
ENGROSSED SECOND SUBSTITUTE SENATE BILL 6267

State of Washington

61st Legislature

2010 Regular Session

By Senate Ways & Means (originally sponsored by Senators Rockefeller and Honeyford; by request of Department of Ecology)

READ FIRST TIME 02/09/10.

1 AN ACT Relating to water right processing improvements; amending
2 RCW 90.03.265, 90.14.065, 90.44.100, and 90.44.100; adding new sections
3 to chapter 90.03 RCW; adding new sections to chapter 90.44 RCW;
4 creating new sections; providing an effective date; and providing an
5 expiration date.

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

7 NEW SECTION. **Sec. 1.** Water is an essential element for economic
8 prosperity and it generates new, family-wage jobs and state revenues.
9 It is the intent of the legislature to provide both the water right
10 applicants and the department of ecology with the necessary tools to
11 expedite the processing of water right applications depending on the
12 needs of the project and agency workload.

13 NEW SECTION. **Sec. 2.** Sufficient resources to support the
14 department of ecology's water resource program are essential for
15 effective and sustainable water management that provides certainty to
16 processed applications. The department of ecology shall review current
17 water resource functions and report to the legislature and the governor

1 by September 1, 2010, on improvements to make the program more self-
2 sustaining and efficient.

3 **Sec. 3.** RCW 90.03.265 and 2003 c 70 s 6 are each amended to read
4 as follows:

5 (1)(a) Any applicant for a new withdrawal or a change, transfer, or
6 amendment of a water right pending before the department((~~τ~~)) may
7 initiate a cost-reimbursement agreement with the department to provide
8 expedited review of the application. A cost-reimbursement agreement
9 may ((~~only~~)) be initiated under this section if the applicant agrees to
10 pay for, or as part of a cooperative effort agrees to pay for, the cost
11 of processing his or her application and all other applications from
12 the same source of supply which must be acted upon before the
13 applicant's request because they were filed prior to the date of when
14 the applicant filed.

15 (b) The requirement to pay for the cost of other applications under
16 (a) of this subsection does not apply to an application for a new
17 appropriation that would not diminish the water available to earlier
18 pending applicants for new appropriations from the same source of
19 supply.

20 (c) The requirement to pay for the cost of processing other
21 applications under (a) of this subsection does not apply to an
22 application for a change, transfer, or other amendment that would not
23 diminish the water available to earlier pending applicants for changes
24 or transfers from the same source of supply.

25 (d) In determining whether an application would not diminish the
26 water available to earlier pending applicants, the department shall
27 consider any water impoundment or other water resource management
28 mitigation technique proposed by the applicant under RCW 90.03.255 or
29 90.44.055.

30 (e) The department may enter into cost-reimbursement agreements
31 provided resources are available and shall use the process established
32 under RCW 43.21A.690 for entering into cost-reimbursement agreements.
33 The department's share of work related to a cost-reimbursement
34 application, such as final certificate approval, must be prioritized
35 within the framework of other water right processing needs and as
36 determined by agency rule.

1 (f) Each individual applicant is responsible for his or her own
2 appeal costs that may result from a water right decision made by the
3 department. In the event that the department's approval of an
4 application is appealed under chapter 43.21B RCW by a third party, the
5 applicant for the water right in question must reimburse the department
6 for the cost of defending the decision before the pollution control
7 hearings board unless otherwise agreed to by the applicant and the
8 department. If an applicant appeals either an approval or a denial by
9 the department, the applicant is responsible only for its own appeal
10 costs.

11 (2) In pursuing a cost-reimbursement project, the department must
12 determine the source of water proposed to be diverted or withdrawn
13 from, including the boundaries of the area that delimits the source.
14 The department must determine if any other water right permit
15 applications are pending from the same source. A water source may
16 include surface water only, groundwater only, or surface and
17 groundwater together if the department finds they are hydraulically
18 connected. The department shall consider technical information
19 submitted by the applicant in making its determinations under this
20 subsection. The department may recover from a cost-reimbursement
21 applicant its own costs in making the same source determination under
22 this subsection.

