
HOUSE BILL 1610

State of Washington

62nd Legislature

2011 Regular Session

By Representatives Blake and Chandler; by request of Department of Ecology

Read first time 01/26/11. Referred to Committee on Agriculture & Natural Resources.

1 AN ACT Relating to the management of water resources; amending RCW
2 90.03.255, 90.44.055, 90.44.050, 90.14.140, 90.14.160, 90.14.170,
3 90.14.180, 90.03.380, 90.03.380, 90.44.100, 90.44.100, 90.82.040,
4 90.82.043, 90.82.060, 90.82.060, and 90.03.470; reenacting and amending
5 RCW 90.14.140; adding new sections to chapter 90.03 RCW; adding a new
6 section to chapter 90.54 RCW; creating new sections; repealing RCW
7 90.14.240; prescribing penalties; providing an effective date; and
8 providing an expiration date.

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

10 **PART 1**

11 **INTENT**

12 NEW SECTION. **Sec. 101.** (1) The legislature finds that continued
13 population growth will increase competition for water among municipal,
14 industrial, agricultural, and instream water interests in the state.
15 The competition for water will also be intensified by the coming
16 challenges of climate change that will reduce the capacity of the
17 state's natural snowpack and groundwater resources to recharge and
18 sustain stream base flows and lake levels. The legislature therefore

1 intends to promote active water management that protects and restores
2 sustainable water supplies for our communities, farms, and ecosystems.
3 Active water management means ensuring that current water supplies are
4 used efficiently, collecting data and assessing water availability,
5 investing in development of new water supplies, and working with local
6 partners to implement watershed plans and actions.

7 (2) The legislature finds that an adequate scientific foundation is
8 necessary to support sound water resources management by characterizing
9 how much water a water source has now and will have in the future, as
10 well as how much water is being used now and will be needed in the
11 future under projected climatic and development trends. The
12 legislature therefore intends to promote water supply assessments as a
13 foundational and science-based extension of current watershed planning
14 and implementation efforts to project future water supply needs and
15 availability, to develop surface and groundwater supply solutions, and
16 to inform coordinated water supply and land use decisions that serve
17 the economic and environmental water needs of present and future
18 generations.

19 (3) The legislature finds that certainty and clarity in water
20 rights administration is crucial for the economic and environmental
21 vitality of the state, but that current statutory authorities for
22 managing water create unnecessary administrative costs and
23 inefficiencies and impede effective conservation of scarce water
24 resources. The legislature therefore intends to reform current
25 statutory provisions to promote administrative efficiencies and active
26 water management that will be needed to help the state and its water
27 users prepare for coming water resource challenges due to population
28 growth and climate change.

29 (4) The legislature finds that processing water rights involves
30 conferring a significant private right to use a public resource upon
31 applicants and that applicants pay approximately two percent of state
32 water right application processing costs. The legislature therefore
33 intends to authorize new cost recovery mechanisms through which the
34 beneficiaries of this process pay for the costs of processing their
35 applications.

36 (5) The legislature finds that the state general fund pays for
37 approximately eighty-five percent of the department of ecology's costs
38 for water resource management services provided by the water resources

1 program as a whole. The legislature therefore intends to direct the
2 department of ecology to recommend ways to make the state's water
3 resource management program financially self-sufficient.

4 **PART 2**

5 **MITIGATION AND CONSERVATION**

6 **Sec. 201.** RCW 90.03.255 and 1997 c 360 s 2 are each amended to
7 read as follows:

8 (1) The department shall, when evaluating an application for a
9 water right, transfer, or change filed pursuant to RCW 90.03.250 or
10 90.03.380 that includes provision for (~~any water impoundment or other~~
11 ~~resource management technique~~) mitigation of impacts through new or
12 existing storage or other infrastructure, operations, or institutional
13 arrangements, take into consideration the benefits and costs, including
14 environmental effects, of any (~~water impoundment or other resource~~
15 ~~management~~) mitigation technique that is included as a component of
16 the application. The department's consideration shall extend to any
17 increased water supply that results from (~~the impoundment or other~~
18 ~~resource management~~) a mitigation technique, including but not limited
19 to any recharge of groundwater that may occur or water banking activity
20 under chapters 90.42 and 90.38 RCW, as a means of making water
21 available or otherwise offsetting the impact of the diversion of
22 surface water proposed in the application for the water right,
23 transfer, or change. Provision for (~~an impoundment or other resource~~
24 ~~management technique~~) mitigation of impacts in an application shall be
25 made solely at the discretion of the applicant and shall not otherwise
26 be made by the department as a condition for approving an application
27 that does not include such provision, unless the department has first
28 adopted a rule closing the source to new appropriations or a rule
29 establishing instream flows that apply to the source. If the
30 department has adopted such closure or instream flow rules and it has
31 published guidance as provided in subsection (2) of this section, then
32 the department may reject an application for lack of completeness if it
33 is not accompanied by a mitigation plan.

34 (2) The department may publish guidance on its web site to inform
35 applicants of mitigation strategies, techniques, and institutional
36 arrangements that, where feasible, would ensure that, if the

1 application were granted, the effects of the new diversion or
2 withdrawal would not impair any senior water right or adopted instream
3 flow, or negatively affect any closed water source.

4 (3) This section does not lessen, enlarge, or modify the rights of
5 any riparian owner, or any existing water right acquired by
6 appropriation or otherwise.

7 **Sec. 202.** RCW 90.44.055 and 1997 c 360 s 3 are each amended to
8 read as follows:

9 (1) The department shall, when evaluating an application for a
10 water right or an amendment filed pursuant to RCW 90.44.050 or
11 90.44.100 that includes provision for (~~any water impoundment or other~~
12 ~~resource management technique~~) mitigation of impacts through new or
13 existing storage or other infrastructure, operations, or institutional
14 arrangements, take into consideration the benefits and costs, including
15 environmental effects, of any (~~water impoundment or other resource~~
16 ~~management~~) mitigation technique that is included as a component of
17 the application. The department's consideration shall extend to any
18 increased water supply that results from the impoundment or other
19 resource management technique, including but not limited to any
20 recharge of groundwater that may occur or water banking activity under
21 chapters 90.42 and 90.38 RCW, as a means of making water available or
22 otherwise offsetting the impact of the withdrawal of groundwater
23 proposed in the application for the water right or amendment in the
24 same water resource inventory area. Provision for (~~an impoundment or~~
25 ~~other resource management technique~~) mitigation of impacts in an
26 application shall be made solely at the discretion of the applicant and
27 shall not be made by the department as a condition for approving an
28 application that does not include such provision, unless the department
29 has first adopted a rule closing the source to new appropriations or
30 has first adopted rules establishing instream flows that apply to the
31 source. If the department has adopted such closure or instream flow
32 rules and it has published guidance as provided in subsection (2) of
33 this section, then the department may reject an application for lack of
34 completeness if it is not accompanied by a mitigation plan.

35 (2) The department may publish guidance on its web site to inform
36 applicants of mitigation strategies, techniques, and institutional
37 arrangements that, where feasible, would ensure that, if the

1 application were granted, the effects of the new diversion or
2 withdrawal would not impair any senior water right or adopted instream
3 flow, or negatively affect any closed water source.

4 (3) This section does not lessen, enlarge, or modify the rights of
5 any riparian owner, or any existing water right acquired by
6 appropriation or otherwise.

7 **Sec. 203.** RCW 90.44.050 and 2003 c 307 s 1 are each amended to
8 read as follows:

9 (1) After June 6, 1945, no withdrawal of public groundwaters of the
10 state shall be begun, nor shall any well or other works for such
11 withdrawal be constructed, unless an application to appropriate such
12 waters has been made to the department and a permit has been granted by
13 it as herein provided: EXCEPT, HOWEVER, That any withdrawal of public
14 groundwaters for stock-watering purposes, or for the watering of a lawn
15 or of a noncommercial garden not exceeding one-half acre in area, or
16 for single or group domestic uses in an amount not exceeding five
17 thousand gallons a day, or as provided in RCW 90.44.052, or for an
18 industrial purpose in an amount not exceeding five thousand gallons a
19 day, is and shall be exempt from the provisions of this section, but,
20 to the extent that it is regularly used beneficially, shall be entitled
21 to a right equal to that established by a permit issued under the
22 provisions of this chapter: PROVIDED, HOWEVER, That the department
23 from time to time may require the person or agency making any such
24 small withdrawal to furnish information as to the means for and the
25 quantity of that withdrawal: PROVIDED, FURTHER, That at the option of
26 the party making withdrawals of groundwaters of the state not exceeding
27 five thousand gallons per day, applications under this section or
28 declarations under RCW 90.44.090 may be filed and permits and
29 certificates obtained in the same manner and under the same
30 requirements as is in this chapter provided in the case of withdrawals
31 in excess of five thousand gallons a day.

32 (2) The department may by rule establish quantity and acreage
33 limits for new uses of water that are lower than those provided in
34 subsection (1) of this section. The rules, which may include rules
35 adopted under RCW 90.54.050, must be specific to a watershed or aquifer
36 that the department believes is at or close to being fully appropriated

1 and that lower limits on new uses of groundwater are needed in the
2 interest of conservation and stretching the beneficial use of remaining
3 waters as far as possible.

4 **PART 3**

5 **REVIEW PROCESS**

6 NEW SECTION. **Sec. 301.** A new section is added to chapter 90.03
7 RCW to read as follows:

8 (1) The department may tentatively determine the extent, validity,
9 and priority of respective rights to the use of water for purposes of
10 protecting senior water rights from impairment by junior water rights,
11 or when necessary for effective water management, or when a question
12 arises among competing water users whether any of them is using water
13 in excess of the amount to which the user of the water is lawfully
14 entitled.

