issue a superseding  
35 certificate for the portion of the right that has been put to  
36 beneficial use and shall issue a permit for the inchoate portion of the  
37 water right that is reinstated to permit status. The permit shall have  
38 a development schedule and be conditioned with the performance

1 standards created by section 4 of this act. The development schedule  
2 shall be twenty years from the effective date of this section with the  
3 option to extend if good cause is shown under RCW 90.03.320, except  
4 that the department may:

5 (a) Authorize a development schedule longer than twenty years, but  
6 not more than fifty years, if a planned need is demonstrated, and (i)  
7 a withdrawal facility with a hydraulic capacity beyond that needed for  
8 twenty years was constructed, or (ii) debt service requirements extend  
9 for such a period;

10 (b) Authorize a development schedule of less than twenty years if  
11 the permittee, with reasonable diligence, can perfect the permit in a  
12 shorter period of time; or

13 (c) Deny any time for further development if there is no  
14 demonstrated need for the water based on the water system plan or other  
15 applicable information.

16 (2) Upon any determination of noncompliance with the performance  
17 standards created by section 4 of this act, the permittee shall be  
18 granted, by written notice, a reasonable period of time to comply. If  
19 the permittee receiving such a notification disagrees with the  
20 department's determination of a reasonable time for compliance, it may,  
21 at its election, initiate nonbinding mediation with the department to  
22 resolve the dispute. After mediation, if the dispute is not resolved,  
23 the state shall issue an order to effect the performance standards.  
24 The order is appealable to the pollution control hearings board.

25 (3) At the end of the construction schedule authorized in the  
26 permit, the permittee may request an extension of time only as provided  
27 in RCW 90.03.320.

28 (4) The department shall process requests made under this section  
29 generally in the order in which received.

30 NEW SECTION. **Sec. 4.** (1) Any permittee with a water right permit  
31 reinstated under RCW 90.03.330 must meet the performance standards of  
32 this section. Demonstration of compliance with performance standards  
33 shall be through existing planning programs and processes of the  
34 department of health or ecology to the extent practicable. All class  
35 A public water systems asserting they hold a certificate of water right  
36 water that documents a combination of water put to beneficial use and  
37 water not yet put to beneficial use shall initially document compliance  
38 with RCW 90.03.330 not less than two years and not more than eight

1 years from the effective date of this section. All other public water  
2 systems asserting they hold a certificate of water right water that  
3 documents a combination of water put to beneficial use and water not  
4 yet put to beneficial use shall initially document compliance with RCW  
5 90.03.330 not less than four years from the effective date of this  
6 section, unless requested by the department to do so sooner. If the  
7 permittee complies with the performance standards, it will be in  
8 compliance with RCW 90.03.320. The performance standards are:

9 (a) Evidence demonstrating a need for the water within the  
10 development schedule specified by the permit consistent with demand  
11 forecasts prepared in accordance with the demand forecasting methods  
12 specified by the departments of ecology and health;

13 (b) Evidence that the water system's use of water is fully  
14 consistent with approved local land use planning within the constraints  
15 of water availability and cost;

16 (c) Evidence that water use meets state conservation and water use  
17 efficiency requirements existing at the time the documentation is  
18 submitted;

19 (d) Current information on how the utility's recent and proposed  
20 beneficial use of water under the permit is consistent with state and  
21 federal laws legally applicable to water use under the permit;

22 (e) Evidence of participation by the permittee, to the extent  
23 practicable, in watershed planning under chapter 90.82 RCW, coordinated  
24 water system planning under chapter 70.119 RCW, or other collaborative  
25 watershed planning efforts, if initiated; and

26 (f) Evidence of participation in and implementation of agreements  
27 under section 5 of this act, as required.

28 (2) For the performance standards in subsection (1) of this  
29 section, the department of health is responsible for ensuring  
30 compliance with subsection (1)(a) through (c) of this section and the  
31 department of ecology is responsible for ensuring compliance with  
32 subsection (1)(d) through (f) of this section when compliance with the  
33 performance standards is identified in a water system plan. If no  
34 water system plan is required, the department of ecology is responsible  
35 for ensuring compliance with all performance standards.