23 (3) Upon request of the applicant seeking cost-reimbursement
24 processing, the department may elect to initiate a coordinated cost-
25 reimbursement process. To initiate this process, the department must
26 notify in writing all persons who have pending applications on file for
27 a new appropriation, change, transfer, or amendment of a water right
28 from that water source. A water source may include surface water only,
29 groundwater only, or surface and groundwater together if the department
30 determines that they are hydraulically connected. The notice must be
31 made by way of mail and by publication in a newspaper of general
32 circulation in the area where affected properties are located. The
33 notice must:

34 (a) Inform those applicants that cost-reimbursement processing of
35 applications within the described water source is being initiated;

36 (b) Provide to individual applicants the criteria under which the
37 applications will be examined and determined;

1 (c) Provide to individual applicants the estimated cost for having
2 an application processed;

3 (d) Provide an estimate of how long the cost-reimbursement process
4 will take before an application is approved or denied; and

5 (e) Provide at least sixty days for the applicants to respond in
6 writing regarding the applicant's decision to participate in the cost-
7 reimbursement process.

8 (4) The applicant initiating cost-reimbursement request must pay
9 for the cost of the determination under subsections (2) and (3) of this
10 section and other costs necessary for the initial phase of cost-
11 reimbursement processing. The cost for each applicant for conducting
12 processing under a coordinated cost-reimbursement agreement must be
13 based on the proportionate quantity of water requested by each
14 applicant.

15 (5) For any cost-reimbursement process under this section, the
16 applicant may select the consultant from the department's prequalified
17 consultant's list or may be assigned a prequalified consultant by the
18 department. The applicant may also use its own consultant at the
19 discretion of the department if the consultant meets the requirements
20 in subsection (6) of this section.

21 (6)(a) If the applicant proposes to use its own consultant for one
22 or more of the work products or reports associated with the work
23 generally performed under a cost-reimbursement agreement, and the
24 department agrees to such use, all investigations, work products,
25 technical reports and analysis, findings, and documentation undertaken
26 by the consultant relating to the application, including preparation of
27 a draft report of examination, is subject to the review, comment,
28 modification, refusal, or approval of the department before being used
29 in the department's decision-making process. At any point during the
30 cost-reimbursement process, the department may request or accept
31 technical information, data, and analysis from the applicant or the
32 applicant's consultant to support the cost-reimbursement process or the
33 department's decision on the application.

34 (b) The department is authorized to adopt rules or guidance
35 providing: (i) Minimum qualifications and standards for the submission
36 of such technical information; and (ii) technical information,
37 scientific analysis, work product documentation, and report
38 presentation standards that an applicant's consultant must meet.

1 (7) The department must provide notice to potential consultants of
2 the opportunity to be considered for inclusion on the list of cost-
3 reimbursement consultants to whom work assignments will be made. The
4 department must competitively select an appropriate number of
5 consultants who are qualified by training and experience to investigate
6 and make recommendations on the disposition of water right
7 applications. The consultant list must be renewed at least every six
8 years, though the department may add qualified cost-reimbursement
9 consultants to the list at any time. The department must enter a
10 master contract with each consultant selected and thereafter make work
11 assignments based on availability and qualifications.

12 (8) The department may remove any consultant from the consultant
13 list for poor performance, malfeasance, or excessive complaints from
14 cost-reimbursement participants. The department may interview any
15 cost-reimbursement consultant to determine whether the person is
16 qualified for this work, and must spot-check the work of consultants to
17 ensure that the public is being competently served.

18 (9) When assigned or selected for an application or set of
19 applications to investigate, the consultant must document its findings
20 and recommended disposition in the form of written draft reports of
21 examination. Within two weeks of the department receiving the draft
22 reports of examination, an applicant may provide comments to the
23 department on the contents of the report. The department may modify
24 the reports of examination submitted by the consultant. The
25 department's decision on a permit application is final unless it is
26 appealed to the pollution control hearings board under chapter 43.21B
27 RCW.

