

CERTIFICATION OF ENROLLMENT  
SECOND ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1338

58th Legislature  
2003 1st Special Session

Passed by the House June 5, 2003  
Yeas 83 Nays 14

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**Speaker of the House of Representatives**

Passed by the Senate June 10, 2003  
Yeas 33 Nays 11

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**President of the Senate**

Approved

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**Governor of the State of Washington**

CERTIFICATE

I, Cynthia Zehnder, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SECOND ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1338** as passed by the House of Representatives and the Senate on the dates hereon set forth.

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**Chief Clerk**

FILED

**Secretary of State  
State of Washington**

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SECOND ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1338

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Passed Legislature - 2003 1st Special Session

State of Washington                      58th Legislature                      2003 Regular Session

By House Committee on Appropriations (originally sponsored by Representatives Linville, Kirby, Lantz, Rockefeller, Shabro, Jarrett, Grant, Quall, Hunt, Delvin, Wallace, Woods, Benson, Morris and Conway; by request of Governor Locke)

READ FIRST TIME 03/10/03.

1            AN ACT Relating to certainty and flexibility of municipal water  
2 rights and efficient use of water; amending RCW 90.03.015, 90.03.260,  
3 90.03.386, 90.03.330, 90.48.495, 90.48.112, 90.46.120, and 70.119A.110;  
4 adding new sections to chapter 90.03 RCW; adding a new section to  
5 chapter 70.119A RCW; adding a new section to chapter 43.20 RCW; adding  
6 a new section to chapter 90.82 RCW; and adding a new section to chapter  
7 90.54 RCW.

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

9            **Sec. 1.** RCW 90.03.015 and 1987 c 109 s 65 are each amended to read  
10 as follows:

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

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

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

15            (3) "Municipal water supplier" means an entity that supplies water  
16 for municipal water supply purposes.

17            (4) "Municipal water supply purposes" means a beneficial use of  
18 water: (a) For residential purposes through fifteen or more  
19 residential service connections or for providing residential use of

1 water for a nonresidential population that is, on average, at least  
2 twenty-five people for at least sixty days a year; (b) for governmental  
3 or governmental proprietary purposes by a city, town, public utility  
4 district, county, sewer district, or water district; or (c) indirectly  
5 for the purposes in (a) or (b) of this subsection through the delivery  
6 of treated or raw water to a public water system for such use. If  
7 water is beneficially used under a water right for the purposes listed  
8 in (a), (b), or (c) of this subsection, any other beneficial use of  
9 water under the right generally associated with the use of water within  
10 a municipality is also for "municipal water supply purposes,"  
11 including, but not limited to, beneficial use for commercial,  
12 industrial, irrigation of parks and open spaces, institutional,  
13 landscaping, fire flow, water system maintenance and repair, or related  
14 purposes. If a governmental entity holds a water right that is for the  
15 purposes listed in (a), (b), or (c) of this subsection, its use of  
16 water or its delivery of water for any other beneficial use generally  
17 associated with the use of water within a municipality is also for  
18 "municipal water supply purposes," including, but not limited to,  
19 beneficial use for commercial, industrial, irrigation of parks and open  
20 spaces, institutional, landscaping, fire flow, water system maintenance  
21 and repair, or related purposes.

22 (5) "Person" means any firm, association, water users' association,  
23 corporation, irrigation district, or municipal corporation, as well as  
24 an individual.

25 NEW SECTION. Sec. 2. A new section is added to chapter 90.03 RCW  
26 to read as follows:

27 Beneficial uses of water under a municipal water supply purposes  
28 water right may include water withdrawn or diverted under such a right  
29 and used for:

30 (1) Uses that benefit fish and wildlife, water quality, or other  
31 instream resources or related habitat values; or

32 (2) Uses that are needed to implement environmental obligations  
33 called for by a watershed plan approved under chapter 90.82 RCW, or a  
34 comprehensive watershed plan adopted under RCW 90.54.040(1) after the  
35 effective date of this section, a federally approved habitat  
36 conservation plan prepared in response to the listing of a species as  
37 being endangered or threatened under the federal endangered species

1 act, 16 U.S.C. Sec. 1531 et seq., a hydropower license of the federal  
2 energy regulatory commission, or a comprehensive irrigation district  
3 management plan.

