
HOUSE BILL 1338

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By Representatives Linville, Kirby, Lantz, Rockefeller, Shabro, Jarrett, Grant, Quall, Hunt, Delvin, Wallace, Woods, Benson, Morris and Conway; by request of Governor Locke

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1 AN ACT Relating to certainty and flexibility of municipal water
2 rights and efficient use of water; amending RCW 90.03.015, 90.14.031,
3 90.03.330, 90.03.260, 90.03.386, 43.20.250, 90.48.495, 90.48.112, and
4 90.46.120; adding new sections to chapter 90.03 RCW; adding a new
5 section to chapter 90.14 RCW; adding a new section to chapter 43.20
6 RCW; adding a new section to chapter 70.116 RCW; adding a new section
7 to chapter 70.119A RCW; adding new sections to chapter 90.44 RCW;
8 adding new sections to chapter 90.82 RCW; and creating a new section.

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

10 NEW SECTION. **Sec. 1.** (1) The legislature finds that municipal
11 water suppliers need greater certainty for their municipal water rights
12 in order to effectively meet their obligations under approved water
13 system plans, growth management plans, and other land use plans. The
14 legislature further finds that greater flexibility is needed in the
15 exercise of municipal water supplier's water rights to effectively
16 implement watershed, basin, and regional water management plans
17 developed under chapter 90.82 RCW and under other authorities.

18 (2) It is the legislature's intent to provide additional certainty

1 for municipal water rights, in conjunction with establishing clear
2 requirements for the efficient use of the state's water resources.

3 (3) Further, it is the legislature's intent that municipal water
4 suppliers with water rights, the sources of which are located within
5 watershed planning areas, be allowed under certain conditions to:

6 (a) Change or transfer unperfected amounts of water under such
7 rights;

8 (b) Develop new rights or change or transfer existing rights that
9 would impact stream flows if appropriate mitigation is provided; and

10 (c) Enter into contracts with the department of ecology to assist
11 in implementing the objectives of watershed plans, basin plans, or
12 regional water management plans.

13 (4) In providing certainty and flexibility for municipal water
14 rights, the legislature further intends that:

15 (a) Water resources be managed to ensure the safe supply of water
16 for drinking and sanitation needs for all citizens of the state;

17 (b) Valid rights to the use of water, both for instream and out-of-
18 stream purposes be protected;

19 (c) Water resources be managed to ensure preservation of
20 environmental values, including instream resources;

21 (d) Water supplies be managed to meet planned growth, and growth
22 must be planned to responsibly address water supplies;

23 (e) Water resources be managed to ensure both efficient use of
24 water and efficient use of financial resources to secure affordable
25 supplies; and

26 (f) Water resource management decisions be made within a broad
27 context of local community and state interests.

28 **Sec. 2.** RCW 90.03.015 and 1987 c 109 s 65 are each amended to read
29 as follows:

30 (~~As used in this chapter:~~) The definitions in this section apply
31 throughout this chapter unless the context clearly requires otherwise.

32 (1) "Department" means the department of ecology(~~(+)~~).
33

34 (2) "Director" means the director of ecology(~~(+and)~~).
35

36 (3) "Municipal water supplier" means:

(a) A city or town;

(b) A county appointed as the receiver of a failing water system

1 under RCW 43.70.195, approved as a satellite management agency under
2 RCW 70.116.134, or that delivers water resulting from the reclamation
3 and reuse of water under chapter 90.46 RCW; or

4 (c) A purveyor, as defined in RCW 70.119A.020, that:

5 (i) Is approved by the department of health to serve either
6 existing service connections, or additional service connections, or
7 both;

8 (ii) Is serving water to supply customers and users to the extent
9 allowed under an applicable land use plan;

10 (iii) Is in compliance with water system planning requirements
11 established under chapter 43.20 or 70.116 RCW; and

12 (iv) Provides water to one or more public water systems that
13 regularly serves fifteen or more residential connections, or twenty-
14 five or more residents for one hundred eighty days or more per year.

15 (4) "Municipal water supply purposes" means any beneficial use for
16 which water is provided by a municipal water supplier, and any water
17 rights held by cities, towns, or counties for use in their own
18 operations. Beneficial uses of water under a municipal supply purpose
19 right may include water diverted or withdrawn for:

20 (a) Uses that are designed to benefit fish and wildlife, water
21 quality, or other instream resources or related habitat values; or

22 (b) Uses that are called for by an approved watershed plan adopted
23 under chapter 90.82 RCW or similar plan adopted under RCW 90.54.040(1),
24 a habitat conservation plan prepared in response to an endangered
25 species listing, or a comprehensive irrigation district management
26 plan.

27 (5) "Person" means any firm, association, water users' association,
28 corporation, irrigation district, or municipal corporation, as well as
29 an individual.