28 (10) The department must provide the applicant the opportunity to
29 review and comment on the consultant's findings, technical reports, and
30 preliminary draft reports of examination prior to the completion of
31 final documents by the consultant. The department must consider such
32 comments by the applicant prior to the department's issuance of a draft
33 report of examination.

34 (11) If an applicant elects not to participate in a cost-
35 reimbursement process, the application remains on file with the
36 department, retains its priority date, and may be processed in the
37 future under regular processing, expedited processing, or through cost-
38 reimbursement.

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

3 The water rights processing account is created in the state
4 treasury. All receipts from the fees collected under sections 5 and 12
5 of this act must be deposited into the account. Money in the account
6 may be spent only after appropriation. Expenditures from the account
7 may only be used to support the processing of water right applications
8 for a new appropriation, change, transfer, or amendment of a water
9 right or for the examination, certification, and renewal of
10 certification of water right examiners as provided in this chapter and
11 chapters 90.42 and 90.44 RCW.

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

14 (1) The department may expedite processing of applications within
15 the same source of water on its own volition when there is interest
16 from a sufficient number of applicants or upon receipt of written
17 requests from at least ten percent of the applicants within the same
18 source of water.

19 (2) If the conditions of subsection (1) of this section have been
20 met and the department determines that the public interest is best
21 served by expediting applications within a water source, the department
22 must notify in writing all persons who have pending applications on
23 file for a new appropriation, change, transfer, or amendment of a water
24 right from that water source. A water source may include surface water
25 only, groundwater only, or surface and groundwater together if the
26 department determines that they are hydraulically connected. The
27 notice must be made by way of mail and by publication in a newspaper of
28 general circulation in the area where affected properties are located.
29 The notice must:

30 (a) Inform those applicants that expedited processing of
31 applications with the described water source is being initiated;

32 (b) Provide to individual applicants the criteria under which the
33 applications will be examined and determined;

34 (c) Provide to individual applicants the estimated cost for having
35 an application processed on an expedited basis;

36 (d) Provide an estimate of how long the expedited process will take
37 before an application is approved or denied; and

1 (e) Provide at least sixty days for the applicants to respond in
2 writing regarding the applicant's decision to participate in the
3 expedited processing of their applications.

4 (3) In addition to the application fees provided in RCW 90.03.470,
5 the department must recover the full cost of processing all the
6 applications from applicants who elect to participate within the water
7 source through expedited processing fees. The department must
8 calculate an expedited processing fee based primarily on the
9 proportionate quantity of water requested by each applicant and may
10 adjust the fee if it appears that the application will require a
11 disproportionately greater amount of time and effort to process due to
12 its complexity. Any application fees that were paid by the applicant
13 under RCW 90.03.470 must be credited against the applicant's share of
14 the cost of processing applications under the provisions of this
15 section.

16 (4) The expedited processing fee must be collected by the
17 department prior to the expedited processing of an application. An
18 applicant who has stated in writing that he or she wants his or her
19 application processed using the expedited procedures in this section
20 must transmit the processing fee within sixty days of the written
21 request. Failure to do so will result in the applicant not being
22 included in expedited processing for that water source.

23 (5) If an applicant elects not to participate in expedited
24 processing, the application remains on file with the department, the
25 applicant retains his or her priority date, and the application may be
26 processed in the future through regular processing, expedited
27 processing, coordinated cost-reimbursement processing, or cost-
28 reimbursement. Such an application may not be processed through
29 expedited processing within twelve months after the department's
30 issuance of decisions on participating applications at the conclusion
31 of expedited processing unless the applicant agrees to pay the full
32 proportionate share that would otherwise have been paid during such
33 processing. Any proceeds collected from an applicant under this
34 delayed entry into expedited processing may be used to reimburse the
35 other applicants who participated in the previous expedited processing
36 of applications.

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

3 The department must provide electronic notice and opportunity for
4 comment to affected federally recognized tribal governments
5 concurrently when providing notice to applicants under RCW 90.03.265
6 and sections 5 and 12 of this act.