36 NEW SECTION. **Sec. 5.** (1) Where the source of water authorized for  
37 diversion under a permit reinstated by section 3 of this act is either  
38 a surface water source or a ground water source that is interconnected

1 with a surface water body that provides habitat for salmon or trout  
2 populations listed or proposed for listing under the federal endangered  
3 species act or determined by the department of fish and wildlife to be  
4 depressed or critical, and where water can be used to protect and  
5 restore streamflows that are needed by such species and stocks, the  
6 public water system shall enter into and implement a binding agreement  
7 with the departments of ecology and fish and wildlife to specify how  
8 inchoate water is developed concurrently with the restoration and  
9 protection of streamflow necessary for the recovery of such fish  
10 species.

11 (2) In developing binding agreements with permittees under this  
12 section, the departments of fish and wildlife and ecology shall give  
13 priority to water systems having more than one thousand service  
14 connections. Agreements with water systems having fewer than one  
15 thousand service connections shall be a priority, if the system's water  
16 source is identified as a priority by the department of fish and  
17 wildlife in consultation with other concerned state agencies. Public  
18 water systems are encouraged to join together for purposes of  
19 concluding agreements under this section and to do so on a watershed or  
20 multiwatershed basis to promote the recovery of fish stocks and  
21 efficient delivery of public water supply.

22 (3) The purpose of the binding agreement is to identify and make  
23 mutual commitments to:

24 (a) Take immediate actions to arrest the further decline in fish  
25 stocks;

26 (b) Establish, protect, and restore an instream flow that is  
27 sufficient to restore and maintain properly functioning habitat  
28 conditions to support a harvestable supply of fish. Any instream flows  
29 that are established in connection with a binding agreement for a water  
30 resource inventory area, as defined by chapter 173-500 WAC, overlaying  
31 the same geographic areas that received a grant from the department  
32 under chapter 90.82 RCW shall be interim unless and until such planning  
33 for instream flow, if applicable, is complete under chapter 90.82 RCW.  
34 Interim instream flows established shall be conservative with regard to  
35 preserving instream values. Before establishing an instream flow under  
36 this section, the department shall engage in government-to-government  
37 consultation with affected tribes regarding the setting of such flows;

38 (c) Define a strategy to restore streamflows to the established  
39 instream flow;

1 (d) Establish benchmarks or milestones that can be used to  
2 objectively measure the success in the recovery and maintenance of the  
3 listed salmonid stocks; and

4 (e) Establish provisions for an adaptive management approach to  
5 modify the binding agreement to effect its goal.

6 (4) If a binding agreement is not developed and signed by the  
7 departments of ecology and fish and wildlife and the permittee within  
8 two years of the effective date of this section, the permittee's use of  
9 water from the effective date of this section under the permit shall be  
10 subject to applicable source instream flows created by rule existing as  
11 of the effective date of this section. If instream flows have not been  
12 established by rule or the rule's instream flow is insufficient, an  
13 instream flow shall be specified by the department in consultation with  
14 the department of fish and wildlife under RCW 75.20.050 by permit  
15 proviso, and the permit shall be subject to any future instream flows  
16 adopted or amended by the department.

17 (5) Within four years of the effective date of this section and  
18 every three years thereafter, the department, in consultation with the  
19 department of fish and wildlife, shall review the binding agreement and  
20 its implementation to determine its effectiveness in contributing to  
21 the recovery and maintenance of the listed salmonid stocks. The review  
22 shall also assess the actions of all parties to implement the  
23 agreement. If the department of ecology determines by written findings  
24 that a permittee who is party to the binding agreement has failed to  
25 abide by the agreement, it shall condition the use of water under the  
26 permit, from the effective date of this section, to applicable instream  
27 flows created by rule existing as of the effective date of this  
28 section. If instream flows have not been established by rule or the  
29 rule's instream flow is insufficient, an instream flow shall be  
30 specified by the department in consultation with the department of fish  
31 and wildlife under RCW 75.20.050 by permit proviso, and the permit  
32 shall be subject to any future instream flows adopted or amended by the  
33 department.