15 (2) Except as provided in subsection (3) of this section, such a
16 tentative determination is binding among the water users whose rights
17 are determined until such time as a partial or final decree is entered
18 in a general adjudication, which includes rights to the uses determined
19 by the department pursuant to this section, but is not binding on any
20 water user whose rights were not determined by the department. A water
21 master may rely on such a determination in dividing, regulating, and
22 controlling the use of water pursuant to RCW 90.03.070.

23 (3) Any person aggrieved by department actions under this section
24 may appeal the decision to the pollution control hearings board under
25 chapter 43.21B RCW.

26 NEW SECTION. **Sec. 302.** A new section is added to chapter 90.03
27 RCW to read as follows:

28 (1) In making a determination of the extent and validity of a water
29 right under this chapter and chapters 90.14, 90.38, 90.42, and 90.44
30 RCW, the department shall only evaluate the exercise of the water right
31 during the most recent thirty-year period prior to the commencement of
32 the department's determination at issue.

33 (2) For the purposes of appeal, department determinations under
34 this section do not alone constitute an agency action. Aggrieved

1 parties must appeal the primary action of the department under which
2 the evaluation under this section applies.

3 (3) Notwithstanding subsection (1) of this section, water right
4 determinations during a general adjudication, under RCW 90.03.110
5 through 90.03.245 and 90.03.620 through 90.03.645, are not limited to
6 a thirty-year period of review.

7 (4) Nothing in this section limits a superior court's authority in
8 determining the extent and validity of a water right.

9 **PART 4**
10 **RELINQUISHMENT**

11 **Sec. 401.** RCW 90.14.140 and 2009 c 183 s 14 are each amended to
12 read as follows:

13 (1) (~~For the purposes of RCW 90.14.130 through 90.14.180,~~
14 ~~"sufficient cause" shall be defined as the nonuse of all or a portion~~
15 ~~of the water by the owner of a water right for a period of five or more~~
16 ~~consecutive years where such nonuse occurs as a result of~~) Beneficial
17 use is the basis, the measure, and the limit of all rights to the use
18 of water in this state. Notwithstanding any other provisions of RCW
19 90.14.130 through 90.14.180, there shall be no relinquishment of any
20 water right as a result of nonuse when the nonuse occurs due to the
21 following:

22 (a) Drought, or other unavailability of water;

23 (b) Active service in the armed forces of the United States during
24 military crisis;

25 (c) Nonvoluntary service in the armed forces of the United States;

26 (d) The operation of legal proceedings;

27 (e) Federal or state agency leases of or options to purchase lands
28 or water rights which preclude or reduce the use of the right by the
29 owner of the water right;

30 (f) Federal laws imposing land or water use restrictions either
31 directly or through the voluntary enrollment of a landowner in a
32 federal program implementing those laws, or acreage limitations, or
33 production quotas;

34 (g) Temporarily reduced water need for irrigation use where such
35 reduction is due to varying weather conditions, including but not
36 limited to precipitation and temperature, that warranted the reduction

1 in water use, so long as the water user's diversion and delivery
2 facilities are maintained in good operating condition consistent with
3 beneficial use of the full amount of the water right;

4 (h) Temporarily reduced diversions or withdrawals of irrigation
5 water directly resulting from the provisions of a contract or similar
6 agreement in which a supplier of electricity buys back electricity from
7 the water right holder and the electricity is needed for the diversion
8 or withdrawal or for the use of the water diverted or withdrawn for
9 irrigation purposes;

10 (i) Water conservation measures implemented under the Yakima river
11 basin water enhancement project, so long as the conserved water is
12 reallocated in accordance with the provisions of P.L. 103-434;

13 (j) Reliance by an irrigation water user on the transitory presence
14 of return flows in lieu of diversion or withdrawal of water from the
15 primary source of supply, if such return flows are measured or reliably
16 estimated using a scientific methodology generally accepted as reliable
17 within the scientific community; ((~~or~~))

18 (k) The reduced use of irrigation water resulting from crop
19 rotation. For purposes of this subsection, crop rotation means the
20 temporary change in the type of crops grown resulting from the exercise
21 of generally recognized sound farming practices. Unused water
22 resulting from crop rotation will not be relinquished if the remaining
23 portion of the water continues to be beneficially used(~~(-~~

24 ~~(2) Notwithstanding any other provisions of RCW 90.14.130 through~~
25 ~~90.14.180, there shall be no relinquishment of any water right:~~

26 ~~(a) If such));~~

27 (1) The right is claimed for power development purposes under
28 chapter 90.16 RCW and annual license fees are paid in accordance with
29 chapter 90.16 RCW;

30 ~~((b) If such))~~ (m) The right is used for a standby or reserve
31 water supply to be used in time of drought or other low flow period so
32 long as withdrawal or diversion facilities are maintained in good
33 operating condition for the use of such reserve or standby water
34 supply;

35 ~~((c) If such))~~ (n) The right is claimed for a determined future
36 development to take place either within fifteen years of July 1, 1967,
37 or the most recent beneficial use of the water right, whichever date is
38 later;

1 ~~((d) If such))~~ (o) The right is claimed for municipal water supply
2 purposes under chapter 90.03 RCW;

3 ~~((e) If such waters are))~~ (p) A water source is not subject to
4 appropriation under the applicable provisions of RCW 90.40.030;

5 ~~((f) If such))~~ (q) The right or portion of the right is leased to
6 another person for use on land other than the land to which the right
7 is appurtenant as long as the lessee makes beneficial use of the right
8 in accordance with this chapter and a transfer or change of the right
9 has been approved by the department in accordance with RCW 90.03.380,
10 90.03.383, 90.03.390, or 90.44.100;

11 ~~((g) If such a))~~ (r) The right or portion of the right is
12 authorized for a purpose that is satisfied by the use of agricultural
13 industrial process water as authorized under RCW 90.46.150;

14 ~~((h) If such))~~ (s) The right is a trust water right under chapter
15 90.38 or 90.42 RCW;

16 ~~((i) If such a))~~ (t) The right is involved in an approved local
17 water plan created under RCW 90.92.090, provided the right is subject
18 to an agreement not to divert under RCW 90.92.050, or provided the
19 right is banked under RCW 90.92.070; or

20 (u) If such a right is a perfected and developed water right used
21 for an agricultural irrigation purpose and as long as:

22 (i) The water user's diversion and delivery facilities are
23 maintained in good operating condition consistent with the full
24 beneficial use of the right;

25 (ii) Each part of the authorized acreage is irrigated for
26 beneficial use at least once every five years and is nonwasteful; and

27 (iii) The actual use of water on a unit basis is less than one
28 hundred ten percent the annual crop requirement for the most water
29 intensive crop normally grown in the area.

30 ~~((3))~~ (2) In adding provisions to this section by chapter 237,
31 Laws of 2001, the legislature does not intend to imply legislative
32 approval or disapproval of any existing administrative policy
33 regarding, or any existing administrative or judicial interpretation
34 of, the provisions of this section not expressly added or revised.

35 **Sec. 402.** RCW 90.14.140 and 2001 c 240 s 1, 2001 c 237 s 27, and
36 2001 c 69 s 5 are each reenacted and amended to read as follows:

37 (1) ~~((For the purposes of RCW 90.14.130 through 90.14.180,~~

1 ~~"sufficient cause" shall be defined as the nonuse of all or a portion~~
2 ~~of the water by the owner of a water right for a period of five or more~~
3 ~~consecutive years where such nonuse occurs as a result of)) Beneficial~~
4 ~~use is the basis, the measure, and the limit of all rights to the use~~
5 ~~of water in this state. Notwithstanding any other provisions of RCW~~
6 ~~90.14.130 through 90.14.180, there shall be no relinquishment of any~~
7 ~~water right as a result of nonuse when the nonuse occurs due to any of~~
8 ~~the following:~~

9 (a) Drought, or other unavailability of water;

10 (b) Active service in the armed forces of the United States during
11 military crisis;

12 (c) Nonvoluntary service in the armed forces of the United States;

13 (d) The operation of legal proceedings;

14 (e) Federal or state agency leases of or options to purchase lands
15 or water rights which preclude or reduce the use of the right by the
16 owner of the water right;

17 (f) Federal laws imposing land or water use restrictions either
18 directly or through the voluntary enrollment of a landowner in a
19 federal program implementing those laws, or acreage limitations, or
20 production quotas;

21 (g) Temporarily reduced water need for irrigation use where such
22 reduction is due to varying weather conditions, including but not
23 limited to precipitation and temperature, that warranted the reduction
24 in water use, so long as the water user's diversion and delivery
25 facilities are maintained in good operating condition consistent with
26 beneficial use of the full amount of the water right;

27 (h) Temporarily reduced diversions or withdrawals of irrigation
28 water directly resulting from the provisions of a contract or similar
29 agreement in which a supplier of electricity buys back electricity from
30 the water right holder and the electricity is needed for the diversion
31 or withdrawal or for the use of the water diverted or withdrawn for
32 irrigation purposes;

33 (i) Water conservation measures implemented under the Yakima river
34 basin water enhancement project, so long as the conserved water is
35 reallocated in accordance with the provisions of P.L. 103-434;

36 (j) Reliance by an irrigation water user on the transitory presence
37 of return flows in lieu of diversion or withdrawal of water from the

1 primary source of supply, if such return flows are measured or reliably
2 estimated using a scientific methodology generally accepted as reliable
3 within the scientific community; (~~or~~)

4 (k) The reduced use of irrigation water resulting from crop
5 rotation. For purposes of this subsection, crop rotation means the
6 temporary change in the type of crops grown resulting from the exercise
7 of generally recognized sound farming practices. Unused water
8 resulting from crop rotation will not be relinquished if the remaining
9 portion of the water continues to be beneficially used(~~or~~