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

9 (1) The department shall establish and maintain a list of certified
10 water right examiners. Certified water right examiners on the list are
11 eligible to perform final proof examinations of permitted water uses
12 leading to the issuance of a water right certificate under RCW
13 90.03.330. The list must be updated annually and must be made
14 available to the public through written and electronic media.

15 (2) In order to qualify, an individual must be registered in
16 Washington as a professional engineer, professional land surveyor, or
17 registered hydrogeologist, or an individual must demonstrate at least
18 five years of applicable experience to the department, or be a board
19 member of a water conservancy board. Qualified individuals must also
20 pass a written examination prior to being certified by the department.
21 Such an examination must be administered by either the department or an
22 entity formally approved by the department. Each certified water right
23 examiner must demonstrate knowledge and competency regarding:

- 24 (a) Water law in the state of Washington;
25 (b) Measurement of the flow of water through open channels and
26 enclosed pipes;
27 (c) Water use and water level reporting;
28 (d) Estimation of the capacity of reservoirs and ponds;
29 (e) Irrigation crop water requirements;
30 (f) Aerial photo interpretation;
31 (g) Legal descriptions of land parcels;
32 (h) Location of land and water infrastructure through the use of
33 maps and global positioning;
34 (i) Proper construction and sealing of well bores; and
35 (j) Other topics related to the preparation and certification of
36 water rights in Washington state.

1 (3) Except as provided in subsection (9) of this section, upon
2 completion of a water appropriation and putting water to beneficial
3 use, in order to receive a final water right certificate, the permit
4 holder must secure the services of a certified water right examiner who
5 has been tested and certified by the department. The examiner shall
6 carry out a final examination of the project to verify its completion
7 and to determine and document for the permit holder and the department
8 the amount of water that has been appropriated for beneficial use, the
9 location of diversion or withdrawal and conveyance facilities, and the
10 actual place of use. The examiner shall take measurements or make
11 estimates of the maximum diversion or withdrawal, the capacity of water
12 storage facilities, the acreage irrigated, the type and number of
13 residences served, the type and number of stock watered, and other
14 information relevant to making a final determination of the amount of
15 water beneficially used. The examiner shall make photographs of the
16 facilities to document the use or uses of water and the photographs
17 must be submitted with the examiner's report to the department. The
18 department shall specify the format and required content of the reports
19 and may provide a form for that purpose.

20 (4) The department may suspend or revoke a certification based on
21 poor performance, malfeasance, failure to acquire continuing education
22 credits, or excessive complaints from the examiner's customers. The
23 department may require the retesting of an examiner. The department
24 may interview any examiner to determine whether the person is qualified
25 for this work. The department shall spot-check the work of examiners
26 to ensure that the public is being competently served. Any person
27 aggrieved by an order of the department including the granting, denial,
28 revocation, or suspension of a certificate issued by the department
29 under this chapter may appeal pursuant to chapter 43.21B RCW.

30 (5) The decision regarding whether to issue a final water right
31 certificate is solely the responsibility and function of the
32 department.

33 (6) The department shall make its final decision under RCW
34 90.03.330 within sixty days of the date of receipt of the proof of
35 examination from the certified water right examiner, unless otherwise
36 requested by the applicant.

37 (7) Each certified water right examiner must complete eight hours
38 annually of qualifying continuing education in the water resources

1 field. The department shall determine and specify the qualifying
2 continuing education and shall inform examiners of the opportunities.
3 The department shall track whether examiners are current in their
4 continuing education and may suspend the certification of an examiner
5 who has not complied with the continuing education requirement.

6 (8) Each certified water right examiner must be bonded for at least
7 fifty thousand dollars.

8 (9) The department may waive the requirement to secure the services
9 of a certified water right examiner in situations in which the
10 department deems it unnecessary for purposes of issuing a certificate
11 of water right.

12 (10) The department shall establish and collect fees for the
13 examination, certification, and renewal of certification of water right
14 examiners. Revenue collected from these fees must be deposited into
15 the water rights processing account created in section 4 of this act.
16 Pursuant to RCW 43.135.055, the department is authorized to set fees
17 for examination, certification, and renewal of certification for water
18 right examiners.