34 (6) If any permittee who is party to a binding agreement disagrees  
35 with any determinations made by the department under this section, the  
36 permittee may elect to initiate nonbinding mediation with the  
37 department to resolve a dispute. After mediation, if the dispute is  
38 not resolved, the permittee may appeal any findings made by the  
39 department to the pollution control hearings board.



1 (7) This section does not waive any other requirement of the law  
2 related to the use of water.

3 NEW SECTION. **Sec. 6.** In order to meet the objectives of sections  
4 7 through 11 and 13 through 15 of this act, any two or more public  
5 water purveyors, including purveyors of reclaimed water, and federally  
6 recognized tribes, may petition the department for designation of, and  
7 approval of a regional integrated water supply management agreement for  
8 a specific geographic area. Counties may, at their option, participate  
9 within the scope of their existing authority and responsibility in the  
10 development of regional integrated water supply management agreements  
11 for areas within their jurisdiction, and may be signatories to the  
12 agreement. The department shall coordinate its review of such a  
13 petition with the departments of health, community, trade, and economic  
14 development, and fish and wildlife, and shall, if necessary, enter into  
15 such agreements with those agencies as are necessary to carry out the  
16 purposes of sections 7 through 11 and 13 through 15 of this act.  
17 Approval and implementation of a regional integrated water supply  
18 management agreement, under the procedures in section 10 of this act  
19 shall be in place of the following provisions of this act, where  
20 applicable: (1) The authorized development schedule for inchoate water  
21 right permits under section 3 of this act; (2) the performance  
22 standards for the development of inchoate water right permits under  
23 section 4 of this act; (3) the binding agreement for development of  
24 inchoate water right permits under section 5 of this act; and (4) the  
25 requirements for the movement of inchoate water right permits under  
26 section 15 of this act.

27 NEW SECTION. **Sec. 7.** A regional integrated water supply  
28 management agreement shall constitute an interlocal agreement subject  
29 to chapter 39.34 RCW. At least one of the participants to the  
30 agreement must be a public agency eligible to enter into an interlocal  
31 agreement under chapter 39.34 RCW. In order for any other person or  
32 entity to become a participant in the regional integrated water supply  
33 management agreement, that person must contract with the public agency  
34 eligible to enter into an interlocal agreement under chapter 39.34 RCW.  
35 The regional integrated water supply management agreement shall  
36 identify and make mutual commitments to address the following:

1 (1) An implementation program that provides for immediate and long-  
2 term actions to protect and enhance instream flows, on both mainstem  
3 rivers and tributaries that are affected by water supply withdrawals or  
4 suitable for supplementation by the participants in the agreement.  
5 This program shall be in the context of an adaptive management  
6 framework that is designed to achieve the goals of a harvestable supply  
7 of fish and growth management objectives;

8 (2) Assurances of the signatories' participation in, support of,  
9 and assistance to the department in its development of, a timely and  
10 scientifically relevant assessment of the instream flow needs for  
11 aquatic habitat for anadromous fish within the water resource inventory  
12 areas affected by the regional integrated water supply management  
13 agreement. For purposes of this subsection, "timely" means no later  
14 than six years following the department's approval of the agreement or  
15 an earlier time in the discretion of the department. The department  
16 shall use the assessment, and other relevant information, in  
17 consultation with the department of fish and wildlife and affected  
18 tribes, to establish instream flow requirements throughout the water  
19 resource inventory areas affected by the regional integrated water  
20 supply management agreement. The agreement shall specify how the costs  
21 of the assessment would be divided among the signatories, the affected  
22 counties, the state, and other parties. The department may approve  
23 actions under regional integrated water supply management agreements  
24 based on provisional flow regime commitments during the time period  
25 while the work of assessing and establishing instream flow requirements  
26 is being accomplished. Provisional instream flows shall be established  
27 that are conservative with regard to preserving instream values. These  
28 actions may involve using a quantity of inchoate water in the long term  
29 where consistent with commitments contained in the regional integrated  
30 water supply management agreement. These actions do not relieve the  
31 parties to the agreement from their burden to address instream flow  
32 requirements established subsequent to the assessment;