10 ~~(2) Notwithstanding any other provisions of RCW 90.14.130 through~~
11 ~~90.14.180, there shall be no relinquishment of any water right:~~

12 ~~(a) If such);~~

13 (1) The right is claimed for power development purposes under
14 chapter 90.16 RCW and annual license fees are paid in accordance with
15 chapter 90.16 RCW;

16 ~~((b) If such))~~ (m) The right is used for a standby or reserve
17 water supply to be used in time of drought or other low flow period so
18 long as withdrawal or diversion facilities are maintained in good
19 operating condition for the use of such reserve or standby water
20 supply;

21 ~~((c) If such))~~ (n) The right is claimed for a determined future
22 development to take place either within fifteen years of July 1, 1967,
23 or the most recent beneficial use of the water right, whichever date is
24 later;

25 ~~((d) If such))~~ (o) The right is claimed for municipal water supply
26 purposes under chapter 90.03 RCW;

27 ~~((e) If such waters are))~~ (p) A water source is not subject to
28 appropriation under the applicable provisions of RCW 90.40.030;

29 ~~((f) If such))~~ (q) The right or portion of the right is leased to
30 another person for use on land other than the land to which the right
31 is appurtenant as long as the lessee makes beneficial use of the right
32 in accordance with this chapter and a transfer or change of the right
33 has been approved by the department in accordance with RCW 90.03.380,
34 90.03.383, 90.03.390, or 90.44.100;

35 ~~((g) If such a))~~ (r) The right or portion of the right is
36 authorized for a purpose that is satisfied by the use of agricultural
37 industrial process water as authorized under RCW 90.46.150; (~~or~~

1 ~~(h) If such~~) (s) The right is a trust water right under chapter
2 90.38 or 90.42 RCW; or

3 (t) The right is a perfected and developed water right used for an
4 agricultural irrigation purpose and as long as:

5 (i) The water user's diversion and delivery facilities are
6 maintained in good operating condition consistent with the full
7 beneficial use of the right;

8 (ii) Each part of the authorized acreage is irrigated for
9 beneficial use at least once every five years and is nonwasteful; and

10 (iii) The actual use of water on a unit basis is less than one
11 hundred ten percent the annual crop requirement for the most water
12 intensive crop normally grown in the area.

13 ~~((3))~~ (2) In adding provisions to this section by chapter 237,
14 Laws of 2001, the legislature does not intend to imply legislative
15 approval or disapproval of any existing administrative policy
16 regarding, or any existing administrative or judicial interpretation
17 of, the provisions of this section not expressly added or revised.

18 **Sec. 403.** RCW 90.14.160 and 1981 c 291 s 1 are each amended to
19 read as follows:

20 Any person entitled to divert or withdraw waters of the state
21 through any appropriation authorized by enactments of the legislature
22 prior to enactment of chapter 117, Laws of 1917, or by custom, or by
23 general adjudication, who abandons the same, or who voluntarily fails,
24 without sufficient ~~((cause))~~ exception under RCW 90.14.140, to
25 beneficially use all or any part of said right to divert or withdraw
26 for any period of five successive years after July 1, 1967, shall
27 relinquish such right or portion thereof, and said right or portion
28 thereof shall revert to the state, and the waters affected by said
29 right shall become available for appropriation in accordance with RCW
30 90.03.250.

31 **Sec. 404.** RCW 90.14.170 and 1967 c 233 s 17 are each amended to
32 read as follows:

33 Any person entitled to divert or withdraw waters of the state by
34 virtue of his ownership of land abutting a stream, lake, or
35 watercourse, who abandons the same, or who voluntarily fails, without
36 sufficient ~~((cause))~~ exception under RCW 90.14.140, to beneficially use

1 all or any part of said right to withdraw or divert said water for any
2 period of five successive years after July 1, 1967, shall relinquish
3 such right or portion thereof, and such right or portion thereof shall
4 revert to the state, and the waters affected by said right shall become
5 available for appropriation in accordance with the provisions of RCW
6 90.03.250.

7 **Sec. 405.** RCW 90.14.180 and 1987 c 109 s 101 are each amended to
8 read as follows:

9 Any person hereafter entitled to divert or withdraw waters of the
10 state through an appropriation authorized under RCW 90.03.330,
11 90.44.080, or 90.44.090 who abandons the same, or who voluntarily
12 fails, without sufficient ((~~cause~~)) exception under RCW 90.14.140, to
13 beneficially use all or any part of said right to withdraw for any
14 period of five successive years shall relinquish such right or portion
15 thereof, and such right or portion thereof shall revert to the state,
16 and the waters affected by said right shall become available for
17 appropriation in accordance with RCW 90.03.250. All certificates
18 hereafter issued by the department of ecology pursuant to RCW 90.03.330
19 shall expressly incorporate this section by reference.

20 **Sec. 406.** RCW 90.03.380 and 2009 c 183 s 15 are each amended to
21 read as follows:

22 (1) The right to the use of water which has been applied to a
23 beneficial use in the state shall be and remain appurtenant to the land
24 or place upon which the same is used: PROVIDED, HOWEVER, That the
25 right may be transferred to another or to others and become appurtenant
26 to any other land or place of use without loss of priority of right
27 theretofore established if such change can be made without detriment or
28 injury to existing rights. The point of diversion of water for
29 beneficial use or the purpose of use may be changed, if such change can
30 be made without detriment or injury to existing rights. A change in
31 the place of use, point of diversion, and/or purpose of use of a water
32 right to enable irrigation of additional acreage or the addition of new
33 uses may be permitted if such change results in no increase in the
34 annual consumptive quantity of water used under the water right. For
35 purposes of this section, "annual consumptive quantity" means the
36 estimated or actual annual amount of water diverted pursuant to the

1 water right, reduced by the estimated annual amount of return flows,
2 averaged over the two years of greatest use within the most recent
3 five-year period of continuous beneficial use of the water right.
4 Before any transfer of such right to use water or change of the point
5 of diversion of water or change of purpose of use can be made, any
6 person having an interest in the transfer or change, shall file a
7 written application therefor with the department, and the application
8 shall not be granted until notice of the application is published as
9 provided in RCW 90.03.280. If it shall appear that such transfer or
10 such change may be made without injury or detriment to existing rights,
11 the department shall issue to the applicant an authorization to
12 implement the change together with any conditions that may be required
13 to avoid injury or detriment to another water right. Upon the
14 applicant's showing that the change or transfer has been implemented,
15 the department shall issue a certificate in duplicate granting the
16 right for such transfer or for such change of point of diversion or of
17 use. The certificate so issued shall be filed and be made a record
18 with the department and the duplicate certificate issued to the
19 applicant may be filed with the county auditor in like manner and with
20 the same effect as provided in the original certificate or permit to
21 divert water. The time period that the water right was banked under
22 RCW 90.92.070, in an approved local water plan created under RCW
23 90.92.090, or the water right was subject to an agreement to not divert
24 under RCW 90.92.050 will not be included in the most recent five-year
25 period of continuous beneficial use for the purpose of determining the
26 annual consumptive quantity under this section. If the water right has
27 not been used during the previous five years but the nonuse of which
28 qualifies for one or more of the statutory (~~good causes or~~)
29 exceptions to relinquishment in RCW 90.14.140 and 90.44.520, the period
30 of nonuse is not included in the most recent five-year period of
31 continuous beneficial use for purposes of determining the annual
32 consumptive quantity of water under this section.

33 (2) The department's determination of the extent and validity of
34 water rights under this section shall be consistent with section 302 of
35 this act.

36 (3) The department may establish a reasonable schedule for
37 completion of necessary work to effect a change in the purpose, place,
38 or manner of use or for the construction of works to effect an

1 authorized change of point of diversion or withdrawal. Nonuse during
2 such a reasonable schedule is not subject to relinquishment provided
3 the project is pursued in accordance with RCW 90.03.320. Failure to
4 complete all or a portion of the change results in relinquishment of
5 the right unless otherwise excused under RCW 90.14.140.

6 (4) If an application for change proposes to transfer water rights
7 from one irrigation district to another, the department shall, before
8 publication of notice, receive concurrence from each of the irrigation
9 districts that such transfer or change will not adversely affect the
10 ability to deliver water to other landowners or impair the financial
11 integrity of either of the districts.

12 ((+3)) (5) A change in place of use by an individual water user or
13 users of water provided by an irrigation district need only receive
14 approval for the change from the board of directors of the district if
15 the use of water continues within the irrigation district, and when
16 water is provided by an irrigation entity that is a member of a board
17 of joint control created under chapter 87.80 RCW, approval need only be
18 received from the board of joint control if the use of water continues
19 within the area of jurisdiction of the joint board and the change can
20 be made without detriment or injury to existing rights.

21 ((+4)) (6) This section shall not apply to trust water rights
22 acquired by the state through the funding of water conservation
23 projects under chapter 90.38 RCW or RCW 90.42.010 through 90.42.070.

24 ((+5)) (7)(a) Pending applications for new water rights are not
25 entitled to protection from impairment, injury, or detriment when an
26 application relating to an existing surface or ground water right is
27 considered.

28 (b) Applications relating to existing surface or ground water
29 rights may be processed and decisions on them rendered independently of
30 processing and rendering decisions on pending applications for new
31 water rights within the same source of supply without regard to the
32 date of filing of the pending applications for new water rights.

33 (c) Notwithstanding any other existing authority to process
34 applications, including but not limited to the authority to process
35 applications under WAC 173-152-050 as it existed on January 1, 2001, an
36 application relating to an existing surface or ground water right may
37 be processed ahead of a previously filed application relating to an
38 existing right when sufficient information for a decision on the

1 previously filed application is not available and the applicant for the
2 previously filed application is sent written notice that explains what
3 information is not available and informs the applicant that processing
4 of the next application will begin. The previously filed application
5 does not lose its priority date and if the information is provided by
6 the applicant within sixty days, the previously filed application shall
7 be processed at that time. This subsection ~~((+5+))~~ (7)(c) does not
8 affect any other existing authority to process applications.