19 (11) The department may adopt rules appropriate to carry out the
20 purposes of this section.

21 **Sec. 8.** RCW 90.14.065 and 1987 c 93 s 1 are each amended to read
22 as follows:

23 (1)(a) Any person or entity, or successor to such person or entity,
24 having a statement of claim on file with the water rights claims
25 registry (~~(on April 20, 1987,)~~) may submit to the department of ecology
26 for filing(~~(r)~~) an amendment to such a statement of claim if the
27 submitted amendment is based on:

28 ~~((1))~~ (i) An error in estimation of the quantity of the
29 applicant's water claim prescribed in RCW 90.14.051 if the applicant
30 provides reasons for the failure to claim such right in the original
31 claim;

32 ~~((2))~~ (ii) A change in circumstances not foreseeable at the time
33 the original claim was filed, if such change in circumstances relates
34 only to the manner of transportation or diversion of the water and not
35 to the use or quantity of such water; or

36 ~~((3))~~ (iii) The amendment is ministerial in nature.

1 **(b)** The department shall accept any such submission and file the
2 same in the registry unless the department by written determination
3 concludes that the requirements of (a)(i), (ii), or (iii) of this
4 subsection ~~((1), (2), or (3) of this section)~~ have not been
5 satisfied.

6 **(2)** In addition to subsection (1) of this section, a surface water
7 right claim may be changed or transferred in the same manner as a
8 permit or certificate under RCW 90.03.380, and a water right claim for
9 groundwater may be changed or transferred as provided under RCW
10 90.03.380 and 90.44.100.

11 **(3)** Any person aggrieved by a determination of the department may
12 obtain a review thereof by filing a petition for review with the
13 pollution control hearings board within thirty days of the date of the
14 determination by the department. The provisions of RCW 90.14.081 shall
15 apply to any amendment filed or approved under this section.

16 **Sec. 9.** RCW 90.44.100 and 2009 c 183 s 16 are each amended to read
17 as follows:

18 (1) After an application to, and upon the issuance by the
19 department of an amendment to the appropriate permit or certificate of
20 groundwater right, the holder of a valid right to withdraw public
21 groundwaters may, without losing the holder's priority of right,
22 construct wells or other means of withdrawal at a new location in
23 substitution for or in addition to those at the original location, or
24 the holder may change the manner or the place of use of the water.

25 (2) An amendment to construct replacement or a new additional well
26 or wells at a location outside of the location of the original well or
27 wells or to change the manner or place of use of the water shall be
28 issued only after publication of notice of the application and findings
29 as prescribed in the case of an original application. Such amendment
30 shall be issued by the department only on the conditions that: (a) The
31 additional or replacement well or wells shall tap the same body of
32 public groundwater as the original well or wells; (b) where a
33 replacement well or wells is approved, the use of the original well or
34 wells shall be discontinued and the original well or wells shall be
35 properly decommissioned as required under chapter 18.104 RCW; (c) where
36 an additional well or wells is constructed, the original well or wells
37 may continue to be used, but the combined total withdrawal from the

1 original and additional well or wells shall not enlarge the right
2 conveyed by the original permit or certificate; and (d) other existing
3 rights shall not be impaired. The department may specify an approved
4 manner of construction and shall require a showing of compliance with
5 the terms of the amendment, as provided in RCW 90.44.080 in the case of
6 an original permit.

7 (3) The construction of a replacement or new additional well or
8 wells at the location of the original well or wells shall be allowed
9 without application to the department for an amendment. However, the
10 following apply to such a replacement or new additional well: (a) The
11 well shall tap the same body of public groundwater as the original well
12 or wells; (b) if a replacement well is constructed, the use of the
13 original well or wells shall be discontinued and the original well or
14 wells shall be properly decommissioned as required under chapter 18.104
15 RCW; (c) if a new additional well is constructed, the original well or
16 wells may continue to be used, but the combined total withdrawal from
17 the original and additional well or wells shall not enlarge the right
18 conveyed by the original water use permit or certificate; (d) the
19 construction and use of the well shall not interfere with or impair
20 water rights with an earlier date of priority than the water right or
21 rights for the original well or wells; (e) the replacement or
22 additional well shall be located no closer than the original well to a
23 well it might interfere with; (f) the department may specify an
24 approved manner of construction of the well; and (g) the department
25 shall require a showing of compliance with the conditions of this
26 subsection (3).