33 (3) Establishment of applicable water use and conservation  
34 standards consistent with state standards adopted by rule for the  
35 participating agencies and provisions for effective monitoring and  
36 enforcement thereof;

37 (4) Inclusion of reclaimed water, as part of the overall resource  
38 strategy, where both physically and economically feasible, including

1 environmental considerations, within the management area, as determined  
2 by applicable state law, or otherwise in the absence of state law;

3 (5) Water supply interties involving the participating utilities  
4 and any needed applications for change to water rights;

5 (6) Duration of the agreement, as well as provisions for extension,  
6 and procedures for amendment of the agreement and area designation to  
7 conform to later changes in water service areas and planning elements  
8 required under chapter 36.70A RCW, to provisions of watershed plans  
9 adopted under chapter 90.82 RCW or similar collaborative watershed  
10 planning processes, and to the addition of other agencies as  
11 participants to the agreement after its initial date of designation and  
12 approval;

13 (7) Strategies for accomplishing the actions proposed in the  
14 agreement, including roles, responsibilities, schedules, benchmarks,  
15 objective measurements, and monitoring;

16 (8) Procedures for (a) periodic joint review by the participants,  
17 counties, and the state, working jointly for a consolidated review by  
18 the departments of ecology, health, and fish and wildlife, and  
19 community, trade, and economic development at no greater than six-year  
20 intervals, to determine whether any modifications are necessary to  
21 accomplish the original purposes and objectives of the agreement; (b)  
22 recertification of consistency with applicable provisions of chapter  
23 36.70A RCW, as necessary to achieve continued progress toward the  
24 purposes and objectives of the agreement; and (c) dispute resolution  
25 between the participating parties and the state concerning such  
26 modifications;

27 (9) Assurances that participants to the agreement have the  
28 requisite authority, ability, and commitment to accomplish the actions  
29 and achieve the objectives of the management agreement, including a  
30 description of general financing strategies, including anticipated  
31 state or federal funding. Such assurances may include establishment of  
32 a water master under RCW 90.03.070 or stream patrol under chapter 90.08  
33 RCW, where appropriate; and

34 (10) Procedures and requirements to be followed upon withdrawal of  
35 a participant or upon termination of the agreement to ensure that  
36 objectives and accomplishments in meeting the needs of people and fish  
37 are protected.

1        NEW SECTION.    **Sec. 8.**    Upon completion of preparation of an  
2 agreement that documents compliance with the requirements of section 7  
3 of this act, participants may petition for the establishment of a  
4 regional integrated water supply management area. Such petitions shall  
5 include the following:

6        (1) Evidence of consistency, and assurances of compliance, with  
7 land use and utility service provisions of comprehensive plans and  
8 development regulations, adopted under chapter 36.70A RCW, of those  
9 counties, cities, and towns located, in whole or in part, within the  
10 management area. Such evidence shall include a certification from each  
11 county and city planning under chapter 36.70A RCW and located partially  
12 or wholly within the proposed regional integrated water supply  
13 management area that the proposed regional integrated water supply  
14 management agreement assures water supply consistent with all  
15 comprehensive planning policies and development regulations related to  
16 land use, utility service, and growth targets adopted by that county or  
17 city under chapter 36.70A RCW;

18        (2) Evidence of consistency with existing approved plans, including  
19 water system plans or coordinated water system plans, and  
20 identification of proposed changes to such plans necessary to conform  
21 them to provisions of the agreement;

22        (3) Identification of existing documents or portions thereof on  
23 which the participants propose to rely, including flow agreements in  
24 habitat conservation plans, hydropower facility licensing agreements,  
25 or other similar documents developed to respond to species listed under  
26 the federal endangered species act; and

27        (4) A description of activities undertaken by the participants to  
28 consult with affected parties, including tribes with adjudicated  
29 fishing rights or reservation lands located within the management area,  
30 and county governments that elect not to participate in the agreement.