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

6 When requested by a municipal water supplier or when processing a  
7 change or amendment to the right, the department shall amend the water  
8 right documents and related records to ensure that water rights that  
9 are for municipal water supply purposes, as defined in RCW 90.03.015,  
10 are correctly identified as being for municipal water supply purposes.  
11 This section authorizes a water right or portion of a water right held  
12 or acquired by a municipal water supplier that is for municipal water  
13 supply purposes as defined in RCW 90.03.015 to be identified as being  
14 a water right for municipal water supply purposes. However, it does  
15 not authorize any other water right or other portion of a right held or  
16 acquired by a municipal water supplier to be so identified without the  
17 approval of a change or transfer of the right or portion of the right  
18 for such a purpose.

19 **Sec. 4.** RCW 90.03.260 and 1987 c 109 s 84 are each amended to read  
20 as follows:

21 (1) Each application for permit to appropriate water shall set  
22 forth the name and post office address of the applicant, the source of  
23 water supply, the nature and amount of the proposed use, the time  
24 during which water will be required each year, the location and  
25 description of the proposed ditch, canal, or other work, the time  
26 within which the completion of the construction and the time for the  
27 complete application of the water to the proposed use.

28 (2) If for agricultural purposes, ~~((it))~~ the application shall give  
29 the legal subdivision of the land and the acreage to be irrigated, as  
30 near as may be, and the amount of water expressed in acre feet to be  
31 supplied per season. If for power purposes, it shall give the nature  
32 of the works by means of which the power is to be developed, the head  
33 and amount of water to be utilized, and the uses to which the power is  
34 to be applied.

35 (3) If for construction of a reservoir, ~~((it))~~ the application

1 shall give the height of the dam, the capacity of the reservoir, and  
2 the uses to be made of the impounded waters.

3 (4) If for community or multiple domestic water supply, the  
4 application shall give the projected number of service connections  
5 sought to be served. However, for a municipal water supplier that has  
6 an approved water system plan under chapter 43.20 RCW or an approval  
7 from the department of health to serve a specified number of service  
8 connections, the service connection figure in the application or any  
9 subsequent water right document is not an attribute limiting exercise  
10 of the water right as long as the number of service connections to be  
11 served under the right is consistent with the approved water system  
12 plan or specified number.

13 (5) If for municipal water supply, ((it)) the application shall  
14 give the present population to be served, and, as near as may be  
15 estimated, the future requirement of the municipality. However, for a  
16 municipal water supplier that has an approved water system plan under  
17 chapter 43.20 RCW or an approval from the department of health to serve  
18 a specified number of service connections, the population figures in  
19 the application or any subsequent water right document are not an  
20 attribute limiting exercise of the water right as long as the  
21 population to be provided water under the right is consistent with the  
22 approved water system plan or specified number.

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

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

30 **Sec. 5.** RCW 90.03.386 and 1991 c 350 s 2 are each amended to read  
31 as follows:

32 (1) Within service areas established pursuant to chapter((s)) 43.20  
33 ((and)) or 70.116 RCW, the department of ecology and the department of  
34 health shall coordinate approval procedures to ensure compliance and  
35 consistency with the approved water system plan or small water system  
36 management program.

1       (2) The effect of the department of health's approval of a planning  
2 or engineering document that describes a municipal water supplier's  
3 service area under chapter 43.20 RCW, or the local legislative  
4 authority's approval of service area boundaries in accordance with  
5 procedures adopted pursuant to chapter 70.116 RCW, is that the place of  
6 use of a surface water right or ground water right used by the supplier  
7 includes any portion of the approved service area that was not  
8 previously within the place of use for the water right if the supplier  
9 is in compliance with the terms of the water system plan or small water  
10 system management program, including those regarding water  
11 conservation, and the alteration of the place of use is not  
12 inconsistent, regarding an area added to the place of use, with: Any  
13 comprehensive plans or development regulations adopted under chapter  
14 36.70A RCW; any other applicable comprehensive plan, land use plan, or  
15 development regulation adopted by a city, town, or county; or any  
16 watershed plan approved under chapter 90.82 RCW, or a comprehensive  
17 watershed plan adopted under RCW 90.54.040(1) after the effective date  
18 of this section, if such a watershed plan has been approved for the  
19 area.

20       (3) A municipal water supplier must implement cost-effective water  
21 conservation in accordance with the requirements of section 7 of this  
22 act as part of its approved water system plan or small water system  
23 management program. In preparing its regular water system plan update,  
24 a municipal water supplier with one thousand or more service  
25 connections must describe: (a) The projects, technologies, and other  
26 cost-effective measures that comprise its water conservation program;  
27 (b) improvements in the efficiency of water system use resulting from  
28 implementation of its conservation program over the previous six years;  
29 and (c) projected effects of delaying the use of existing inchoate  
30 rights over the next six years through the addition of further cost-  
31 effective water conservation measures before it may divert or withdraw  
32 further amounts of its inchoate right for beneficial use. When  
33 establishing or extending a surface or ground water right construction  
34 schedule under RCW 90.03.320, the department must take into  
35 consideration the public water system's use of conserved water.