27 (4) As used in this section, the "location of the original well or
28 wells" of a water right permit or certificate is the area described as
29 the point of withdrawal in the original public notice published for the
30 application for the water right for the well. The location of the
31 original well or wells of a water right claim filed under chapter 90.14
32 RCW is the area located within a one-quarter mile radius of the current
33 well or wells.

34 (5) The development and use of a small irrigation impoundment, as
35 defined in RCW 90.03.370(8), does not constitute a change or amendment
36 for the purposes of this section. The exemption expressly provided by
37 this subsection shall not be construed as requiring an amendment of any

1 existing water right to enable the holder of the right to store water
2 governed by the right.

3 (6) This section does not apply to a water right involved in an
4 approved local water plan created under RCW 90.92.090 or a banked water
5 right under RCW 90.92.070.

6 **Sec. 10.** RCW 90.44.100 and 2003 c 329 s 3 are each amended to read
7 as follows:

8 (1) After an application to, and upon the issuance by the
9 department of an amendment to the appropriate permit or certificate of
10 groundwater right, the holder of a valid right to withdraw public
11 groundwaters may, without losing the holder's priority of right,
12 construct wells or other means of withdrawal at a new location in
13 substitution for or in addition to those at the original location, or
14 the holder may change the manner or the place of use of the water.

15 (2) An amendment to construct replacement or a new additional well
16 or wells at a location outside of the location of the original well or
17 wells or to change the manner or place of use of the water shall be
18 issued only after publication of notice of the application and findings
19 as prescribed in the case of an original application. Such amendment
20 shall be issued by the department only on the conditions that: (a) The
21 additional or replacement well or wells shall tap the same body of
22 public groundwater as the original well or wells; (b) where a
23 replacement well or wells is approved, the use of the original well or
24 wells shall be discontinued and the original well or wells shall be
25 properly decommissioned as required under chapter 18.104 RCW; (c) where
26 an additional well or wells is constructed, the original well or wells
27 may continue to be used, but the combined total withdrawal from the
28 original and additional well or wells shall not enlarge the right
29 conveyed by the original permit or certificate; and (d) other existing
30 rights shall not be impaired. The department may specify an approved
31 manner of construction and shall require a showing of compliance with
32 the terms of the amendment, as provided in RCW 90.44.080 in the case of
33 an original permit.

34 (3) The construction of a replacement or new additional well or
35 wells at the location of the original well or wells shall be allowed
36 without application to the department for an amendment. However, the
37 following apply to such a replacement or new additional well: (a) The

1 well shall tap the same body of public groundwater as the original well
2 or wells; (b) if a replacement well is constructed, the use of the
3 original well or wells shall be discontinued and the original well or
4 wells shall be properly decommissioned as required under chapter 18.104
5 RCW; (c) if a new additional well is constructed, the original well or
6 wells may continue to be used, but the combined total withdrawal from
7 the original and additional well or wells shall not enlarge the right
8 conveyed by the original water use permit or certificate; (d) the
9 construction and use of the well shall not interfere with or impair
10 water rights with an earlier date of priority than the water right or
11 rights for the original well or wells; (e) the replacement or
12 additional well shall be located no closer than the original well to a
13 well it might interfere with; (f) the department may specify an
14 approved manner of construction of the well; and (g) the department
15 shall require a showing of compliance with the conditions of this
16 subsection (3).

17 (4) As used in this section, the "location of the original well or
18 wells" of a water right permit or certificate is the area described as
19 the point of withdrawal in the original public notice published for the
20 application for the water right for the well. The location of the
21 original well or wells of a water right claim filed under chapter 90.14
22 RCW is the area located within a one-quarter mile radius of the current
23 well or wells.