31        NEW SECTION.    **Sec. 9.**    Concurrently with its approval of a regional  
32 integrated water supply management agreement under the process  
33 described in section 10 of this act, the department shall make  
34 decisions and issue appropriate documentation as necessary to change  
35 water right claims, permits, and certificates of the participating  
36 utilities to combine the service areas of the participating utilities,  
37 as identified in water system plans approved under chapter 43.20 RCW,  
38 and if otherwise required in coordinated water system plans adopted

1 under chapter 70.116 RCW, as the authorized place of water use, and to  
2 establish a schedule or schedules for the perfection of inchoate water  
3 rights consistent with the scope of the agreement.

4 NEW SECTION. **Sec. 10.** The procedures for designation of a  
5 regional integrated water management area and approval of a management  
6 agreement shall be as follows:

7 (1) Upon receipt of a petition, the department shall notify all  
8 affected state agencies and tribes and shall instruct the petitioners  
9 to publish notice thereof in a form and within a time prescribed by the  
10 department in a newspaper of general circulation published in the  
11 county or counties to be included in the proposed regional integrated  
12 water supply management area, and in such other newspapers as the  
13 department may direct, once a week for two consecutive weeks. The  
14 public comment period shall run for ninety days following the second  
15 publication date. In addition, the department may use other means it  
16 deems appropriate to obtain comment from the general public and persons  
17 that may have particular interest in the terms of the petition.

18 (2) After the close of the public comment period, the department  
19 shall consult with all affected state agencies, including the  
20 departments of health, community, trade, and economic development, and  
21 fish and wildlife, and it shall invite consultation with any tribe with  
22 adjudicated fishing rights or reservation land located within the  
23 management area. In addition, the department shall invite consultation  
24 with any county, city, or town not a participant to the agreement,  
25 located wholly or partially within the management area, for purposes of  
26 determining compliance of the agreement with plans adopted under  
27 chapters 36.70A, 43.20, 90.82, and 70.116 RCW. If it determines that  
28 the petition and associated agreements adequately satisfy the  
29 requirements of sections 7 through 12 and 13 through 15 of this act,  
30 and that no existing water rights will be impaired thereby, it shall  
31 approve the petition, if the departments of health and fish and  
32 wildlife concur.

33 (3) The department's decision to approve or disapprove a petition  
34 shall be appealable to the pollution control hearings board within  
35 thirty days of its decision.

36 NEW SECTION. **Sec. 11.** A water supply utility that is not a  
37 participant to a regional integrated water supply management agreement,

1 but that has a service area located wholly or partially within the  
2 boundaries of a management area, may continue to provide water to its  
3 service area, consistent with an approved water system plan, the terms  
4 of sections 7 through 11 and 13 through 15 of this act, and any other  
5 applicable federal or state law.

6 **Sec. 12.** RCW 43.21B.110 and 1998 c 262 s 18, 1998 c 156 s 8, and  
7 1998 c 36 s 22 are each reenacted and amended to read as follows:

8 (1) The hearings board shall only have jurisdiction to hear and  
9 decide appeals from the following decisions of the department, the  
10 director, local conservation districts, and the air pollution control  
11 boards or authorities as established pursuant to chapter 70.94 RCW, or  
12 local health departments:

13 (a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431,  
14 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.48.144, 90.56.310, and  
15 90.56.330.

16 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,  
17 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,  
18 90.14.130, 90.48.120, and 90.56.330.

19 (c) The issuance, modification, or termination of any permit,  
20 certificate, or license by the department or any air authority in the  
21 exercise of its jurisdiction, including the issuance or termination of  
22 a waste disposal permit, the denial of an application for a waste  
23 disposal permit, the modification of the conditions or the terms of a  
24 waste disposal permit, or a decision to approve or deny an application  
25 for a solid waste permit exemption under RCW 70.95.300.

26 (d) Decisions of local health departments regarding the grant or  
27 denial of solid waste permits pursuant to chapter 70.95 RCW.

28 (e) Decisions of local health departments regarding the issuance  
29 and enforcement of permits to use or dispose of biosolids under RCW  
30 70.95J.080.