30 NEW SECTION. Sec. 3. A new section is added to chapter 90.03 RCW
31 to read as follows:

32 (1) Only a municipal water supplier may hold a surface or ground
33 water right for municipal water supply purposes. For irrigation
34 districts that provide public water supplies under approval of the
35 department of health, only those rights or portions thereof that are
36 used for public water supply are water rights for municipal water
37 supply purposes.

1 (2) If a municipal water supplier acquires an existing surface or
2 ground water right that is a municipal water supply purpose right, the
3 right will remain as a municipal supply purpose right. If a municipal
4 water supplier acquires an existing surface or ground water right that
5 is not a municipal supply purpose right, the right may be changed to
6 municipal water supply purposes upon the approval of the department in
7 accordance with the water right change provisions of this chapter and
8 the amendment provisions of chapter 90.44 RCW.

9 (3) When requested by a municipal water supplier or when processing
10 a change or amendment to the right, the department shall amend the
11 water right documents and related records to ensure that municipal
12 supply purpose rights are correctly identified.

13 NEW SECTION. **Sec. 4.** A new section is added to chapter 90.14 RCW
14 to read as follows:

15 When a municipal water supplier acquires an existing water right
16 that is not a municipal water supply purpose right, that right is not
17 subject to relinquishment for nonuse occurring during the time that the
18 acquirer diligently seeks the department's approval to change the right
19 to municipal water supply purposes. Once a change to municipal water
20 supply purposes is approved by the department, the right is thereafter
21 subject to the exception from relinquishment in RCW 90.14.140(2)(d).

22 **Sec. 5.** RCW 90.14.031 and 1969 ex.s. c 284 s 12 are each amended
23 to read as follows:

24 ~~((Unless a different meaning is plainly required by the context,~~
25 ~~the following words and phrases as used in RCW 90.14.031 through~~
26 ~~90.14.121 shall have the following meanings:))~~

27 (1) The definitions in this subsection apply throughout this
28 chapter unless the context clearly requires otherwise.

29 (a) "Municipal water supplier" has the same meaning as defined in
30 RCW 90.03.015.

31 (b) "Municipal water supply purpose" has the same meaning as
32 defined in RCW 90.03.015.

33 (2) The definitions in this subsection apply throughout RCW
34 90.14.031 through 90.14.121 unless the context clearly requires
35 otherwise.

1 (a) "Person" shall mean an individual, partnership, association,
2 public or private corporation, city or other municipality, county, or
3 a state agency, and the United States of America when claiming water
4 rights established under the laws of the state of Washington.

5 ~~((+2))~~ (b) "Beneficial use" shall include, but not be limited to,
6 use for domestic water, irrigation, fish, shellfish, game and other
7 aquatic life, municipal, recreation, industrial water, generation of
8 electric power, and navigation.

9 **Sec. 6.** RCW 90.03.330 and 1987 c 109 s 89 are each amended to read
10 as follows:

11 (1) Upon a showing satisfactory to the department that any
12 appropriation has been perfected in accordance with the provisions of
13 this chapter, it shall be the duty of the department to issue to the
14 applicant a certificate stating such facts in a form to be prescribed
15 by ~~((him))~~ the director, and such certificate shall thereupon be
16 recorded with the department. Any original water right certificate
17 issued, as provided by this chapter, shall be recorded with the
18 department and thereafter, at the expense of the party receiving the
19 same, be transmitted by the department ~~((transmitted))~~ to the county
20 auditor of the county or counties where the distributing system or any
21 part thereof is located, and be recorded in the office of such county
22 auditor, and thereafter be transmitted to the owner thereof.

23 (2) A water right certificate for an inchoate water right, or for
24 any portion of a water right that was or is inchoate, acquired by, held
25 by, or issued to a municipal water supplier for municipal water supply
26 purposes is considered a water right in good standing to the extent the
27 water:

28 (a)(i) Has been applied to beneficial use; or (ii) is needed to
29 meet reasonably anticipated future needs, for a period not to exceed
30 fifty years from the effective date of this section, as demonstrated
31 pursuant to the rules adopted under section 11(7) of this act; and

32 (b) The holder of the certificate is in compliance with all
33 requirements of the water system plan or coordinated water system plan
34 governing the municipal water supplier, including but not limited to
35 the conservation element of the municipal water supplier's approved
36 water system plan, as amended from time to time. If the certificate
37 holder is not in compliance with the requirements of the water system

1 plan or coordinated water system plan, the holder is prohibited from
2 further expansion of water use under an inchoate right until the holder
3 returns to compliance.

4 (3) For the purposes of this section, a certificate for an inchoate
5 water right is a water right certificate or a portion thereof that
6 authorizes the use of water that has not been perfected through the
7 actual beneficial use of water. By order of the department, a water
8 right certificate held by a municipal water supplier for municipal
9 water supply purposes under this subsection may be subject to
10 requirements for metering, monitoring, and reporting water use, and for
11 the installation of fish protection devices, as the department may deem
12 appropriate.