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

1       (1) Upon a showing satisfactory to the department that any  
2 appropriation has been perfected in accordance with the provisions of  
3 this chapter, it shall be the duty of the department to issue to the  
4 applicant a certificate stating such facts in a form to be prescribed  
5 by ~~((him))~~ the director, and such certificate shall thereupon be  
6 recorded with the department. Any original water right certificate  
7 issued, as provided by this chapter, shall be recorded with the  
8 department and thereafter, at the expense of the party receiving the  
9 same, be transmitted by the department ~~((transmitted))~~ to the county  
10 auditor of the county or counties where the distributing system or any  
11 part thereof is located, and be recorded in the office of such county  
12 auditor, and thereafter be transmitted to the owner thereof.

13       (2) Except as provided for the issuance of certificates under RCW  
14 90.03.240 and for the issuance of certificates following the approval  
15 of a change, transfer, or amendment under RCW 90.03.380 or 90.44.100,  
16 the department shall not revoke or diminish a certificate for a surface  
17 or ground water right for municipal water supply purposes as defined in  
18 RCW 90.03.015 unless the certificate was issued with ministerial errors  
19 or was obtained through misrepresentation. The department may adjust  
20 such a certificate under this subsection if ministerial errors are  
21 discovered, but only to the extent necessary to correct the ministerial  
22 errors. The department may diminish the right represented by such a  
23 certificate if the certificate was obtained through a misrepresentation  
24 on the part of the applicant or permit holder, but only to the extent  
25 of the misrepresentation. The authority provided by this subsection  
26 does not include revoking, diminishing, or adjusting a certificate  
27 based on any change in policy regarding the issuance of such  
28 certificates that has occurred since the certificate was issued. This  
29 subsection may not be construed as providing any authority to the  
30 department to revoke, diminish, or adjust any other water right.

31       (3) This subsection applies to the water right represented by a  
32 water right certificate issued prior to the effective date of this  
33 section for municipal water supply purposes as defined in RCW 90.03.015  
34 where the certificate was issued based on an administrative policy for  
35 issuing such certificates once works for diverting or withdrawing and  
36 distributing water for municipal supply purposes were constructed  
37 rather than after the water had been placed to actual beneficial use.  
38 Such a water right is a right in good standing.

1       (4) After the effective date of this section, the department must  
2 issue a new certificate under subsection (1) of this section for a  
3 water right represented by a water right permit only for the perfected  
4 portion of a water right as demonstrated through actual beneficial use  
5 of water.

6       NEW SECTION. Sec. 7. A new section is added to chapter 70.119A  
7 RCW to read as follows:

8       (1) It is the intent of the legislature that the department  
9 establish water use efficiency requirements designed to ensure  
10 efficient use of water while maintaining water system financial  
11 viability, improving affordability of supplies, and enhancing system  
12 reliability.

13       (2) The requirements of this section shall apply to all municipal  
14 water suppliers and shall be tailored to be appropriate to system size,  
15 forecasted system demand, and system supply characteristics.

16       (3) For the purposes of this section:

17       (a) Water use efficiency includes conservation planning  
18 requirements, water distribution system leakage standards, and water  
19 conservation performance reporting requirements; and

20       (b) "Municipal water supplier" and "municipal water supply  
21 purposes" have the meanings provided by RCW 90.03.015.

22       (4) To accomplish the purposes of this section, the department  
23 shall adopt rules necessary to implement this section by December 31,  
24 2005. The department shall:

25       (a) Develop conservation planning requirements that ensure  
26 municipal water suppliers are: (i) Implementing programs to integrate  
27 conservation with water system operation and management; and (ii)  
28 identifying how to appropriately fund and implement conservation  
29 activities. Requirements shall apply to the conservation element of  
30 water system plans and small water system management programs developed  
31 pursuant to chapter 43.20 RCW. In establishing the conservation  
32 planning requirements the department shall review the current  
33 department conservation planning guidelines and include those elements  
34 that are appropriate for rule. Conservation planning requirements  
35 shall include but not be limited to:

36       (A) Selection of cost-effective measures to achieve a system's



1 water conservation objectives. Requirements shall allow the municipal  
2 water supplier to select and schedule implementation of the best  
3 methods for achieving its conservation objectives;

4 (B) Evaluation of the feasibility of adopting and implementing  
5 water delivery rate structures that encourage water conservation;

6 (C) Evaluation of each system's water distribution system leakage  
7 and, if necessary, identification of steps necessary for achieving  
8 water distribution system leakage standards developed under (b) of this  
9 subsection;

10 (D) Collection and reporting of water consumption and source  
11 production and/or water purchase data. Data collection and reporting  
12 requirements shall be sufficient to identify water use patterns among  
13 utility customer classes, where applicable, and evaluate the  
14 effectiveness of each system's conservation program. Requirements,  
15 including reporting frequency, shall be appropriate to system size and  
16 complexity. Reports shall be available to the public; and

17 (E) Establishment of minimum requirements for water demand forecast  
18 methodologies such that demand forecasts prepared by municipal water  
19 suppliers are sufficient for use in determining reasonably anticipated  
20 future water needs;

21 (b) Develop water distribution system leakage standards to ensure  
22 that municipal water suppliers are taking appropriate steps to reduce  
23 water system leakage rates or are maintaining their water distribution  
24 systems in a condition that results in leakage rates in compliance with  
25 the standards. Limits shall be developed in terms of percentage of  
26 total water produced and/or purchased and shall not be lower than ten  
27 percent. The department may consider alternatives to the percentage of  
28 total water supplied where alternatives provide a better evaluation of  
29 the water system's leakage performance. The department shall institute  
30 a graduated system of requirements based on levels of water system  
31 leakage. A municipal water supplier shall select one or more control  
32 methods appropriate for addressing leakage in its water system;

33 (c) Establish minimum requirements for water conservation  
34 performance reporting to assure that municipal water suppliers are  
35 regularly evaluating and reporting their water conservation  
36 performance. The objective of setting conservation goals is to enhance  
37 the efficient use of water by the water system customers. Performance  
38 reporting shall include:

1 (i) Requirements that municipal water suppliers adopt and achieve  
2 water conservation goals. The elected governing board or governing  
3 body of the water system shall set water conservation goals for the  
4 system. In setting water conservation goals the water supplier may  
5 consider historic conservation performance and conservation investment,  
6 customer base demographics, regional climate variations, forecasted  
7 demand and system supply characteristics, system financial viability,  
8 system reliability, and affordability of water rates. Conservation  
9 goals shall be established by the municipal water supplier in an open  
10 public forum;

11 (ii) Requirements that the municipal water supplier adopt schedules  
12 for implementing conservation program elements and achieving  
13 conservation goals to ensure that progress is being made toward adopted  
14 conservation goals;

15 (iii) A reporting system for regular reviews of conservation  
16 performance against adopted goals. Performance reports shall be  
17 available to customers and the public. Requirements, including  
18 reporting frequency, shall be appropriate to system size and  
19 complexity;

20 (iv) Requirements that any system not meeting its water  
21 conservation goals shall develop a plan for modifying its conservation  
22 program to achieve its goals along with procedures for reporting  
23 performance to the department;

24 (v) If a municipal water supplier determines that further  
25 reductions in consumption are not reasonably achievable, it shall  
26 identify how current consumption levels will be maintained;

27 (d) Adopt rules that, to the maximum extent practical, utilize  
28 existing mechanisms and simplified procedures in order to minimize the  
29 cost and complexity of implementation and to avoid placing unreasonable  
30 financial burden on smaller municipal systems.

31 (5) The department shall establish an advisory committee to assist  
32 the department in developing rules for water use efficiency. The  
33 advisory committee shall include representatives from public water  
34 system customers, environmental interest groups, business interest  
35 groups, a representative cross-section of municipal water suppliers, a  
36 water utility conservation professional, tribal governments, the  
37 department of ecology, and any other members determined necessary by  
38 the department. The department may use the water supply advisory

1 committee created pursuant to RCW 70.119A.160 augmented with additional  
2 participants as necessary to comply with this subsection to assist the  
3 department in developing rules.

4 (6) The department shall provide technical assistance upon request  
5 to municipal water suppliers and local governments regarding water  
6 conservation, which may include development of best management  
7 practices for water conservation programs, conservation landscape  
8 ordinances, conservation rate structures for public water systems, and  
9 general public education programs on water conservation.

10 (7) To ensure compliance with this section, the department shall  
11 establish a compliance process that incorporates a graduated approach  
12 employing the full range of compliance mechanisms available to the  
13 department.