31 (f) Decisions of the department regarding waste-derived fertilizer  
32 or micronutrient fertilizer under RCW 15.54.820, and decisions of the  
33 department regarding waste-derived soil amendments under RCW 70.95.205.

34 (g) Decisions of local conservation districts related to the denial  
35 of approval or denial of certification of a dairy nutrient management  
36 plan; conditions contained in a plan; application of any dairy nutrient  
37 management practices, standards, methods, and technologies to a

1 particular dairy farm; and failure to adhere to the plan review and  
2 approval timelines in RCW 90.64.026.

3 (h) Any other decision by the department or an air authority which  
4 pursuant to law must be decided as an adjudicative proceeding under  
5 chapter 34.05 RCW.

6 (i) Approval or denial of a regional integrated water supply  
7 management agreement under chapter 90.03 RCW.

8 (2) The following hearings shall not be conducted by the hearings  
9 board:

10 (a) Hearings required by law to be conducted by the shorelines  
11 hearings board pursuant to chapter 90.58 RCW.

12 (b) Hearings conducted by the department pursuant to RCW 70.94.332,  
13 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

14 (c) Proceedings by the department relating to general adjudications  
15 of water rights pursuant to chapter 90.03 or 90.44 RCW.

16 (d) Hearings conducted by the department to adopt, modify, or  
17 repeal rules.

18 (3) Review of rules (~~and regulations~~) adopted by the hearings  
19 board shall be subject to review in accordance with the provisions of  
20 the Administrative Procedure Act, chapter 34.05 RCW.

21 NEW SECTION. Sec. 13. A regional integrated water supply  
22 management agreement shall not supersede provisions of:

23 (1) A habitat conservation plan; safe harbor agreement; or  
24 conservation agreement approved under the federal endangered species  
25 act; or

26 (2) A federal hydropower license dealing with instream flows or  
27 habitat conservation.

28 NEW SECTION. Sec. 14. (1) In order to meet the objectives of  
29 sections 7 through 11 and 13 through 15 of this act, any public water  
30 system with a service area, as specified in a water system plan  
31 approved under chapter 43.20 RCW or in coordinated water system plan  
32 adopted under chapter 70.116 RCW, that constitutes all or a significant  
33 portion of one or more counties, and that is governed by a board of  
34 directors or commissioners elected from the general population of the  
35 area served by the system, and that is a certified satellite management  
36 agency under RCW 70.116.134 may petition the department for designation  
37 of, and approval as a regional water supply utility. The department

1 shall coordinate its review of such a petition with the counties with  
2 land use jurisdiction in the petitioner's service area, the departments  
3 of health, community, trade, and economic development, and fish and  
4 wildlife.

5 (2) Designation of and approval as a regional water supply utility  
6 shall be accomplished through an interlocal agreement under chapter  
7 39.34 RCW between the department and the petitioning public water  
8 system. The interlocal agreement shall delineate the purpose and  
9 obligations of regional water supply utility. The department's  
10 approval of any regional water supply utility shall be the same as  
11 provided in the petition as to form and approval of a regional  
12 integrated management area.

13 (3) The department may approve applications for change of water  
14 right or inchoate water right permit under this chapter held by any  
15 entity, when that entity's operation and management of public water  
16 supply is to be taken over by a regional water supply utility and the  
17 water right held by that entity will be used by the regional water  
18 supply utility if each individual inchoate water right or permit for  
19 diversion or withdrawal is limited to two hundred fifty gallons per  
20 minute instantaneous volume and two hundred fifty acre-feet per year  
21 annual quantity or less and the regional water supply utility proposes  
22 to mitigate for any impacts potentially created by changes to the  
23 right. Certificates or permits may be modified at the request of the  
24 regional water supply utility to fall within this limitation.

25 (4) Any water resource mitigation undertaken by the regional water  
26 supply utility shall be maintained and effective for the duration of  
27 the water right. Mitigation measures are subject to evaluation  
28 regarding their effectiveness on an annual basis and may be modified,  
29 as necessary, by joint agreement between the department and the  
30 regional water supply utility to maintain a standard of no new impact  
31 from the change or amendment.