13 (4) Except as set forth in RCW 90.03.240, the department may not
14 rescind, reissue, or supersede any water right certificate held by a
15 municipal water supplier for municipal water supply purposes that
16 documents a water right in good standing under the requirements in
17 subsection (2) of this section, unless the water right holder requests
18 the issuance of new water right documents that reflect the status of
19 the water right perfected through beneficial use and the inchoate right
20 remaining in good standing, or the department authorizes a change,
21 transfer, or amendment of the water right under RCW 90.03.380 or
22 90.44.100. Nothing in this section prohibits the department from
23 correcting ministerial errors in a water right certificate.

24 (5) Any superseding water right certificate issued by the
25 department under this section retains the original priority date for
26 the water right and is not subject to an instream flow rule that has a
27 junior priority date. When implementing the requirement to not impair
28 existing water rights during a change, transfer, or amendment of a
29 water right certificate under RCW 90.03.380 or 90.44.100, the
30 department may condition the exercise of the water right, with the
31 consent of the certificate holder, in order to avoid impairment of an
32 instream flow right and to authorize the requested change, transfer, or
33 amendment.

34 (6) After the effective date of this section, the department shall
35 issue a new certificate under subsection (1) of this section only for
36 the perfected portion of a water right as demonstrated through actual
37 beneficial use of water.

1 **Sec. 7.** RCW 90.03.260 and 1987 c 109 s 84 are each amended to read
2 as follows:

3 (1) Each application for permit to appropriate water shall set
4 forth the name and post office address of the applicant, the source of
5 water supply, the nature and amount of the proposed use, the time
6 during which water will be required each year, the location and
7 description of the proposed ditch, canal, or other work, the time
8 within which the completion of the construction and the time for the
9 complete application of the water to the proposed use.

10 (2) If for agricultural purposes, (~~it~~) the application shall give
11 the legal subdivision of the land and the acreage to be irrigated, as
12 near as may be, and the amount of water expressed in acre feet to be
13 supplied per season. If for power purposes, it shall give the nature
14 of the works by means of which the power is to be developed, the head
15 and amount of water to be utilized, and the uses to which the power is
16 to be applied.

17 (3) If for construction of a reservoir, (~~it~~) the application
18 shall give the height of the dam, the capacity of the reservoir, and
19 the uses to be made of the impounded waters.

20 (4) If for community or multiple domestic water supply, the
21 application shall give the projected number of service connections
22 sought to be served. However, for a municipal water supplier that has
23 an approved water system plan under chapter 43.20 RCW including a water
24 system plan that is part of a coordinated water system plan approved
25 under chapter 70.116 RCW that specifies a maximum number of service
26 connections, the service connection figure in the application or any
27 subsequent water right document is not an attribute limiting exercise
28 of the water right.

29 (5) If for municipal water supply, (~~it~~) the application shall
30 give the present population to be served, and, as near as may be
31 estimated, the future requirement of the municipality. However, for a
32 municipal water supplier that has an approved water system plan under
33 chapter 43.20 RCW including a water system plan that is part of a
34 coordinated water system plan approved under chapter 70.116 RCW that
35 specifies a maximum population, the population figures in the
36 application or any subsequent water right document are not an attribute
37 limiting exercise of the water right.

1 (6) If for mining purposes, (~~it~~) the application shall give the
2 nature of the mines to be served and the method of supplying and
3 utilizing the water; also their location by legal subdivisions.

4 (7) All applications shall be accompanied by such maps and
5 drawings, in duplicate, and such other data, as may be required by the
6 department, and such accompanying data shall be considered as a part of
7 the application.

8 **Sec. 8.** RCW 90.03.386 and 1991 c 350 s 2 are each amended to read
9 as follows:

10 (1) Within service areas established pursuant to chapter(~~s~~) 43.20
11 (~~and~~) or 70.116 RCW, the department of ecology and the department of
12 health shall coordinate approval procedures to ensure compliance and
13 consistency with the approved water system plan.

14 (2) For a municipal water supplier that has an approved water
15 system plan under chapter 43.20 RCW including a water system plan that
16 is part of a coordinated water system plan approved under chapter
17 70.116 RCW that specifies a maximum number of service connections to be
18 served under the approved water system plan, the maximum number of
19 service connections or maximum population to be served specified on a
20 water right application, permit, or certificate are not an attribute
21 limiting exercise of the water right.

22 (3) For the purposes of subsections (4) and (5) of this section,
23 the appropriate authority for service area approvals is the department
24 of health. Where the department of health has approved a coordinated
25 water system plan under RCW 70.116.060(2), the appropriate authority
26 may also be the local legislative authority.

27 (4) The effect of the department of health's approval of a water
28 system plan or water system plan amendment that describes a municipal
29 water supplier's service area under chapter 43.20 RCW, or the local
30 legislative authority's approval of service area boundaries in
31 accordance with procedures adopted pursuant to chapter 70.116 RCW, is
32 that the place of use of a surface water right or ground water right
33 used by the municipal water supplier is equivalent to, and coexistent
34 with, the approved service area provided that no impairment is found
35 under the procedures in subsection (5) of this section.