9 (d) Nothing in this subsection ~~((+5+))~~ (7) is intended to stop the
10 processing of applications for new water rights.

11 ~~((+6+))~~ (8) No applicant for a change, transfer, or amendment of a
12 water right may be required to give up any part of the applicant's
13 valid water right or claim to a state agency, the trust water rights
14 program, or to other persons as a condition of processing the
15 application.

16 ~~((+7+))~~ (9) In revising the provisions of this section and adding
17 provisions to this section by chapter 237, Laws of 2001, the
18 legislature does not intend to imply legislative approval or
19 disapproval of any existing administrative policy regarding, or any
20 existing administrative or judicial interpretation of, the provisions
21 of this section not expressly added or revised.

22 ~~((+8+))~~ (10) The development and use of a small irrigation
23 impoundment, as defined in RCW 90.03.370(8), does not constitute a
24 change or amendment for the purposes of this section. The exemption
25 expressly provided by this subsection shall not be construed as
26 requiring a change or transfer of any existing water right to enable
27 the holder of the right to store water governed by the right.

28 ~~((+9+))~~ (11) This section does not apply to a water right involved
29 in an approved local water plan created under RCW 90.92.090, a water
30 right that is subject to an agreement not to divert under RCW
31 90.92.050, or a banked water right under RCW 90.92.070.

32 **Sec. 407.** RCW 90.03.380 and 2003 c 329 s 2 are each amended to
33 read as follows:

34 (1) The right to the use of water which has been applied to a
35 beneficial use in the state shall be and remain appurtenant to the land
36 or place upon which the same is used: PROVIDED, HOWEVER, That the
37 right may be transferred to another or to others and become appurtenant

1 to any other land or place of use without loss of priority of right
2 theretofore established if such change can be made without detriment or
3 injury to existing rights. The point of diversion of water for
4 beneficial use or the purpose of use may be changed, if such change can
5 be made without detriment or injury to existing rights. A change in
6 the place of use, point of diversion, and/or purpose of use of a water
7 right to enable irrigation of additional acreage or the addition of new
8 uses may be permitted if such change results in no increase in the
9 annual consumptive quantity of water used under the water right. For
10 purposes of this section, "annual consumptive quantity" means the
11 estimated or actual annual amount of water diverted pursuant to the
12 water right, reduced by the estimated annual amount of return flows,
13 averaged over the two years of greatest use within the most recent
14 five-year period of continuous beneficial use of the water right.
15 Before any transfer of such right to use water or change of the point
16 of diversion of water or change of purpose of use can be made, any
17 person having an interest in the transfer or change, shall file a
18 written application therefor with the department, and the application
19 shall not be granted until notice of the application is published as
20 provided in RCW 90.03.280. If it shall appear that such transfer or
21 such change may be made without injury or detriment to existing rights,
22 the department shall issue to the applicant an authorization to
23 implement the change together with any conditions that may be required
24 to avoid injury or detriment to another water right. Upon the
25 applicant's showing that the change or transfer has been implemented,
26 the department shall issue a certificate in duplicate granting the
27 right for such transfer or for such change of point of diversion or of
28 use. The certificate so issued shall be filed and be made a record
29 with the department and the duplicate certificate issued to the
30 applicant may be filed with the county auditor in like manner and with
31 the same effect as provided in the original certificate or permit to
32 divert water. If the water right has not been used during the previous
33 five years but the nonuse of which qualifies for one or more of the
34 statutory exceptions to relinquishment in RCW 90.14.140 and 90.44.520,
35 the period of nonuse is not included in the most recent five-year
36 period of continuous beneficial use for purposes of determining the
37 annual consumptive quantity of water under this section.

1 (2) The department's determination of the extent and validity of
2 water rights under this section shall be consistent with section 302 of
3 this act.

4 (3) The department may establish a reasonable schedule for
5 completion of necessary work to effect a change in the purpose, place,
6 or manner of use or for the construction of works to effect an
7 authorized change of point of diversion or withdrawal. Nonuse during
8 such a reasonable schedule is not subject to relinquishment provided
9 the project is pursued in accordance with RCW 90.03.320. Failure to
10 complete all or a portion of the change results in relinquishment of
11 the right unless otherwise excused under RCW 90.14.140.

12 (4) If an application for change proposes to transfer water rights
13 from one irrigation district to another, the department shall, before
14 publication of notice, receive concurrence from each of the irrigation
15 districts that such transfer or change will not adversely affect the
16 ability to deliver water to other landowners or impair the financial
17 integrity of either of the districts.

18 ~~((+3))~~ (5) A change in place of use by an individual water user or
19 users of water provided by an irrigation district need only receive
20 approval for the change from the board of directors of the district if
21 the use of water continues within the irrigation district, and when
22 water is provided by an irrigation entity that is a member of a board
23 of joint control created under chapter 87.80 RCW, approval need only be
24 received from the board of joint control if the use of water continues
25 within the area of jurisdiction of the joint board and the change can
26 be made without detriment or injury to existing rights.

27 ~~((+4))~~ (6) This section shall not apply to trust water rights
28 acquired by the state through the funding of water conservation
29 projects under chapter 90.38 RCW or RCW 90.42.010 through 90.42.070.

30 ~~((+5))~~ (7)(a) Pending applications for new water rights are not
31 entitled to protection from impairment, injury, or detriment when an
32 application relating to an existing surface or ground water right is
33 considered.

34 (b) Applications relating to existing surface or ground water
35 rights may be processed and decisions on them rendered independently of
36 processing and rendering decisions on pending applications for new
37 water rights within the same source of supply without regard to the
38 date of filing of the pending applications for new water rights.

1 (c) Notwithstanding any other existing authority to process
2 applications, including but not limited to the authority to process
3 applications under WAC 173-152-050 as it existed on January 1, 2001, an
4 application relating to an existing surface or ground water right may
5 be processed ahead of a previously filed application relating to an
6 existing right when sufficient information for a decision on the
7 previously filed application is not available and the applicant for the
8 previously filed application is sent written notice that explains what
9 information is not available and informs the applicant that processing
10 of the next application will begin. The previously filed application
11 does not lose its priority date and if the information is provided by
12 the applicant within sixty days, the previously filed application shall
13 be processed at that time. This subsection ~~((+5+))~~ (7)(c) does not
14 affect any other existing authority to process applications.

15 (d) Nothing in this subsection ~~((+5+))~~ (7) is intended to stop the
16 processing of applications for new water rights.

17 ~~((+6+))~~ (8) No applicant for a change, transfer, or amendment of a
18 water right may be required to give up any part of the applicant's
19 valid water right or claim to a state agency, the trust water rights
20 program, or to other persons as a condition of processing the
21 application.

22 ~~((+7+))~~ (9) In revising the provisions of this section and adding
23 provisions to this section by chapter 237, Laws of 2001, the
24 legislature does not intend to imply legislative approval or
25 disapproval of any existing administrative policy regarding, or any
26 existing administrative or judicial interpretation of, the provisions
27 of this section not expressly added or revised.

28 ~~((+8+))~~ (10) The development and use of a small irrigation
29 impoundment, as defined in RCW 90.03.370(8), does not constitute a
30 change or amendment for the purposes of this section. The exemption
31 expressly provided by this subsection shall not be construed as
32 requiring a change or transfer of any existing water right to enable
33 the holder of the right to store water governed by the right.

34 **Sec. 408.** RCW 90.44.100 and 2009 c 183 s 16 are each amended to
35 read as follows:

36 (1) After an application to, and upon the issuance by the
37 department of an amendment to the appropriate permit or certificate of

1 groundwater right, the holder of a valid right to withdraw public
2 groundwaters may, without losing the holder's priority of right,
3 construct wells or other means of withdrawal at a new location in
4 substitution for or in addition to those at the original location, or
5 the holder may change the manner or the place of use of the water.

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

25 (3) The construction of a replacement or new additional well or
26 wells at the location of the original well or wells shall be allowed
27 without application to the department for an amendment. However, the
28 following apply to such a replacement or new additional well: (a) The
29 well shall tap the same body of public groundwater as the original well
30 or wells; (b) if a replacement well is constructed, the use of the
31 original well or wells shall be discontinued and the original well or
32 wells shall be properly decommissioned as required under chapter 18.104
33 RCW; (c) if a new additional well is constructed, the original well or
34 wells may continue to be used, but the combined total withdrawal from
35 the original and additional well or wells shall not enlarge the right
36 conveyed by the original water use permit or certificate; (d) the
37 construction and use of the well shall not interfere with or impair
38 water rights with an earlier date of priority than the water right or

1 rights for the original well or wells; (e) the replacement or
2 additional well shall be located no closer than the original well to a
3 well it might interfere with; (f) the department may specify an
4 approved manner of construction of the well; and (g) the department
5 shall require a showing of compliance with the conditions of this
6 subsection (3).

7 (4) As used in this section, the "location of the original well or
8 wells" is the area described as the point of withdrawal in the original
9 public notice published for the application for the water right for the
10 well.

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

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

20 (7) The department's determination of the extent and validity of
21 water rights under this section must be consistent with section 302 of
22 this act.

23 **Sec. 409.** RCW 90.44.100 and 2003 c 329 s 3 are each amended to
24 read as follows:

25 (1) After an application to, and upon the issuance by the
26 department of an amendment to the appropriate permit or certificate of
27 groundwater right, the holder of a valid right to withdraw public
28 groundwaters may, without losing the holder's priority of right,
29 construct wells or other means of withdrawal at a new location in
30 substitution for or in addition to those at the original location, or
31 the holder may change the manner or the place of use of the water.