32 NEW SECTION. **Sec. 15.** The department shall approve an application  
33 for change that proposes to change or transfer an inchoate water right  
34 permit from one public water system to another or to expand the place  
35 of use of an existing public water system if in addition to the  
36 requirements of RCW 90.03.380:

37 (1) The proposed change will authorize the use of water consistent  
38 with a state-approved water system plan under chapter 43.20 RCW or a



1 regional integrated water supply management agreement under section 10  
2 of this act, and any approved comprehensive plan under chapter 36.70A  
3 or 36.70 RCW, or in the absence of such a plan, an approved plan under  
4 chapter 35.63 RCW. The department shall review water right issues  
5 concurrently with department of health review of the associated water  
6 system plan describing any proposed transfer of water. Any transfer of  
7 more than two million gallons of water per day across a water resource  
8 inventory area boundary must be consistent with an approved watershed  
9 plan under chapter 90.82 RCW, coordinated water system plan under  
10 chapter 70.116 RCW, regional integrated water supply management  
11 agreement approved under section 10 of this act, or a similar plan. In  
12 the absence of such a plan, the department shall secure the approval of  
13 all counties affected by the transfer before approval of the change;

14 (2) The public water system has implemented water conservation  
15 measures so that its water use meets or exceeds state performance  
16 standards. For transfers of water by intertie, the receiving public  
17 water system's conservation performance must be equivalent to or exceed  
18 the sending system's performance; and

19 (3)(a) The use of water is subject to instream flows to protect the  
20 quality of the natural environment as provided in RCW 90.54.020(3)(a)  
21 or 75.20.050 and a contribution to flow restoration is made as provided  
22 under (b) of this subsection. The department shall condition the use  
23 of water with any instream flow proviso on the water right permit  
24 proposed for change or any applicable instream flows contained in an  
25 adopted rule, unless the department, in consultation with the  
26 department of fish and wildlife, determines that the applicable  
27 instream flow is not sufficient. Interim instream flows shall be  
28 established that are conservative with regard to preserving instream  
29 values. Any interim instream flow placed as a proviso on an approved  
30 change under this section is effective until permanent instream flows  
31 are developed under a watershed planning program under chapter 90.82  
32 RCW, or in the absence of such a program, by the department under  
33 chapters 90.22 and 90.54 RCW. Before establishing an instream flow  
34 under this section, the department shall engage in government-to-  
35 government consultation with affected tribes regarding the setting of  
36 such flows.

37 (b) In addition to the provisions of (a) of this subsection, in  
38 areas where adopted minimum instream flows have not been met in eight  
39 of the most recent ten years, the department shall require the

1 applicant to provide a contribution to assist in the restoration of  
2 aquatic ecosystems in the affected watershed or watersheds equal to ten  
3 percent of the volume or value of the unused water to be transferred.  
4 The contribution can be a transfer of water to the state trust water  
5 rights program or, at the applicant's discretion, a one-time monetary  
6 contribution. For a monetary contribution, the applicant proposing the  
7 transfer shall remit to the state treasurer a payment based on the  
8 value of the water as determined by a licensed independent real estate  
9 appraiser selected by agreement of the department and the applicant.  
10 The cost of the appraisal shall be borne by the applicant. Any funds  
11 conveyed to the state under this section shall be deposited in the  
12 state streamflow restoration account established in chapter ..., Laws  
13 of 1999 (Senate Bill No. 5289). If Senate Bill No. 5289 is not enacted  
14 by July 1, 1999, such funds shall be deposited to the state reclamation  
15 revolving account and used solely for the acquisition of water rights  
16 for streamflow restoration in transactions with willing lessors and  
17 sellers.

18 NEW SECTION. **Sec. 16.** Nothing under this act, including  
19 decisions made under the authority of this act, may impair any existing  
20 water right.

21 NEW SECTION. **Sec. 17.** Sections 3 through 11 and 13 through 16 of  
22 this act are each added to chapter 90.03 RCW.

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