36 (5) If a municipal water supplier wants the place of use of a water
37 right in its possession to be equivalent to and coexistent with their

1 approved service area, the water right holder shall, within thirty days
2 after submitting the request for service area approval to the
3 appropriate authority as described in subsection (3) of this section,
4 notify the department and publish notice as prescribed in the case of
5 an original water right application in RCW 90.03.280.

6 (a) The notice must state that any person who believes that a water
7 right will be impaired as a result of the application of this section
8 must submit a written claim of impairment to the department within
9 thirty days of the last date of publication.

10 (b) If no impairment claims are submitted within the specified time
11 period, the service area approval by the appropriate authority as
12 described in subsection (3) of this section has the effect of
13 confirming that the place of use of the water right used to supply
14 water to the service area is equivalent to and coexistent with the
15 approved service area.

16 (c) If one or more impairment claim is submitted within the
17 specified time period, the department shall proceed to make a
18 determination regarding the impairment claim or claims within sixty
19 days of receipt of the claim or claims. The department shall issue its
20 determination in writing, stating either that it finds that there will
21 be impairment (a "finding of impairment") or that it finds there will
22 not be impairment (a "finding of no impairment"). The department of
23 ecology's written determination may be appealed to the pollution
24 control hearings board as provided in chapter 43.21B RCW.

25 (d) Final resolution of an impairment claim occurs at the
26 expiration of the appeal period following a final determination by the
27 department, the pollution control hearings board, and any reviewing
28 court. If the appropriate authority as described in subsection (3) of
29 this section approves the service area for which an impairment claim
30 has been filed but has not yet been finally resolved or for which final
31 resolution is a finding of impairment, approval has no effect on
32 whether the place of use is equivalent to and coexistent with the
33 approved service area. Upon final resolution of an impairment claim
34 that results in a finding of no impairment, the place of use of the
35 water right is equivalent to and coexistent with the service area
36 approved by the appropriate authority as described in subsection (3) of
37 this section.

1 (e) An impairment claim based on alleged impairment to either an
2 instream flow established by rule or a water right held by the state in
3 trust for instream flow purposes may only be asserted by the department
4 or the department of fish and wildlife.

5 (6) A municipal water supplier shall implement cost-effective water
6 conservation in accordance with its approved water system plan and
7 shall make full utilization of the conserved water before utilizing any
8 inchoate portion of water right certificates it may hold. When
9 establishing or extending a surface or ground water right construction
10 schedule under RCW 90.03.320, the department shall take into
11 consideration the public water system's use of conserved water.

12 NEW SECTION. Sec. 9. A new section is added to chapter 43.20 RCW
13 to read as follows:

14 The effect of a department approval of a water system plan or water
15 system plan amendment under this chapter is that the place of use of a
16 surface water right or ground water right used by the municipal water
17 supplier is equivalent to, and coexistent with, the service area
18 described in the system's water system plan provided that no impairment
19 is found under the procedures in RCW 90.03.386(5).

20 NEW SECTION. Sec. 10. A new section is added to chapter 70.116
21 RCW to read as follows:

22 The effect of approval by the local legislative authority of a
23 service area change for a public water system subject to a coordinated
24 water system plan approved under this chapter is that the place of use
25 of a surface water right or ground water right used by the municipal
26 water supplier is equivalent to, and coexistent with, the service area
27 described in the system's water system plan provided that no impairment
28 is found under the procedures in RCW 90.03.386(5).

29 **Sec. 11.** RCW 43.20.250 and 2002 c 161 s 1 are each amended to read
30 as follows:

31 (1) Except as provided in subsection (2) of this section, for any
32 new or revised water system plan submitted for review under this
33 chapter, the department shall review and either approve, conditionally
34 approve, reject, or request amendments within ninety days of the
35 receipt of the submission of the plan. The department may extend this

1 ninety-day time limitation for new submittals by up to an additional
2 ninety days if insufficient time exists to adequately review the
3 general comprehensive plan. For rejections of plans or extensions of
4 the timeline, the department shall provide in writing, to the person or
5 entity submitting the plan, the reason for such action. In addition,
6 the person or entity submitting the plan and the department may
7 mutually agree to an extension of the deadlines contained in this
8 section.

9 (2) The time limitations set forth in subsection (1) of this
10 section do not apply to any new or revised water system plan that is
11 subject to the requirements of RCW 90.03.386(3) if a claim of
12 impairment is filed with the department of ecology.

13 NEW SECTION. Sec. 12. A new section is added to chapter 70.119A
14 RCW to read as follows:

15 The department shall:

16 (1) Develop water use efficiency requirements designed to ensure
17 efficient use of water while maintaining system financial viability and
18 improve affordability of supplies. Water use efficiency requirements
19 must include conservation planning requirements, water loss standards,
20 and procedures by which public water systems establish and adopt water
21 conservation objectives.