32 (2) An amendment to construct replacement or a new additional well
33 or wells at a location outside of the location of the original well or
34 wells or to change the manner or place of use of the water shall be
35 issued only after publication of notice of the application and findings
36 as prescribed in the case of an original application. Such amendment
37 shall be issued by the department only on the conditions that: (a) The

1 additional or replacement well or wells shall tap the same body of
2 public groundwater as the original well or wells; (b) where a
3 replacement well or wells is approved, the use of the original well or
4 wells shall be discontinued and the original well or wells shall be
5 properly decommissioned as required under chapter 18.104 RCW; (c) where
6 an additional well or wells is constructed, the original well or wells
7 may continue to be used, but the combined total withdrawal from the
8 original and additional well or wells shall not enlarge the right
9 conveyed by the original permit or certificate; and (d) other existing
10 rights shall not be impaired. The department may specify an approved
11 manner of construction and shall require a showing of compliance with
12 the terms of the amendment, as provided in RCW 90.44.080 in the case of
13 an original permit.

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

34 (4) As used in this section, the "location of the original well or
35 wells" is the area described as the point of withdrawal in the original
36 public notice published for the application for the water right for the
37 well.

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

7 (6) The department's determination of the extent and validity of
8 water rights under this section must be consistent with section 302 of
9 this act.

10 **PART 5**

11 **STREAM FLOW RESTORATION**

12 NEW SECTION. **Sec. 501.** A new section is added to chapter 90.54
13 RCW to read as follows:

14 After consulting with potentially affected tribal governments,
15 local governments, and stakeholders, the department may set, either by
16 order or rule, nonbinding achievable stream flow restoration benchmarks
17 and state the preferred, though not exclusive, means by which the
18 department and other parties may seek to achieve the benchmarks.

19 **PART 6**

20 **WATERSHED MANAGEMENT**

21 **Sec. 601.** RCW 90.82.040 and 2003 1st sp.s. c 4 s 2 are each
22 amended to read as follows:

23 (1) Once a WRIA planning unit has been initiated under RCW
24 90.82.060 and a lead agency has been designated, it shall notify the
25 department and may apply to the department for funding assistance for
26 conducting the planning and implementation. Funds shall be provided
27 from and to the extent of appropriations made by the legislature to the
28 department expressly for this purpose.

29 (2)(a) Each planning unit that has complied with subsection (1) of
30 this section is eligible to receive watershed planning grants in the
31 following amounts for the first three phases of watershed planning and
32 phase four watershed plan implementation:

33 (i) Initiating governments may apply for an initial organizing

1 grant of up to fifty thousand dollars for a single WRIA or up to
2 seventy-five thousand dollars for a multi-WRIA management area in
3 accordance with RCW 90.82.060(4);

4 (ii)(A) A planning unit may apply for up to two hundred thousand
5 dollars for each WRIA in the management area for conducting watershed
6 assessments in accordance with RCW 90.82.070, except that a planning
7 unit that chooses to conduct a detailed assessment or studies under
8 (a)(ii)(B) of this subsection or whose initiating governments choose or
9 have chosen to include an instream flow or water quality component in
10 accordance with RCW 90.82.080 or 90.82.090 may apply for up to one
11 hundred thousand additional dollars for each instream flow and up to
12 one hundred thousand additional dollars for each water quality
13 component included for each WRIA to conduct an assessment on that
14 optional component and for each WRIA in which the assessments or
15 studies under (a)(ii)(B) of this subsection are conducted.

16 (B) A planning unit may elect to apply for up to one hundred
17 thousand additional dollars to conduct a detailed assessment of
18 multipurpose water storage opportunities or for studies of specific
19 multipurpose storage projects which opportunities or projects are
20 consistent with and support the other elements of the planning unit's
21 watershed plan developed under this chapter; and

22 (iii) A planning unit may apply for up to two hundred fifty
23 thousand dollars for each WRIA in the management area for developing a
24 watershed plan and making recommendations for actions by local, state,
25 and federal agencies, tribes, private property owners, private
26 organizations, and individual citizens, including a recommended list of
27 strategies and projects that would further the purpose of the plan in
28 accordance with RCW 90.82.060 through 90.82.100.

29 (b) A planning unit may request a different amount for phase two or
30 phase three of watershed planning than is specified in (a) of this
31 subsection, provided that the total amount of funds awarded do not
32 exceed the maximum amount the planning unit is eligible for under (a)
33 of this subsection. The department shall approve such an alternative
34 allocation of funds if the planning unit identifies how the proposed
35 alternative will meet the goals of this chapter and provides a proposed
36 timeline for the completion of planning. However, the up to one
37 hundred thousand additional dollars in funding for instream flow and
38 water quality components and for water storage assessments or studies

1 that a planning unit may apply for under (a)(ii)(A) and (B) of this
2 subsection may be used only for those instream flow, water quality, and
3 water storage purposes.

4 (c) (~~By December 1, 2001, or~~) Within one year of initiating phase
5 one of watershed planning, (~~whichever occurs later,~~) the initiating
6 governments for each planning unit must inform the department whether
7 they intend to have the planning unit establish or amend instream flows
8 as part of its planning process. If they elect to have the planning
9 unit establish or amend instream flows, the planning unit is eligible
10 to receive one hundred thousand dollars for that purpose in accordance
11 with (a)(ii)(A) of this subsection. If the initiating governments for
12 a planning unit elect not to establish or amend instream flows as part
13 of the unit's planning process, the department shall retain one hundred
14 thousand dollars to carry out an assessment to support establishment of
15 instream flows and to establish such flows in accordance with RCW
16 90.54.020(3)(a) and chapter 90.22 RCW. The department shall not use
17 these funds to amend an existing instream flow unless requested to do
18 so by the initiating governments for a planning unit.

19 (d) In administering funds appropriated for supplemental funding
20 for optional plan components under (a)(ii) of this subsection, the
21 department shall give priority in granting the available funds to
22 proposals for setting or amending instream flows.

23 (e) A planning unit may apply for a matching grant for phase four
24 watershed plan implementation following approval under the provisions
25 of RCW 90.82.130. (~~A match of ten percent is required and~~) For years
26 one, two, three, four, and five of phase four, a match of ten percent
27 is required. For years six, seven, eight, and nine of phase four, a
28 match of fifty percent is required. For all years in phase four, the
29 match may include financial contributions or in-kind goods and services
30 directly related to coordination, plan, or project implementation, and
31 oversight functions. The match can be provided by the planning unit or
32 by the combined commitments from federal agencies, tribal governments,
33 local governments, special districts, or other local organizations.
34 The phase four grant may be up to one hundred thousand dollars for each
35 planning unit for each of the first three years of implementation. At
36 the end of the three-year period, a two-year extension may be available
37 for up to fifty thousand dollars each year. Subject to the
38 availability of amounts appropriated for this specific purpose, at the

1 end of five years and for years six and seven, a two-year matching
2 grant extension may be applied for with funding up to fifty thousand
3 dollars each year. For years eight and nine, planning units may apply
4 for another two-year matching grant extension with funding up to fifty
5 thousand dollars each year. For planning units that cover more than
6 one WRIA, additional matching funds of up to twenty-five thousand
7 dollars may be available for each additional WRIA per year for the
8 first three years of implementation, and up to twelve thousand five
9 hundred dollars per WRIA per year for each of the fourth ((and fifth
10 years)), fifth, sixth, seventh, eighth, and ninth years.

11 (f) When evaluating requests from watershed planning units and lead
12 agencies to implement an adopted watershed plan and a completed
13 detailed implementation plan for funding consistent with (e) of this
14 subsection and for phase four years two through nine, the department
15 must give priority consideration to grant proposals that directly
16 support activities or implement projects that:

17 (i) Integrate watershed plan implementation with the goals,
18 objectives, or work plans of other local, regional, or statewide water
19 resource, water quality, or fish recovery programs and plans;

20 (ii) Develop new, or improve existing assessment of water supply as
21 required under RCW 90.82.070. To implement this subsection (2)(f)(ii),
22 the planning unit must work with the department to identify any areas
23 of substantive water management data gaps or technical gaps based on
24 current information. The planning unit must coordinate with the
25 department to prioritize future actions necessary to address any
26 substantive data gaps or technical gaps in new or existing assessments.
27 Planning units may list the improvement of its phase two watershed
28 assessment as its highest priority when making any future decisions
29 about watershed plan implementation;

30 (iii) Develop or implement strategies and priorities to enhance,
31 restore, or augment stream flows; and

32 (iv) Include in phase four, year six, a review of the adopted
33 watershed plan and the detailed implementation plan to affirm that the
34 highest priority water resource management issue or issues in the
35 watershed or watersheds are being addressed by the planning unit,
36 initiating governments, or other applicable local and tribal
37 governments in the basin. A detailed implementation plan update is

1 required at the end of year six and year nine. This plan update must
2 include a ranked ordering of water quantity, water quality, and habitat
3 projects or needs to address the highest priority issues.

4 (g) Throughout phase four, planning units with a detailed
5 implementation plan are eligible to apply for special grants from the
6 state's operating or capital budgets. These funds must be used to
7 carry out locally managed projects to the extent funds are appropriated
8 by the legislature for the purposes of implementing this act. In
9 addition to the eligibility requirements and priority considerations of
10 this subsection and subsection (3) of this section, the department must
11 consider the following to make grant award decisions for phase four:

12 (i) The existence, or reasonably anticipated emergence, of critical
13 water supply and demand issues that may create consistent, adverse
14 impacts on annual or seasonal water availability for people, farms, or
15 fish;

16 (ii) The existence, or reasonably anticipated emergence, of
17 critical water quality issues that may create adverse impacts to public
18 or environmental health or local economies;

19 (iii) The extent to which the adopted watershed plan, the detailed
20 implementation plan, and related implementation project proposals are
21 integrated with or will support other statewide or regional water
22 quantity or quality initiatives;

23 (iv) The department's work plan for review of existing or
24 development of new instream flow or basin water management rules to be
25 adopted by the department;

26 (v) The capacity of the planning unit and the lead agency for grant
27 administration and project management under this chapter.