24 (5) The development and use of a small irrigation impoundment, as
25 defined in RCW 90.03.370(8), does not constitute a change or amendment
26 for the purposes of this section. The exemption expressly provided by
27 this subsection shall not be construed as requiring an amendment of any
28 existing water right to enable the holder of the right to store water
29 governed by the right.

30 NEW SECTION. Sec. 11. A new section is added to chapter 90.44 RCW
31 to read as follows:

32 Applications to appropriate groundwater under a cost-reimbursement
33 agreement must be processed in accordance with RCW 90.03.265 when an
34 applicant requests the assignment of a cost-reimbursement consultant as
35 provided in RCW 43.21A.690.

1 NEW SECTION. **Sec. 12.** A new section is added to chapter 90.44 RCW
2 to read as follows:

3 (1) The department may expedite processing of applications within
4 the same source of water on its own volition when there is interest
5 from a sufficient number of applicants or upon receipt of written
6 requests from at least ten percent of the applicants within the same
7 source of water.

8 (2) If the conditions of subsection (1) of this section have been
9 met and the department determines that the public interest is best
10 served by expediting applications within a water source, the department
11 must notify in writing all persons who have pending applications on
12 file for a new appropriation, change, transfer, or amendment of a water
13 right from that water source. A water source may include surface water
14 only, groundwater only, or surface and groundwater together if the
15 department determines that they are hydraulically connected. The
16 notice must be made by way of mail and by publication in a newspaper of
17 general circulation in the area where affected properties are located.
18 The notice must:

19 (a) Inform those applicants that expedited processing of
20 applications with the described water source is being initiated;

21 (b) Provide to individual applicants the criteria under which the
22 applications will be examined and determined;

23 (c) Provide to individual applicants the estimated cost for having
24 an application processed on an expedited basis;

25 (d) Provide an estimate of how long the expedited process will take
26 before an application is approved or denied; and

27 (e) Provide at least sixty days for the applicants to respond in
28 writing regarding the applicant's decision to participate in expedited
29 processing of their applications.

30 (3) In addition to the application fees provided in RCW 90.03.470,
31 the department must recover the full cost of processing all the
32 applications from applicants who elect to participate within the water
33 source through expedited processing fees. The department must
34 calculate an expedited processing fee based primarily on the
35 proportionate quantity of water requested by each applicant and may
36 adjust the fee if it appears that the application will require a
37 disproportionately greater amount of time and effort to process due to
38 its complexity. Any application fees that were paid by the applicant

1 under RCW 90.03.470 must be credited against the applicant's share of
2 the cost of processing applications under the provisions of this
3 section.

4 (4) The expedited processing fee must be collected by the
5 department prior to the expedited processing of an application. An
6 applicant who has stated in writing that he or she wants his or her
7 application processed using the expedited procedures in this section
8 must transmit the processing fee within sixty days of the written
9 request. Failure to do so will result in the applicant not being
10 included in expedited processing for that water source.

11 (5) If an applicant elects not to participate in expedited
12 processing, the application remains on file with the department, the
13 applicant retains his or her priority date, and the application may be
14 processed in the future through regular processing, expedited
15 processing, coordinated cost-reimbursement processing, or cost-
16 reimbursement. Such an application may not be processed through
17 expedited processing within twelve months after the department's
18 issuance of decisions on participating applications at the conclusion
19 of expedited processing unless the applicant agrees to pay the full
20 proportionate share that would otherwise have been paid during such
21 processing. Any proceeds collected from an applicant under this
22 delayed entry into expedited processing may be used to reimburse the
23 other applicants who participated in the previous expedited processing
24 of applications.

25 NEW SECTION. **Sec. 13.** Section 9 of this act expires June 30,
26 2019.

27 NEW SECTION. **Sec. 14.** Section 10 of this act takes effect June
28 30, 2019.

29 NEW SECTION. **Sec. 15.** If any provision of this act or its
30 application to any person or circumstance is held invalid, the
31 remainder of the act or the application of the provision to other
32 persons or circumstances is not affected.

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