22 (2) Establish an advisory committee to assist the department in
23 developing rules for water use efficiency. The advisory committee must
24 include representatives from public water system customers,
25 environmental interest groups, business interests groups, a
26 representative cross section of public water systems required to
27 prepare water conservation programs as part of their water system
28 plans, tribal governments, the department of ecology, and any other
29 members determined necessary by the department.

30 (3) Provide technical assistance upon request to public water
31 systems and local governments regarding water conservation, including,
32 but not limited to, development of best management practices for water
33 conservation programs, conservation landscape ordinances, conservation
34 rate structures for public water systems, and general public education
35 programs on water conservation.

36 (4) Develop requirements for the conservation element of water
37 system plans, developed under chapter 43.20 RCW or required as part of

1 a coordinated water system plan under chapter 70.116 RCW. Conservation
2 planning requirements must be varied based upon the size of the public
3 water system and must include, but not be limited to, provisions that
4 require the purveyor to:

5 (a) Adopt conservation objectives in accordance with provisions of
6 subsection (6) of this section;

7 (b) Implement all measures determined by the public water system to
8 be cost-effective and necessary to achieve the system's water
9 conservation objectives. Provisions must allow utilities to select the
10 best methods for achieving their conservation objectives. Public water
11 systems are required to implement all conservation measures that
12 provide water from conservation at or below the cost of development of
13 new supplies;

14 (c) Evaluate the use of rate structures to encourage conservation;

15 (d) Evaluate systems' water loss and include a detailed plan for
16 achieving water loss standards developed under subsection (5) of this
17 section;

18 (e) Provide water consumption and source production data sufficient
19 to evaluate system conservation performance. Reporting periods and
20 reporting requirements may vary based on the system size. Reporting
21 must include reporting to the department and to the public; and

22 (f) Include water demand forecasts developed in accordance with
23 requirements established by the department.

24 (5) Develop standards for water loss from public water systems.
25 The standards for public water systems must consider system size and
26 water system loss trends.

27 (6) Establish procedures to be used by public water systems to
28 establish and adopt water conservation objectives. Procedures must
29 include, but not be limited to, provisions for:

30 (a) Public notification and conduct of public meetings by the
31 public water system prior to establishing conservation objectives;

32 (b) Establishing a range of reasonably achievable reductions in
33 consumption per equivalent residential unit, or other measurable
34 criteria, over time; and

35 (c) Establishing and revising conservation objectives.
36 Consideration must be given to historic conservation performance and
37 conservation investment, customer base demographics, regional climate

1 variations, instream flow conditions, system financial viability, and
2 affordability of water rates.

3 (7) Develop water demand forecast methodology sufficient to meet
4 the purposes of subsection (4) of this section and to be used in
5 determining reasonably anticipated future needs for the purposes of RCW
6 90.03.330(2).

7 (8) Establish provisions for either withholding approval of system
8 expansion, or withholding state funding, or both, in cases where water
9 systems fail to comply with the provisions of this section.

10 (9) Adopt rules necessary to implement the provision of this
11 section by December 31, 2005.

12 **Sec. 13.** RCW 90.48.495 and 1989 c 348 s 10 are each amended to
13 read as follows:

14 The department of ecology shall require sewer plans to include a
15 discussion of water conservation measures considered or underway that
16 would reduce flows to the sewerage system and an analysis of their
17 anticipated impact on public sewer service and treatment capacity. The
18 plans must consider the feasibility of providing assistance to
19 implement water conservation measures as an alternative to constructing
20 new or expanded treatment capacity.

21 **Sec. 14.** RCW 90.48.112 and 1997 c 444 s 9 are each amended to read
22 as follows:

23 The evaluation of any plans submitted under RCW 90.48.110 must
24 include consideration of opportunities for the use of reclaimed water
25 as defined in RCW 90.46.010. Wastewater plans submitted under RCW
26 90.48.110 must include a statement describing how applicable
27 reclamation and reuse elements will be coordinated as required under
28 RCW 90.46.120(2).

29 **Sec. 15.** RCW 90.46.120 and 1997 c 444 s 1 are each amended to read
30 as follows:

31 (1) The owner of a wastewater treatment facility that is reclaiming
32 water with a permit issued under this chapter has the exclusive right
33 to any reclaimed water generated by the wastewater treatment facility.
34 Use and distribution of the reclaimed water by the owner of the
35 wastewater treatment facility is exempt from the permit requirements of

1 RCW 90.03.250 and 90.44.060. Revenues derived from the reclaimed water
2 facility shall be used only to offset the cost of operation of the
3 wastewater utility fund or other applicable source of system-wide
4 funding.