28 (h) Nothing in this chapter precludes counties, cities,
29 conservation districts, public utility districts, or other legally
30 recognized special purpose districts of the state that physically or
31 financially support a watershed planning unit and lead agency to
32 exercise their legislated powers to raise local revenue to fund long-
33 term watershed plan implementation needs or projects.

34 (3)(a) The department shall use the eligibility and priority
35 criteria in this subsection (3) instead of rules, policies, or
36 guidelines when evaluating grant applications ((at each stage of the
37 grants program)) during phases one, two, three, and four as identified
38 in this section.

1 (b) ~~((In))~~ When reviewing the eligibility of grant applications
2 under this subsection (3), the department shall evaluate whether:

3 (i) The planning unit meets all of the requirements of this
4 chapter;

5 (ii) The application demonstrates a need for state planning funds
6 to accomplish the objectives of the planning process ~~((; and~~

7 ~~((iii) The application and supporting information evidences a~~
8 ~~readiness))~~ and shows a need for development and implementation grant
9 funds to accomplish the objectives of this section; and

10 ((iii) The application and supporting information shows the grantee
11 is ready to proceed.

12 ~~((In ranking grant applications submitted at each stage of the~~
13 ~~grants program, the department shall give preference to applications in~~
14 ~~the following order of priority:~~

15 ~~((i) Applications from existing planning groups that have been in~~
16 ~~existence for at least one year;~~

17 ~~((ii) Applications that address protection and enhancement of))~~ When
18 making decisions on the priority of funding grant applications
19 submitted during phases one, two, and three as identified in this
20 section, and in addition to priority considerations for funding phase
21 four grants in subsection (2) of this section, the department shall
22 give preference to applications that will:

23 ((i) Protect and enhance fish habitat in watersheds that have
24 aquatic fish species listed or proposed to be listed as endangered or
25 threatened under the federal endangered species act, 16 U.S.C. Sec.
26 1531 et seq. and for which there is evidence of an inability to supply
27 adequate water for the existing population, or for projected population
28 growth and economic growth ~~((from:~~

29 ~~(A) First, multi-WRIA planning; and~~

30 ~~(B) Second, single-WRIA planning;~~

31 ~~((iii) Applications that address protection and enhancement of));~~

32 ((ii) Protect and enhance fish habitat and flows in watersheds or
33 for which there is evidence of an inability to supply adequate water
34 ~~((for))~~ to support existing population or projected population growth
35 and economic growth ~~((from:~~

36 ~~(A) First, multi-WRIA planning; and~~

37 ~~(B) Second, single-WRIA planning)).~~

1 (d) Except for phase four watershed plan implementation, the
2 department may not impose any local matching fund requirement as a
3 condition for grant eligibility or as a preference for receiving a
4 grant.

5 ~~(4) ((The department may retain up to one percent of funds
6 allocated under this section to defray administrative costs.~~

7 ~~(5))~~ Planning and implementation under this chapter ~~((should))~~
8 must be completed as expeditiously as possible, with the focus being on
9 local stakeholders cooperating to meet local needs and partnering with
10 other regional, state, or federal entities and initiatives to address
11 water management problems, issues, and challenges.

12 ~~((6) Funding provided under this section shall be considered a
13 contractual obligation against the moneys appropriated for this
14 purpose.))~~

15 **Sec. 602.** RCW 90.82.043 and 2007 c 445 s 6 are each amended to
16 read as follows:

17 (1) Within one year of accepting funding under RCW 90.82.040(2)(e),
18 the planning unit must complete a detailed implementation plan.
19 Submittal of a detailed implementation plan to the department is a
20 condition of receiving grants for the second and all subsequent years
21 of the phase four grant.

22 (2) Each implementation plan must contain strategies to provide
23 sufficient water for: (a) Production agriculture; (b) commercial,
24 industrial, and residential use; and (c) instream flows. Each
25 implementation plan must contain timelines to achieve these strategies
26 and interim milestones to measure progress.

27 (3) The implementation plan must clearly define coordination and
28 oversight responsibilities; any needed interlocal agreements, rules, or
29 ordinances; any needed state or local administrative approvals and
30 permits that must be secured; and specific funding mechanisms.

31 (4) In developing the implementation plan, the planning unit must
32 consult with other entities planning in the watershed management area
33 and identify and seek to eliminate any activities or policies that are
34 duplicative or inconsistent.

35 (5) ~~((a))~~ By ~~((December 1, 2003, and by))~~ December 1st of each
36 ~~((subsequent))~~ odd-numbered year, the director of the department shall

1 report to the appropriate legislative standing committees regarding
2 statutory changes necessary to enable state agency approval or permit
3 decision making needed to implement a plan approved under this chapter.

4 ~~((b) Beginning with the December 1, 2007, report, and then every
5 two years thereafter, the director shall include in each report the
6 extent to which reclaimed water has been identified in the watershed
7 plans as potential sources or strategies to meet future water needs,
8 and provisions in any watershed implementation plans that discuss
9 barriers to implementation of the water reuse elements of those plans.
10 The department's report shall include an estimate of the potential cost
11 of reclaimed water facilities and identification of potential sources
12 of funding for them.))~~

13 **Sec. 603.** RCW 90.82.060 and 2009 c 183 s 18 are each amended to
14 read as follows:

15 (1) Planning conducted under this chapter must provide for a
16 process to allow the local citizens within a WRIA or multi-WRIA area to
17 join together in an effort to: (a) Assess the status of the water
18 resources of their WRIA or multi-WRIA area; and (b) determine how best
19 to manage the water resources of the WRIA or multi-WRIA area to balance
20 the competing resource demands for that area within the parameters
21 under RCW 90.82.120.

22 (2)(a) Watershed planning under this chapter may be initiated for
23 a WRIA only with the concurrence of: (i) All counties within the WRIA;
24 (ii) the largest city or town within the WRIA unless the WRIA does not
25 contain a city or town; and (iii) the water supply utility obtaining
26 the largest quantity of water from the WRIA or, for a WRIA with lands
27 within the Columbia Basin project, the water supply utility obtaining
28 from the Columbia Basin project the largest quantity of water for the
29 WRIA. To apply for a grant for organizing the planning unit as
30 provided for under RCW 90.82.040(2)(a), these entities shall designate
31 the entity that will serve as the lead agency for the planning effort
32 and indicate how the planning unit will be staffed.

33 (b) For purposes of this chapter, WRIA 40 shall be divided such
34 that the portion of the WRIA located entirely within the Stemilt and
35 Squilchuck subbasins shall be considered WRIA 40a and the remaining
36 portion shall be considered WRIA 40b. Planning may be conducted
37 separately for WRIA 40a and 40b. WRIA 40a shall be eligible for one-

1 fourth of the funding available for a single WRIA, and WRIA 40b shall
2 be eligible for three-fourths of the funding available for a single
3 WRIA, for phases one, two, and three. Both WRIs 40a and 40b are
4 eligible for the full amounts of funding allotted to a whole WRIA for
5 planning units in phase four.

6 (c) For purposes of this chapter, WRIA 29 shall be divided such
7 that the portion of the WRIA located entirely within the White Salmon
8 subbasin and the subbasins east thereof shall be considered WRIA 29b
9 and the remaining portion shall be considered WRIA 29a. Planning may
10 be conducted separately for WRIA 29a and 29b. WRIA 29a shall be
11 eligible for one-half of the funding available for a single WRIA and
12 WRIA 29b shall be eligible for one-half of the funding available for a
13 single WRIA, for phases one, two, and three. Both WRIs 29a and 29b
14 are eligible for the full amounts of funding allotted to a whole WRIA
15 for planning units in phase four.

16 (d) For purposes of this chapter, WRIA 14 shall be divided such
17 that the portion of the WRIA where surface waters drain into Hood Canal
18 shall be considered WRIA 14b, and the remaining portion shall be
19 considered WRIA 14a. Planning for WRIA 14b under this chapter shall be
20 conducted by the WRIA 16 planning unit. WRIA 14b shall be eligible for
21 one-half of the funding available for a single WRIA, and WRIA 14a shall
22 be eligible for one-half of the funding available for a single WRIA,
23 for phases one, two, and three. Both WRIs 14a and 14b are eligible
24 for the full amounts of funding allotted to a whole WRIA for planning
25 units in phase four.

26 (3) Watershed planning under this chapter may be initiated for a
27 multi-WRIA area only with the concurrence of: (a) All counties within
28 the multi-WRIA area; (b) the largest city or town in each WRIA unless
29 the WRIA does not contain a city or town; and (c) the water supply
30 utility obtaining the largest quantity of water in each WRIA.

31 (4) If entities in subsection (2) or (3) of this section decide
32 jointly and unanimously to proceed, they shall invite all tribes with
33 reservation lands within the management area.

34 (5) The entities in subsection (2) or (3) of this section,
35 including the tribes if they affirmatively accept the invitation,
36 constitute the initiating governments for the purposes of this section.