14 (8) Prior to completion of rule making required in subsection (4)  
15 of this section, municipal water suppliers shall continue to meet the  
16 existing conservation requirements of the department and shall continue  
17 to implement their current water conservation programs.

18 NEW SECTION. **Sec. 8.** A new section is added to chapter 43.20 RCW  
19 to read as follows:

20 In approving the water system plan of a public water system, the  
21 department shall ensure that water service to be provided by the system  
22 under the plan for any new industrial, commercial, or residential use  
23 is consistent with the requirements of any comprehensive plans or  
24 development regulations adopted under chapter 36.70A RCW or any other  
25 applicable comprehensive plan, land use plan, or development regulation  
26 adopted by a city, town, or county for the service area. A municipal  
27 water supplier, as defined in RCW 90.03.015, has a duty to provide  
28 retail water service within its retail service area if: (1) Its  
29 service can be available in a timely and reasonable manner; (2) the  
30 municipal water supplier has sufficient water rights to provide the  
31 service; (3) the municipal water supplier has sufficient capacity to  
32 serve the water in a safe and reliable manner as determined by the  
33 department of health; and (4) it is consistent with the requirements of  
34 any comprehensive plans or development regulations adopted under  
35 chapter 36.70A RCW or any other applicable comprehensive plan, land use  
36 plan, or development regulation adopted by a city, town, or county for

1 the service area and, for water service by the water utility of a city  
2 or town, with the utility service extension ordinances of the city or  
3 town.

4 NEW SECTION. **Sec. 9.** A new section is added to chapter 90.82 RCW  
5 to read as follows:

6 (1) The timelines and interim milestones in a detailed  
7 implementation plan required by section 3, chapter . . . (Engrossed  
8 Second Substitute House Bill No. 1336), Laws of 2003 must address the  
9 planned future use of existing water rights for municipal water supply  
10 purposes, as defined in RCW 90.03.015, that are inchoate, including how  
11 these rights will be used to meet the projected future needs identified  
12 in the watershed plan, and how the use of these rights will be  
13 addressed when implementing instream flow strategies identified in the  
14 watershed plan.

15 (2) The watershed planning unit or other authorized lead agency  
16 shall ensure that holders of water rights for municipal water supply  
17 purposes not currently in use are asked to participate in defining the  
18 timelines and interim milestones to be included in the detailed  
19 implementation plan.

20 (3) The department of health shall annually compile a list of water  
21 system plans and plan updates to be reviewed by the department during  
22 the coming year and shall consult with the departments of community,  
23 trade, and economic development, ecology, and fish and wildlife to:  
24 (a) Identify watersheds where further coordination is needed between  
25 water system planning and local watershed planning under this chapter;  
26 and (b) develop a work plan for conducting the necessary coordination.

27 NEW SECTION. **Sec. 10.** A new section is added to chapter 90.54 RCW  
28 to read as follows:

29 The department shall prioritize the expenditure of funds and other  
30 resources for programs related to streamflow restoration in watersheds  
31 where the exercise of inchoate water rights may have a larger effect on  
32 streamflows and other water uses.

33 **Sec. 11.** RCW 90.48.495 and 1989 c 348 s 10 are each amended to  
34 read as follows:

35 The department of ecology shall require sewer plans to include a

1 discussion of water conservation measures considered or underway that  
2 would reduce flows to the sewerage system and an analysis of their  
3 anticipated impact on public sewer service and treatment capacity.

4 **Sec. 12.** RCW 90.48.112 and 1997 c 444 s 9 are each amended to read  
5 as follows:

6 The evaluation of any plans submitted under RCW 90.48.110 must  
7 include consideration of opportunities for the use of reclaimed water  
8 as defined in RCW 90.46.010. Wastewater plans submitted under RCW  
9 90.48.110 must include a statement describing how applicable  
10 reclamation and reuse elements will be coordinated as required under  
11 RCW 90.46.120(2).

12 **Sec. 13.** RCW 90.46.120 and 1997 c 444 s 1 are each amended to read  
13 as follows:

14 (1) The owner of a wastewater treatment facility that is reclaiming  
15 water with a permit issued under this chapter has the exclusive right  
16 to any reclaimed water generated by the wastewater treatment facility.  
17 Use and distribution of the reclaimed water by the owner of the  
18 wastewater treatment facility is exempt from the permit requirements of  
19 RCW 90.03.250 and 90.44.060. Revenues derived from the reclaimed water  
20 facility shall be used only to offset the cost of operation of the  
21 wastewater utility fund or other applicable source of system-wide  
22 funding.