5 (2) If the proposed use or uses of reclaimed water are intended to
6 augment or replace potable water supplies or create the potential for
7 the development of additional potable water supplies, such use or uses
8 shall be considered in the development of the regional water supply
9 plan or plans addressing potable water supply service by multiple water
10 purveyors. The owner of a wastewater treatment facility that proposes
11 to reclaim water shall be included as a participant in the development
12 of such regional water supply plan or plans.

13 (3) Consistent with guidelines to be developed by the department of
14 health, water system plans and coordinated water systems plans
15 developed under chapter 43.20 or 70.116 RCW must be developed and
16 coordinated to ensure that opportunities for reclaimed water are
17 evaluated and that proposals for construction in public rights of way
18 delineated within the plan consider infrastructure needed to distribute
19 the reclaimed water. The requirements of this subsection (3) do not
20 apply to water system plans developed under chapter 43.20 RCW for
21 utilities serving less than one thousand service connections.

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

24 (1) The right to use water under an unperfected municipal,
25 community domestic, or multiple domestic water right or a portion
26 thereof held by a municipal water supplier may be changed or
27 transferred, in the same manner as is provided in RCW 90.03.380, if the
28 change or transfer:

29 (a) Is subject to stream flow protection or restoration
30 requirements related to implementing a watershed plan approved under
31 chapter 90.82 RCW or RCW 90.54.040(1), based on the proportionate share
32 of the water user's effects on environmental resources, including
33 instream flows;

34 (b) Is subject to stream flow protection or restoration
35 requirements contained in an approved habitat conservation plan,
36 federal energy regulatory commission hydropower license, or
37 comprehensive irrigation district management plan;

1 (c) Is subject to a water management environmental contract
2 established under section 20 or 21 of this act; or

3 (d) Is needed to resolve or alleviate a public health or safety
4 emergency caused by a failing public water supply system currently
5 providing potable water to existing users.

6 (2) To qualify for a change or transfer of right under the
7 provisions of subsection (1)(a) or (b) of this section, the public
8 water system operated by the applicant municipal water supplier must be
9 certified by the state department of health to be in compliance with
10 water conservation standards specified by the department of health as
11 those standards may be amended in the future.

12 (3) To qualify for a change or transfer of right under the
13 provisions of subsection (1)(d) of this section, an application for
14 change or transfer of the unperfected water right must be filed
15 specifically to correct the actual or anticipated cause or causes of
16 the public water system failure. Inadequate water rights for a public
17 water system to serve existing hook-ups or to accommodate future
18 population growth or other future uses do not constitute a public
19 health or safety emergency. To be considered a failing public water
20 system, the department of health, in consultation with the department
21 and the local health authority, must make a determination that the
22 system meets one or more of the following conditions:

23 (a) A public water system has failed, or is in danger of failing
24 within two years, to meet state board of health standards for the
25 delivery of potable water to existing users in adequate quantity or
26 quality to meet basic human drinking, cooking, and sanitation needs;

27 (b) The current water source has failed or will fail so that the
28 public water system is or will become incapable of exercising its
29 existing water rights to meet existing needs for drinking, cooking, and
30 sanitation purposes after all reasonable conservation efforts have been
31 implemented; or

32 (c) A change in source is required to meet drinking water quality
33 standards and avoid unreasonable treatment costs, or the state
34 department of health determines that the existing source of supply is
35 unacceptable for human use.

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

1 (1) The purpose of use of an unperfected water right for municipal,
2 community domestic, or multiple domestic use, or a portion thereof,
3 held by a municipal water supplier may be changed or transferred in the
4 same manner as is provided in RCW 90.44.100, if the change or transfer:

5 (a) Is subject to stream flow protection or restoration
6 requirements related to implementing a watershed plan approved under
7 chapter 90.82 RCW or RCW 90.54.040(1), based on the proportionate share
8 of the water user's effects on environmental resources, including
9 instream flows;

10 (b) Is subject to stream flow protection or restoration
11 requirements contained in an approved habitat conservation plan,
12 federal energy regulatory commission hydropower license, or
13 comprehensive irrigation district management plan;

14 (c) Is subject to a water management environmental contract
15 established under section 20 or 21 of this act; or

16 (d) Is needed to resolve or alleviate a public health or safety
17 emergency caused by a failing public water supply system currently
18 providing potable water to existing users.

19 (2) To qualify for a change or transfer of right under the
20 provisions of subsection (1)(a) or (b) of this section, the public
21 water system operated by the applicant municipal water supplier must be
22 certified by the state department of health to be in compliance with
23 water conservation standards specified by the department of health as
24 those standards may be amended in the future.