37 (6) The organizing grant shall be used to organize the planning
38 unit and to determine the scope of the planning to be conducted. In

1 determining the scope of the planning activities, consideration shall
2 be given to all existing plans and related planning activities. The
3 scope of planning must include water quantity elements as provided in
4 RCW 90.82.070, and may include water quality elements as contained in
5 RCW 90.82.090, habitat elements as contained in RCW 90.82.100, and
6 instream flow elements as contained in RCW 90.82.080. The initiating
7 governments shall work with state government, other local governments
8 within the management area, and affected tribal governments, in
9 developing a planning process. The initiating governments may hold
10 public meetings as deemed necessary to develop a proposed scope of work
11 and a proposed composition of the planning unit. In developing a
12 proposed composition of the planning unit, the initiating governments
13 shall provide for representation of a wide range of water resource
14 interests.

15 (7) Each state agency with regulatory or other interests in the
16 WRIA or multi-WRIA area to be planned shall assist the local citizens
17 in the planning effort to the greatest extent practicable, recognizing
18 any fiscal limitations. In providing such technical assistance and to
19 facilitate representation on the planning unit, state agencies may
20 organize and agree upon their representation on the planning unit.
21 Such technical assistance must only be at the request of and to the
22 extent desired by the planning unit conducting such planning. The
23 number of state agency representatives on the planning unit shall be
24 determined by the initiating governments in consultation with the
25 governor's office.

26 (8) As used in this section, "lead agency" means the entity that
27 coordinates staff support of its own or of other local governments and
28 receives grants for developing a watershed plan.

29 (9) A planning unit is dissolved when the department approves a
30 water management board, as authorized in RCW 90.92.030, and all assets,
31 funds, files, planning documents, pending plans and grant applications,
32 and other current activities of the planning unit are transferred to
33 the approved water management board. The approved water management
34 board must assume the duties, responsibilities, and activities of the
35 planning unit and the initiating governments, as required in this
36 chapter.

1 **Sec. 604.** RCW 90.82.060 and 2008 c 210 s 1 are each amended to
2 read as follows:

3 (1) Planning conducted under this chapter must provide for a
4 process to allow the local citizens within a WRIA or multi-WRIA area to
5 join together in an effort to: (a) Assess the status of the water
6 resources of their WRIA or multi-WRIA area; and (b) determine how best
7 to manage the water resources of the WRIA or multi-WRIA area to balance
8 the competing resource demands for that area within the parameters
9 under RCW 90.82.120.

10 (2)(a) Watershed planning under this chapter may be initiated for
11 a WRIA only with the concurrence of: (i) All counties within the WRIA;
12 (ii) the largest city or town within the WRIA unless the WRIA does not
13 contain a city or town; and (iii) the water supply utility obtaining
14 the largest quantity of water from the WRIA or, for a WRIA with lands
15 within the Columbia Basin project, the water supply utility obtaining
16 from the Columbia Basin project the largest quantity of water for the
17 WRIA. To apply for a grant for organizing the planning unit as
18 provided for under RCW 90.82.040(2)(a), these entities shall designate
19 the entity that will serve as the lead agency for the planning effort
20 and indicate how the planning unit will be staffed.

21 (b) For purposes of this chapter, WRIA 40 shall be divided such
22 that the portion of the WRIA located entirely within the Stemilt and
23 Squilchuck subbasins shall be considered WRIA 40a and the remaining
24 portion shall be considered WRIA 40b. Planning may be conducted
25 separately for WRIA 40a and 40b. WRIA 40a shall be eligible for one-
26 fourth of the funding available for a single WRIA, and WRIA 40b shall
27 be eligible for three-fourths of the funding available for a single
28 WRIA, for phases one, two, and three. Both WRIs 40a and 40b are
29 eligible for the full amounts of funding allotted to a whole WRIA for
30 planning units in phase four.

31 (c) For purposes of this chapter, WRIA 29 shall be divided such
32 that the portion of the WRIA located entirely within the White Salmon
33 subbasin and the subbasins east thereof shall be considered WRIA 29b
34 and the remaining portion shall be considered WRIA 29a. Planning may
35 be conducted separately for WRIA 29a and 29b. WRIA 29a shall be
36 eligible for one-half of the funding available for a single WRIA and
37 WRIA 29b shall be eligible for one-half of the funding available for a

1 single WRIA, for phases one, two, and three. Both WRIAs 29a and 29b
2 are eligible for the full amounts of funding allotted to a whole WRIA
3 for planning units in phase four.

4 (d) For purposes of this chapter, WRIA 14 shall be divided such
5 that the portion of the WRIA where surface waters drain into Hood Canal
6 shall be considered WRIA 14b, and the remaining portion shall be
7 considered WRIA 14a. Planning for WRIA 14b under this chapter shall be
8 conducted by the WRIA 16 planning unit. WRIA 14b shall be eligible for
9 one-half of the funding available for a single WRIA, and WRIA 14a shall
10 be eligible for one-half of the funding available for a single WRIA,
11 for phases one, two, and three. Both WRIAs 14a and 14b are eligible
12 for the full amounts of funding allotted to a whole WRIA for planning
13 units in phase four.

14 (3) Watershed planning under this chapter may be initiated for a
15 multi-WRIA area only with the concurrence of: (a) All counties within
16 the multi-WRIA area; (b) the largest city or town in each WRIA unless
17 the WRIA does not contain a city or town; and (c) the water supply
18 utility obtaining the largest quantity of water in each WRIA.

19 (4) If entities in subsection (2) or (3) of this section decide
20 jointly and unanimously to proceed, they shall invite all tribes with
21 reservation lands within the management area.

22 (5) The entities in subsection (2) or (3) of this section,
23 including the tribes if they affirmatively accept the invitation,
24 constitute the initiating governments for the purposes of this section.

25 (6) The organizing grant shall be used to organize the planning
26 unit and to determine the scope of the planning to be conducted. In
27 determining the scope of the planning activities, consideration shall
28 be given to all existing plans and related planning activities. The
29 scope of planning must include water quantity elements as provided in
30 RCW 90.82.070, and may include water quality elements as contained in
31 RCW 90.82.090, habitat elements as contained in RCW 90.82.100, and
32 instream flow elements as contained in RCW 90.82.080. The initiating
33 governments shall work with state government, other local governments
34 within the management area, and affected tribal governments, in
35 developing a planning process. The initiating governments may hold
36 public meetings as deemed necessary to develop a proposed scope of work
37 and a proposed composition of the planning unit. In developing a

1 proposed composition of the planning unit, the initiating governments
2 shall provide for representation of a wide range of water resource
3 interests.

4 (7) Each state agency with regulatory or other interests in the
5 WRIA or multi-WRIA area to be planned shall assist the local citizens
6 in the planning effort to the greatest extent practicable, recognizing
7 any fiscal limitations. In providing such technical assistance and to
8 facilitate representation on the planning unit, state agencies may
9 organize and agree upon their representation on the planning unit.
10 Such technical assistance must only be at the request of and to the
11 extent desired by the planning unit conducting such planning. The
12 number of state agency representatives on the planning unit shall be
13 determined by the initiating governments in consultation with the
14 governor's office.

15 (8) As used in this section, "lead agency" means the entity that
16 coordinates staff support of its own or of other local governments and
17 receives grants for developing a watershed plan.

18 **PART 7**
19 **WATER RESOURCES COST RECOVERY**

20 **Sec. 701.** RCW 90.03.470 and 2005 c 412 s 2 are each amended to
21 read as follows:

22 Except as provided in subsection (16) of this section, the fees
23 specified in this section shall be collected by the department in
24 advance of the requested action.

25 (1) For the examination of an application for a permit to
26 appropriate water, a minimum fee of fifty dollars must be remitted with
27 the application. For an amount of water exceeding one-half cubic foot
28 per second, the examination fee shall be assessed at the rate of one
29 dollar per one hundredth cubic foot per second. In no case will the
30 examination fee be less than fifty dollars or more than twenty-five
31 thousand dollars. No fee is required under this subsection (1) for an
32 application filed by a party to a cost-reimbursement agreement made
33 under RCW 90.03.265.

34 (2) For the examination of an application to store water, a fee of
35 two dollars for each acre foot of storage proposed shall be charged,
36 but a minimum fee of fifty dollars must be remitted with the

1 application. In no case will the examination fee for a storage project
2 be less than fifty dollars or more than twenty-five thousand dollars.
3 No fee is required under this subsection (2) for an application filed
4 by a party to a cost-reimbursement agreement made under RCW 90.03.265.

5 (3)(a) For the examination of an application to transfer, change,
6 or amend a water right certificate, permit, or claim as authorized by
7 RCW 90.44.100, 90.44.105, or 90.03.380, a minimum fee of fifty dollars
8 must be remitted with the application. For an application for change
9 involving an amount of water exceeding one cubic foot per second, the
10 total examination fee shall be assessed at the rate of fifty cents per
11 one hundredth cubic foot per second. For an application for change of
12 a storage water right, the total examination fee shall be assessed at
13 the rate of one dollar for each acre foot of water involved in the
14 change. The fee shall be based on the amount of water subject to
15 change as proposed in the application, not on the total amount of water
16 reflected in the water right certificate, permit, or claim. In no case
17 will the examination fee charged for a change application be less than
18 fifty dollars or more than twelve thousand five hundred dollars.

19 (b) The examination fee for a temporary or seasonal change under
20 RCW 90.03.390 is fifty dollars and must be remitted with the
21 application.

22 (c) No fee is required under this subsection (3) for:

23 (i) An application to process a change relating to donation of a
24 trust water right to the state;

25 (ii) An application to process a change when the department
26 otherwise acquires a trust water right for purposes of improving
27 instream flows or for other public purposes;

28 (iii) An application filed with a water conservancy board according
29 to chapter 90.80 RCW or for the review of a water conservancy board's
30 record of decision submitted to the department according to chapter
31 90.80 RCW; or

32 (iv) An application filed by a party to a cost-reimbursement
33 agreement made under RCW 90.03.265.