23 (2) If the proposed use or uses of reclaimed water are intended to  
24 augment or replace potable water supplies or create the potential for  
25 the development of additional potable water supplies, such use or uses  
26 shall be considered in the development of the regional water supply  
27 plan or plans addressing potable water supply service by multiple water  
28 purveyors. The owner of a wastewater treatment facility that proposes  
29 to reclaim water shall be included as a participant in the development  
30 of such regional water supply plan or plans.

31 (3) Where opportunities for the use of reclaimed water exist within  
32 the period of time addressed by a water supply plan or coordinated  
33 water system plan developed under chapter 43.20 or 70.116 RCW, these  
34 plans must be developed and coordinated to ensure that opportunities  
35 for reclaimed water are evaluated. The requirements of this subsection

1 (3) do not apply to water system plans developed under chapter 43.20  
2 RCW for utilities serving less than one thousand service connections.

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

5 (1) An unperfected surface water right for municipal water supply  
6 purposes or a portion thereof held by a municipal water supplier may be  
7 changed or transferred in the same manner as provided by RCW 90.03.380  
8 for any purpose if:

9 (a) The supplier is in compliance with the terms of an approved  
10 water system plan or small water system management program under  
11 chapter 43.20 or 70.116 RCW that applies to the supplier, including  
12 those regarding water conservation;

13 (b) Instream flows have been established by rule for the water  
14 resource inventory area, as established in chapter 173-500 WAC as it  
15 exists on the effective date of this section, that is the source of the  
16 water for the transfer or change;

17 (c) A watershed plan has been approved for the water resource  
18 inventory area referred to in (b) of this subsection under chapter  
19 90.82 RCW and a detailed implementation plan has been completed that  
20 satisfies the requirements of section 3, chapter . . ., Laws of 2003  
21 (section 3, Engrossed Second Substitute House Bill No. 1336) or a  
22 watershed plan has been adopted after the effective date of this  
23 section for that water resource inventory area under RCW 90.54.040(1)  
24 and a detailed implementation plan has been completed that satisfies  
25 the requirements of section 3, chapter . . ., Laws of 2003 (section 3,  
26 Engrossed Second Substitute House Bill No. 1336); and

27 (d) Stream flows that satisfy the instream flows referred to in (b)  
28 of this subsection are met or the milestones for satisfying those  
29 instream flows required under (c) of this subsection are being met.

30 (2) If the criteria listed in subsection (1)(a) through (d) of this  
31 section are not satisfied, an unperfected surface water right for  
32 municipal water supply purposes or a portion thereof held by a  
33 municipal water supplier may nonetheless be changed or transferred in  
34 the same manner as provided by RCW 90.03.380 if the change or transfer  
35 is:

36 (a) To provide water for an instream flow requirement that has been  
37 established by the department by rule;

1 (b) Subject to stream flow protection or restoration requirements  
2 contained in: A federally approved habitat conservation plan under the  
3 federal endangered species act, 16 U.S.C. Sec. 1531 et seq., a  
4 hydropower license of the federal energy regulatory commission, or a  
5 watershed agreement established under section 16 of this act;

6 (c) For a water right that is subject to instream flow requirements  
7 or agreements with the department and the change or transfer is also  
8 subject to those instream flow requirements or agreements; or

9 (d) For resolving or alleviating a public health or safety  
10 emergency caused by a failing public water supply system currently  
11 providing potable water to existing users, as such a system is  
12 described in section 15 of this act, and if the change, transfer, or  
13 amendment is for correcting the actual or anticipated cause or causes  
14 of the public water system failure. Inadequate water rights for a  
15 public water system to serve existing hookups or to accommodate future  
16 population growth or other future uses do not constitute a public  
17 health or safety emergency.

18 (3) If the recipient of water under a change or transfer authorized  
19 by subsection (1) of this section is a water supply system, the  
20 receiving system must also be in compliance with the terms of an  
21 approved water system plan or small water system management program  
22 under chapter 43.20 or 70.116 RCW that applies to the system, including  
23 those regarding water conservation.

24 (4) The department must provide notice to affected tribes of any  
25 transfer or change proposed under this section.