25 (3) To qualify for a change or transfer of right under the
26 provisions of subsection (1)(d) of this section, an application for
27 change or transfer of the unperfected water right must be filed
28 specifically to correct the actual or anticipated cause or causes of
29 the public water system failure. Inadequate water rights for a public
30 water system to serve existing hook-ups or to accommodate future
31 population growth or other future uses do not constitute a public
32 health or safety emergency. To be considered a failing public water
33 system, the department of health, in consultation with the department
34 and the local health authority, must make a determination that the
35 system meets one or more of the following conditions:

36 (a) A public water system has failed, or is in danger of failing
37 within two years, to meet state board of health standards for the

1 delivery of potable water to existing users in adequate quantity or
2 quality to meet basic human drinking, cooking, and sanitation needs;

3 (b) The current water source has failed or will fail so that the
4 public water system is or will become incapable of exercising its
5 existing water rights to meet existing needs for drinking, cooking, and
6 sanitation purposes after all reasonable conservation efforts have been
7 implemented; or

8 (c) A change in source is required to meet drinking water quality
9 standards and avoid unreasonable treatment costs, or the state
10 department of health determines that the existing source of supply is
11 unacceptable for human use.

12 NEW SECTION. **Sec. 18.** A new section is added to chapter 90.03 RCW
13 to read as follows:

14 (1) The department may, with the concurrence of the department of
15 fish and wildlife, approve various forms of mitigation to offset a
16 measurable or calculated reduction in stream flow during critical flow
17 periods that would result from approval of an application for a water
18 right for municipal water supply purposes or an application for change
19 or transfer of a water right for municipal water supply purposes under
20 the following conditions:

21 (a)(i) The mitigation must be requested by the applicant municipal
22 water supplier; and (ii) a watershed plan adopted under chapter 90.82
23 RCW or RCW 90.54.040(1) must be in effect for the proposed or existing
24 water source related to the water right, and the requested mitigation
25 must be consistent with the plan; or

26 (b) The applicant must be subject to a water management
27 environmental contract established under section 20 or 21 of this act.

28 (2) The applicant must demonstrate that effective measures can be
29 adopted to avoid or mitigate the stream flow reduction, utilizing
30 generally accepted scientific standards to determine as nearly as
31 possible the actual amount of stream flow reduction.

32 (3) Mitigation measures prescribed by the department must be
33 directly proportional to the impact caused by the permitted use of
34 water or change. Elements of mitigation prescribed by the department
35 may include but are not limited to replacement of the consumed water
36 and other actions to preserve or maintain instream values, including
37 nonwater measures and measures at a location other than the stream

1 reach where the effects would occur, and may include any combination of
2 the following in addition to any other measures deemed effective by the
3 department:

4 (a) Stream flow augmentation to replace measured or calculated loss
5 of water as a result of a new surface or ground water permit. The
6 water must be returned to the water body at a time and at a point that
7 will have the required mitigating effect on stream flows;

8 (b) Stream or watershed restoration, installation of vegetation or
9 runoff controls, preservation or restoration of wetlands, ground water
10 recharge as preservation or restoration, replacement of a water source
11 that has a direct hydraulic connection with a surface water body with
12 an alternative source that has a lesser or delayed effect upon the
13 impacted water body, or any other mitigation measures or combination of
14 measures agreed upon by the department and the applicant for a water
15 right; or

16 (c) Use of reclaimed water as a replacement for water authorized
17 for use under an existing right or permit withdrawing water from the
18 same water body.

19 (4) Mitigation measures undertaken pursuant to issuing a water
20 right or a water right change must include:

21 (a) Provisions for assurance that mitigation measures will be
22 maintained and effective for the duration of the water right; and

23 (b) Enforcement measures through application of financial penalty,
24 injunction, or other remedy provided by law.

25 (5) Mitigation measures are subject to evaluation regarding their
26 effectiveness on a periodic basis and should be modified as necessary
27 by joint agreement between the department and the water right holder to
28 maintain the prescribed standard of performance.

29 (6) Mitigation measures approved under this section must not impair
30 existing water rights.

31 (7) Any mitigation prescribed by the department must be set forth
32 in the department's report of examination for the new or changed water
33 right. The mitigation requirements are subject to appeal to the
34 pollution control hearings board under chapter 43.21B RCW, as part of
35 an appeal of the report of examination.

36 NEW SECTION. **Sec. 19.** A new section is added to chapter 90.44 RCW
37 to read as follows:

1 The provisions of section 18 of this act apply to issuance of
2 ground water rights or approval of amendments when the right or
3 amendment would result in a measurable or calculated reduction in the
4 flow of a stream during a critical flow period.

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

7 (1) The department may enter into water management environmental
8 contracts with one or more municipal water suppliers in a watershed to
9 meet environmental objectives established in a water resource
10 management program adopted under RCW 90.54.040(1) or under chapter
11 90.82 RCW. The term of the contracts may not exceed ten years, but the
12 contracts may be renewed or amended upon agreement of the parties.

13 (2) Water management environmental contracts must be consistent
14 with:

15 (a) Growth management plans developed under chapter 36.70A RCW
16 where these plans are adopted and in effect;

17 (b) Water supply plans approved under chapter 43.20 RCW;

18 (c) Coordinated water supply plans approved under chapter 70.116
19 RCW;

20 (d) Watershed plans adopted under chapter 90.82 RCW or RCW
21 90.54.040(1); and

22 (e) Water use efficiency and conservation requirements and
23 standards established by the state department of health or such
24 requirements and standards as are provided in an adopted watershed
25 plan, whichever are the more stringent.