34 (d) For a change, transfer, or amendment involving a single project
35 operating under more than one water right, including related secondary
36 diversion rights, or involving the consolidation of multiple water
37 rights, only one examination fee and one certificate fee are required
38 to be paid.

1 (4) The fifty-dollar minimum fee payable with the application shall
2 be a credit to the total amount whenever the examination fee totals
3 more than fifty dollars under the schedule specified in subsections (1)
4 through (3) of this section and in such case the further fee due shall
5 be the total computed amount, less the amount previously paid. Within
6 five working days from receipt of an application, the department shall
7 notify the applicant by registered mail of any additional fees due
8 under subsections (1) through (3) of this section.

9 (5) The fees specified in subsections (1) through (3) of this
10 section do not apply to any filings for emergency withdrawal
11 authorizations or temporary drought-related water right changes
12 authorized under RCW 43.83B.410 that are received by the department
13 while a drought condition order issued under RCW 43.83B.405 is in
14 effect.

15 (6) For applying for each extension of time for beginning
16 construction work under a permit to appropriate water, for completion
17 of construction work, or for completing application of water to a
18 beneficial use, a fee of fifty dollars is required. These fees also
19 apply to similar extensions of time requested under a change or
20 transfer authorization.

21 (7) For the inspection of any hydraulic works to (~~insure~~) ensure
22 safety to life and property, a fee based on the actual cost of the
23 inspection, including the expense incident thereto, is required except
24 as follows: (a) For any hydraulic works less than ten years old, that
25 the department examined and approved the construction plans and
26 specifications as to its safety when required under RCW 90.03.350,
27 there shall be no fee charged; or (b) for any hydraulic works more than
28 ten years old, but less than twenty years old, that the department
29 examined and approved the construction plans and specifications as to
30 its safety when required under RCW 90.03.350, the fee charged shall not
31 exceed the fee for a significant hazard dam.

32 (8) For the examination of plans and specifications as to safety of
33 controlling works for storage of ten acre feet or more of water, a
34 minimum fee of ten dollars, or a fee equal to the actual cost, is
35 required.

36 (9) For recording an assignment either of a permit to appropriate
37 water or of an application for such a permit, a fee of fifty dollars is
38 required.

1 (10) For preparing and issuing all water right certificates, a fee
2 of fifty dollars is required.

3 (11) For filing and recording a formal protest against granting any
4 application, a fee of fifty dollars is required. No fee is required to
5 submit a comment, by mail or otherwise, regarding an application.

6 (12) For filing an application to amend a water right claim filed
7 under chapter 90.14 RCW, a fee of fifty dollars is required.

8 (13) An application or request for an action as provided for under
9 this section is incomplete unless accompanied by the fee or the minimum
10 fee. If no fee or an amount less than the minimum fee accompanies an
11 application or other request for an action as provided under this
12 section, the department shall return the application or request to the
13 applicant with advice as to the fee that must be remitted with the
14 application or request for it to be accepted for processing. If
15 additional fees are due, the department shall provide timely
16 notification by certified mail with return receipt requested to the
17 applicant. No action may be taken by the department until the fee is
18 paid in full. Failure to remit fees within sixty days of the
19 department's notification is grounds for rejecting the application or
20 request or canceling the permit. Cash shall not be accepted. Except
21 as provided in subsection (16)(d) of this section, fees must be paid by
22 check or money order and are nonrefundable.

23 (14) For purposes of calculating fees for groundwater filings, one
24 cubic foot per second shall be regarded as equivalent to four hundred
25 fifty gallons per minute.

26 ~~((Eighty percent of the fees collected by the department under~~
27 ~~this section shall be deposited in the state general fund. Twenty~~
28 ~~percent of the fees collected by the department under this section~~
29 ~~shall be deposited in the water rights tracking system account~~
30 ~~established in RCW 90.14.240)) Fees collected by the department under
31 this section must be deposited in the water rights processing account
32 established in RCW 90.03.650.~~

33 ~~((Except for the fees relating to the inspection of hydraulic~~
34 ~~works and the examination of plans and specifications of controlling~~
35 ~~works provided for in subsections (7) and (8) of this section, nothing~~
36 ~~in this section is intended to grant authority to the department to~~
37 ~~amend the fees in this section by adoption of rules or otherwise)) (a)
38 In addition to the application, examination, and extension fees in this~~

1 section, the department must recover from applicants the full cost of
2 processing all the applications received after or awaiting the
3 initiation of application processing as of the effective date of this
4 section. In processing the applications the department must continue
5 to improve efficiency, including fully utilizing technology to
6 streamline processes.

7 (b) The department must calculate a processing fee for each
8 application based primarily on the department's projected workload and
9 cost to process the applications to a decision and the proportionate
10 quantity of water requested by each applicant. For the purposes of
11 assessing the full cost of water right processing under this section,
12 the department must ensure that applicants are charged only for
13 services necessarily related to the processing of their applications.
14 The department may adjust the fee if it appears that an application
15 will require a disproportionately greater amount of time and effort to
16 process due to its complexity. Any application fees that were paid by
17 the applicant under other requirements of this section must be credited
18 against the applicant's share of the cost of processing applications
19 under this subsection.

20 (c) The processing fee must be collected by the department prior to
21 the processing of an application. However, prior to collecting the
22 processing fee under (a) of this subsection, the department shall
23 provide in writing an initial assessment that estimates the cost and
24 scope of issues likely involved in processing the applications from a
25 water source. The purpose of this initial assessment is to assist the
26 applicants by providing them with information that could support their
27 decision whether to proceed with having the department make a formal
28 determination on their water right application. Such an assessment
29 must be made with the department's best professional judgment based on
30 the information available to the department at that time. If
31 additional information will need to be collected or studies will have
32 to be conducted to answer the applicable tests for issuing a permit or
33 change approval, the department shall, to the extent possible, disclose
34 to the applicant the time and cost that the department estimates will
35 be incurred. The department's initial assessment under this subsection
36 does not constitute an appealable action or a final decision by the
37 department. The department must recover the department's cost of
38 performing an initial water right processing assessment from those

1 applicants who elect to proceed with having a formal determination made
2 on their application. In the event of voluntary withdrawal of an
3 application prior to issuance of the initial assessment under this
4 section, the department shall refund any application fees that accrued
5 to the applicant.

6 (d) An applicant may choose to withdraw their application from
7 further consideration based on the initial assessment provided by the
8 department and no further costs will accrue to the applicant.

9 (e) An applicant for municipal supply or community domestic supply
10 may request that processing of an application be deferred due to the
11 applicant not being ready to proceed with development of the proposed
12 water use at that time. A request to defer an application must be
13 accompanied by a statement of the reason that deferral is necessary,
14 including the projected timing for development of the water under the
15 application. A deferred application retains its priority date if an
16 annual fee is paid that is equal to ten percent of the estimated cost
17 to process the application under this section.

18 (f) Revenue collected from these fees must be deposited into the
19 water rights processing account created in RCW 90.03.650. The
20 applicant must transmit the processing fee within sixty days of the
21 written request.

22 (g) If the department does not have sufficient technical staff
23 resources or specialized expertise needed to make its determinations on
24 applications, it may elect to utilize a contractor from its cost-
25 reimbursement consultant list established under RCW 90.03.265. The
26 cost of the consultant must be included in the processing fees.

27 (h) The department must fully recover its costs related to
28 providing water users mitigation credits, issued as a result of water
29 banking under chapters 90.42 and 90.38 RCW.

30 (i) The goal of the department is to process all pending
31 applications by July 30, 2017, such that the average waiting period to
32 receive a decision is no longer than one year for new applications
33 received after that date.

34 NEW SECTION. Sec. 702. A new section is added to chapter 90.03
35 RCW to read as follows:

36 The department may adopt a new fee schedule by rule to implement

1 the requirements of RCW 90.03.470. The fees must be based on the
2 department's actual cost to carry out the actions for which fees are
3 charged in RCW 90.03.470.

4 NEW SECTION. **Sec. 703.** A new section is added to chapter 90.03
5 RCW to read as follows:

6 (1) The department must submit a report to the governor and the
7 legislature on the status of water rights processing by November 30,
8 2012, and by November 30th of every even-numbered year thereafter
9 through 2020. The report must include the numbers of applications
10 received, decisions rendered, applications pending, decisions appealed,
11 decisions rendered by conservancy boards, decisions made through use of
12 cost-reimbursement contractors, decisions made under expedited
13 processing provisions, number of staff assigned to processing water
14 rights, and efficiency measures implemented. The department shall also
15 develop and report on performance measures for water rights processing.

16 (2) By September 1, 2011, the department shall explore ways to make
17 the state's water resource management program financially self-
18 sufficient and shall submit a report to the office of financial
19 management and appropriate committees of the legislature regarding
20 recommended actions and legislation needed to implement a preferred
21 approach.

22 **PART 8**

23 **GENERAL PROVISIONS**

24 NEW SECTION. **Sec. 801.** Sections 401, 406, 408, and 603 of this
25 act expire June 30, 2019.

26 NEW SECTION. **Sec. 802.** Sections 402, 407, 409, and 604 of this
27 act take effect June 30, 2019.

28 NEW SECTION. **Sec. 803.** RCW 90.14.240 (Water rights tracking
29 system account) and 2005 c 412 s 3 are each repealed.

30 NEW SECTION. **Sec. 804.** Nothing in this act may be interpreted or
31 administered in a manner that impairs or diminishes a valid water

1 right, including rights established under state law and rights
2 established under federal law.

3 NEW SECTION. **Sec. 805.** If any provision of this act or its
4 application to any person or circumstance is held invalid, the
5 remainder of the act or the application of the provision to other
6 persons or circumstances is not affected.

--- END ---