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

28 To be considered a failing public water system for the purposes of  
29 section 14 of this act, the department of health, in consultation with  
30 the department and the local health authority, must make a  
31 determination that the system meets one or more of the following  
32 conditions:

33 (1) A public water system has failed, or is in danger of failing  
34 within two years, to meet state board of health standards for the  
35 delivery of potable water to existing users in adequate quantity or  
36 quality to meet basic human drinking, cooking, and sanitation needs or  
37 to provide adequate fire protection flows;

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

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

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

12 (1) On a pilot project basis, the department may enter into a  
13 watershed agreement with one or more municipal water suppliers in water  
14 resource inventory area number one to meet the objectives established  
15 in a water resource management program approved or being developed  
16 under chapter 90.82 RCW with the consent of the initiating governments  
17 of the water resource inventory area. The term of an agreement may not  
18 exceed ten years, but the agreement may be renewed or amended upon  
19 agreement of the parties.

20 (2) A watershed agreement must be consistent with:

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

23 (b) Water supply plans and small water system management programs  
24 approved under chapter 43.20 or 70.116 RCW;

25 (c) Coordinated water supply plans approved under chapter 70.116  
26 RCW; and

27 (d) Water use efficiency and conservation requirements and  
28 standards established by the state department of health or such  
29 requirements and standards as are provided in an approved watershed  
30 plan, whichever are the more stringent.

31 (3) A watershed agreement must:

32 (a) Require the public water system operated by the participating  
33 municipal water supplier to meet obligations under the watershed plan;

34 (b) Establish performance measures and timelines for measures to be  
35 completed;

36 (c) Provide for monitoring of stream flows and metering of water  
37 use as needed to ensure that the terms of the agreement are met; and



1 (d) Require annual reports from the water users regarding  
2 performance under the agreement.

3 (4) As needed to implement watershed agreement activities, the  
4 department may provide or receive funding, or both, under its existing  
5 authorities.

6 (5) The department must provide opportunity for public review of a  
7 proposed agreement before it is executed. The department must make  
8 proposed and executed watershed agreements and annual reports available  
9 on the department's internet web site.

10 (6) The department must consult with affected local governments and  
11 the state departments of health and fish and wildlife before executing  
12 an agreement.

13 (7) Before executing a watershed agreement, the department must  
14 conduct a government-to-government consultation with affected tribal  
15 governments. The municipal water suppliers operating the public water  
16 systems that are proposing to enter into the agreements must be invited  
17 to participate in the consultations. During these consultations, the  
18 department and the municipal water suppliers shall explore the  
19 potential interest of the tribal governments or governments in  
20 participating in the agreement.

21 (8) Any person aggrieved by the department's failure to satisfy the  
22 requirements in subsection (3) of this section as embodied in the  
23 department's decision to enter into a watershed agreement under this  
24 section may, within thirty days of the execution of such an agreement,  
25 appeal the department's decision to the pollution control hearings  
26 board under chapter 43.21B RCW.

27 (9) Any projects implemented by a municipal water system under the  
28 terms of an agreement reached under this section may be continued and  
29 maintained by the municipal water system after the agreement expires or  
30 is terminated as long as the conditions of the agreement under which  
31 they were implemented continue to be met.

32 (10) Before December 31, 2003, and December 31, 2004, the  
33 department must report to the appropriate committees of the legislature  
34 the results of the pilot project provided for in this section. Based  
35 on the experience of the pilot project, the department must offer any  
36 suggested changes in law that would improve, facilitate, and maximize  
37 the implementation of watershed plans adopted under this chapter.

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

3        The department may not enter into new watershed agreements under  
4 section 16 of this act after July 1, 2008. This section does not apply  
5 to the renewal of agreements in effect prior to that date.

6        **Sec. 18.**    RCW 70.119A.110 and 1991 c 304 s 5 are each amended to  
7 read as follows:

8        (1) No person may operate a group A public water system unless the  
9 person first submits an application to the department and receives an  
10 operating permit as provided in this section. A new application must  
11 be submitted upon any change in ownership of the system. Any person  
12 operating a public water system on July 28, 1991, may continue to  
13 operate the system until the department takes final action, including  
14 any time necessary for a hearing under subsection (3) of this section,  
15 on a permit application submitted by the person operating the system  
16 under the rules adopted by the department to implement this section.

17        (2) The department may require that each application include the  
18 information that is reasonable and necessary to determine that the  
19 system complies with applicable standards and requirements of the  
20 federal safe drinking water act, state law, and rules adopted by the  
21 department or by the state board of health.