26 (3) A water management environmental contract must:

27 (a) Require the public water system operated by the participating
28 municipal water supplier to meet the environmental obligations under
29 the watershed plan, based on the proportionate share of the public
30 water system's effect on environmental resources;

31 (b) Establish performance measures and timelines for measures to be
32 completed;

33 (c) Provide for monitoring of stream flows and metering of water
34 use as needed to ensure that the terms of the contract are met; and

35 (d) Require annual reports from the water users regarding contract
36 performance.

1 (4) As needed to implement contract activities, the department may
2 provide or receive funding, or both, under its existing authorities.

3 (5) The department shall provide opportunity for public review of
4 a proposed contract before it is executed. The department shall make
5 proposed and executed contracts and annual reports available on the
6 department's internet web site.

7 (6) The department must consult with affected local governments and
8 the state departments of health and fish and wildlife prior to
9 executing a contract.

10 (7) Prior to contract execution, the department must conduct a
11 government-to-government consultation with affected tribal governments.
12 The municipal water suppliers operating the public water systems that
13 are proposing to enter the contracts must be invited to participate in
14 the consultations. During these consultations, the department and the
15 municipal water suppliers shall explore the potential interest of the
16 tribal governments or governments in participating in the contract.

17 (8) Any person aggrieved by the department's failure to satisfy the
18 requirements in subsection (3) of this section as embodied in the
19 department's decision to enter a contract under this section may,
20 within thirty days of the execution of such a contract, appeal the
21 department's decision to the pollution control hearings board under
22 chapter 43.21B RCW.

23 (9) Any projects implemented by a municipal water system under the
24 terms of a contract reached under this section may be continued and
25 maintained by the municipal water system after the contract expires or
26 is terminated.

27 NEW SECTION. **Sec. 21.** A new section is added to chapter 90.82 RCW
28 to read as follows:

29 (1) The departments of ecology and fish and wildlife shall solicit
30 a minimum of two areas engaged in watershed planning under this chapter
31 or basin or multiple watershed planning under RCW 90.54.040(1) to
32 voluntarily pilot the water management environmental contract
33 provisions provided in section 20 of this act prior to completion of a
34 watershed plan. At least one pilot area must be selected from east of
35 the Cascade mountains and at least one pilot area must be selected from
36 west of the Cascade mountains. The pilot areas selected should be
37 planning areas that are relatively advanced in the development and

1 adoption of a plan. This subsection is not intended to limit the
2 number of areas or entities eligible to participate in the pilot water
3 management environmental contracts.

4 (2) Any physical water management projects implemented under this
5 section must first be approved by the watershed planning unit
6 established under this chapter, using the provisions of RCW
7 90.82.130(1)(a); or by the departments of ecology and fish and wildlife
8 in the case of an areas planning under RCW 90.54.040(1).

9 (3) Before December 31, 2003, and December 31, 2004, the department
10 shall report to the appropriate committees of the legislature the
11 results of the implementation pilots provided for in subsection (1) of
12 this section. Based on the experience of the pilot areas, the
13 department shall offer any suggested changes in law that would improve,
14 facilitate, and maximize the implementation of watershed plans adopted
15 under this chapter.

16 NEW SECTION. **Sec. 22.** A new section is added to chapter 90.82 RCW
17 to read as follows:

18 The department may not enter into new water management
19 environmental contracts under section 20 or 21 of this act after July
20 1, 2008. This section does not apply to the renewal of contracts in
21 effect prior to that date.

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

24 The department shall give priority to processing new water right
25 applications under RCW 90.03.290, reservoir permits under RCW
26 90.03.370, and applications for changes and transfers under RCW
27 90.03.380 through 90.03.397, whenever necessary to provide for timely
28 and effective implementation of a watershed plan adopted under chapter
29 90.82 RCW or RCW 90.54.040(1) or a water management environmental
30 contract authorized under section 20 or 21 of this act. This section
31 applies only to the sequence of application processing and does not
32 affect the relative priority date of any resulting water rights.

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

35 The department shall give priority to processing new water right

1 applications under RCW 90.44.050, and applications for changes and
2 transfers under RCW 90.44.100 and 90.44.105, whenever necessary to
3 provide for timely and effective implementation of a watershed plan
4 adopted under chapter 90.82 RCW or RCW 90.54.040(1) or a water
5 management environmental contract authorized under section 20 or 21 of
6 this act. This section applies only to the sequence of application
7 processing and does not affect the relative priority date of any
8 resulting water rights.

9 NEW SECTION. **Sec. 25.** If any provision of this act or its
10 application to any person or circumstance is held invalid, the
11 remainder of the act or the application of the provision to other
12 persons or circumstances is not affected.

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