22        (3) Following its review of the application, its supporting  
23 material, and any information received by the department in its  
24 investigation of the application, the department shall issue or deny  
25 the operating permit. The department shall act on initial permit  
26 applications as expeditiously as possible, and shall in all cases  
27 either grant or deny the application within one hundred twenty days of  
28 receipt of the application or of any supplemental information required  
29 to complete the application. The applicant for a permit shall be  
30 entitled to file an appeal in accordance with chapter 34.05 RCW if the  
31 department denies the initial or subsequent applications or imposes  
32 conditions or requirements upon the operator. Any operator of a public  
33 water system that requests a hearing may continue to operate the system  
34 until a decision is issued after the hearing.

35        (4) At the time of initial permit application or at the time of  
36 permit renewal the department may impose such permit conditions,

1 requirements for system improvements, and compliance schedules as it  
2 determines are reasonable and necessary to ensure that the system will  
3 provide a safe and reliable water supply to its users.

4 (5) Operating permits shall be issued for a term of one year, and  
5 shall be renewed annually, unless the operator fails to apply for a new  
6 permit or the department finds good cause to deny the application for  
7 renewal.

8 (6) Each application shall be accompanied by an annual fee as  
9 follows:

10 (a) The annual fee for public water supply systems serving fifteen  
11 to forty-nine service connections shall be twenty-five dollars.

12 (b) The annual fee for public water supply systems serving fifty to  
13 three thousand three hundred thirty-three service connections shall be  
14 based on a uniform per service connection fee of one dollar and fifty  
15 cents per service connection.

16 (c) The annual fee for public water supply systems serving three  
17 thousand three hundred thirty-four to fifty-three thousand three  
18 hundred thirty-three service connections shall be based on a uniform  
19 per service connection fee of one dollar and fifty cents per service  
20 connection plus ten cents for each service connection in excess of  
21 three thousand three hundred thirty-three service connections.

22 (d) The annual fee for public water supply systems serving fifty-  
23 three thousand three hundred thirty-four or more service connections  
24 shall be ten thousand dollars.

25 (e) In addition to the fees under (a) through (d) of this  
26 subsection, the department may charge an additional one-time fee of  
27 five dollars for each service connection in a new water system.

28 (f) Until June 30, 2007, in addition to the fees under (a) through  
29 (e) of this subsection, the department may charge municipal water  
30 suppliers, as defined in RCW 90.03.015, an additional annual fee  
31 equivalent to twenty-five cents for each residential service connection  
32 for the purpose of funding the water conservation activities in section  
33 7 of this act.

34 (7) The department may phase-in the implementation for any group of  
35 systems provided the schedule for implementation is established by  
36 rule. Prior to implementing the operating permit requirement on water  
37 systems having less than five hundred service connections, the  
38 department shall form a committee composed of persons operating these

1 systems. The committee shall be composed of the department of health,  
2 two operators of water systems having under one hundred connections,  
3 two operators of water systems having between one hundred and two  
4 hundred service connections, two operators of water systems having  
5 between two hundred and three hundred service connections, two  
6 operators of water systems having between three hundred and four  
7 hundred service connections, two operators of water systems having  
8 between four hundred and five hundred service connections, and two  
9 county public health officials. The members shall be chosen from  
10 different geographic regions of the state. This committee shall  
11 develop draft rules to implement this section. The draft rules will  
12 then be subject to the rule-making procedures in accordance with  
13 chapter 34.05 RCW.

14 (8) The department shall notify existing public water systems of  
15 the requirements of RCW 70.119A.030, 70.119A.060, and this section at  
16 least one hundred twenty days prior to the date that an application for  
17 a permit is required pursuant to RCW 70.119A.030, 70.119A.060, and this  
18 section.

19 (9) The department shall issue one operating permit to any approved  
20 satellite system management agency. Operating permit fees for approved  
21 satellite system management agencies shall be one dollar per connection  
22 per year for the total number of connections under the management of  
23 the approved satellite agency. The department shall define by rule the  
24 meaning of the term "satellite system management agency." If a  
25 statutory definition of this term exists, then the department shall  
26 adopt by rule a definition consistent with the statutory definition.

27 (10) For purposes of this section, "group A public water system"  
28 and "system" mean those water systems with fifteen or more service  
29 connections, regardless of the number of people; or a system serving an  
30 average of twenty-five or more people per day for sixty or more days  
31 within a calendar year, regardless of the number of service  
32 connections.

33 NEW SECTION. **Sec. 19.** If any provision of this act or its  
34 application to any person or circumstance is held invalid, the  
35 remainder of the act or the application of the provision to other

1 persons or circumstances is not affected.

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