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HOUSE BILL 2310

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State of Washington

62nd Legislature

2012 Regular Session

By Representatives Wilcox, McCune, and Chandler

Read first time 01/11/12. Referred to Committee on Agriculture & Natural Resources.

1 AN ACT Relating to creating efficiencies for municipal water  
2 suppliers; amending RCW 90.03.380, 90.03.380, 90.03.570, 82.16.020,  
3 82.16.020, 90.03.650, 70.119A.120, 90.03.015, 90.44.100, and 90.44.100;  
4 providing effective dates; and providing expiration dates.

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

6 **Sec. 1.** RCW 90.03.380 and 2011 c 112 s 2 are each amended to read  
7 as follows:

8 (1)(a) The right to the use of water which has been applied to a  
9 beneficial use in the state shall be and remain appurtenant to the land  
10 or place upon which the same is used: PROVIDED, HOWEVER, That the  
11 right may be transferred to another or to others and become appurtenant  
12 to any other land or place of use without loss of priority of right  
13 theretofore established if such change can be made without detriment or  
14 injury to existing rights. The point of diversion of water for  
15 beneficial use or the purpose of use may be changed, if such change can  
16 be made without detriment or injury to existing rights. A change in  
17 the place of use, point of diversion, and/or purpose of use of a water  
18 right to enable irrigation of additional acreage or the addition of new

1 uses may be permitted if such change results in no increase in the  
2 annual consumptive quantity of water used under the water right.

3 (b) For purposes of this section, "annual consumptive quantity"  
4 means the estimated or actual annual amount of water diverted pursuant  
5 to the water right, reduced by the estimated annual amount of return  
6 flows, averaged over the two years of greatest use within the most  
7 recent five-year period of continuous beneficial use of the water  
8 right.

9 (c) Before any transfer of such right to use water or change of the  
10 point of diversion of water or change of purpose of use can be made,  
11 any person having an interest in the transfer or change, shall file a  
12 written application therefor with the department to be considered in a  
13 manner consistent with subsection (12) of this section, and the  
14 application shall not be granted until notice of the application is  
15 published as provided in RCW 90.03.280. If it shall appear that such  
16 transfer or such change may be made without injury or detriment to  
17 existing rights, the department shall issue to the applicant a  
18 certificate in duplicate granting the right for such transfer or for  
19 such change of point of diversion or of use. The certificate so issued  
20 shall be filed and be made a record with the department and the  
21 duplicate certificate issued to the applicant may be filed with the  
22 county auditor in like manner and with the same effect as provided in  
23 the original certificate or permit to divert water. The time period  
24 that the water right was banked under RCW 90.92.070, in an approved  
25 local water plan created under RCW 90.92.090, or the water right was  
26 subject to an agreement to not divert under RCW 90.92.050 will not be  
27 included in the most recent five-year period of continuous beneficial  
28 use for the purpose of determining the annual consumptive quantity  
29 under this section. If the water right has not been used during the  
30 previous five years but the nonuse of which qualifies for one or more  
31 of the statutory good causes or exceptions to relinquishment in RCW  
32 90.14.140 and 90.44.520, the period of nonuse is not included in the  
33 most recent five-year period of continuous beneficial use for purposes  
34 of determining the annual consumptive quantity of water under this  
35 section.

36 (2) If an application for change proposes to transfer water rights  
37 from one irrigation district to another, the department shall, before  
38 publication of notice, receive concurrence from each of the irrigation

1 districts that such transfer or change will not adversely affect the  
2 ability to deliver water to other landowners or impair the financial  
3 integrity of either of the districts.

4 (3) A change in place of use by an individual water user or users  
5 of water provided by an irrigation district need only receive approval  
6 for the change from the board of directors of the district if the use  
7 of water continues within the irrigation district, and when water is  
8 provided by an irrigation entity that is a member of a board of joint  
9 control created under chapter 87.80 RCW, approval need only be received  
10 from the board of joint control if the use of water continues within  
11 the area of jurisdiction of the joint board and the change can be made  
12 without detriment or injury to existing rights.

13 (4) This section shall not apply to trust water rights acquired by  
14 the state through the funding of water conservation projects under  
15 chapter 90.38 RCW or RCW 90.42.010 through 90.42.070.

16 (5)(a) Pending applications for new water rights are not entitled  
17 to protection from impairment, injury, or detriment when an application  
18 relating to an existing surface or ground water right is considered.

19 (b) Applications relating to existing surface or ground water  
20 rights may be processed and decisions on them rendered independently of  
21 processing and rendering decisions on pending applications for new  
22 water rights within the same source of supply without regard to the  
23 date of filing of the pending applications for new water rights.

24 (c) Notwithstanding any other existing authority to process  
25 applications, including but not limited to the authority to process  
26 applications under WAC 173-152-050 as it existed on January 1, 2001, an  
27 application relating to an existing surface or ground water right may  
28 be processed ahead of a previously filed application relating to an  
29 existing right when sufficient information for a decision on the  
30 previously filed application is not available and the applicant for the  
31 previously filed application is sent written notice that explains what  
32 information is not available and informs the applicant that processing  
33 of the next application will begin. The previously filed application  
34 does not lose its priority date and if the information is provided by  
35 the applicant within sixty days, the previously filed application shall  
36 be processed at that time. This subsection (5)(c) does not affect any  
37 other existing authority to process applications.

1 (d) Nothing in this subsection (5) is intended to stop the  
2 processing of applications for new water rights.

3 (6) No applicant for a change, transfer, or amendment of a water  
4 right may be required to give up any part of the applicant's valid  
5 water right or claim to a state agency, the trust water rights program,  
6 or to other persons as a condition of processing the application.

7 (7) In revising the provisions of this section and adding  
8 provisions to this section by chapter 237, Laws of 2001, the  
9 legislature does not intend to imply legislative approval or  
10 disapproval of any existing administrative policy regarding, or any  
11 existing administrative or judicial interpretation of, the provisions  
12 of this section not expressly added or revised.

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

19 (9) This section does not apply to a water right involved in an  
20 approved local water plan created under RCW 90.92.090, a water right  
21 that is subject to an agreement not to divert under RCW 90.92.050, or  
22 a banked water right under RCW 90.92.070.

23 (10)(a) The department may only approve an application submitted  
24 after July 22, 2011, for an interbasin water rights transfer after  
25 providing notice electronically to the board of county commissioners in  
26 the county of origin upon receipt of an application.

27 (b) For the purposes of this subsection:

28 (i) "Interbasin water rights transfer" means a transfer of a water  
29 right for which the proposed point of diversion is in a different basin  
30 than the proposed place of beneficial use.

31 (ii) "County of origin" means the county from which a water right  
32 is transferred or proposed to be transferred.

33 (c) This subsection applies to counties located east of the crest  
34 of the Cascade mountains.

35 (11)(a) In considering applications under this section, the  
36 department's only consideration must be whether an applied for change  
37 adversely impacts senior water rights holders in instances when the  
38 proposed change either:

1 (i) Moves the point of withdrawal further from a surface water  
2 body;

3 (ii) Moves the point of diversion to a lower level aquifer within  
4 the same watershed, as that term is defined in RCW 90.74.010; or

5 (iii) Is a move within a watershed that discharges into salt water.

6 (b) The department must offer applicants satisfying the conditions  
7 of this subsection with a defined timeline for a decision that reflects  
8 the limited review required by the department for these less complex  
9 applications.

10 (12) The department, upon the receipt of an application for a  
11 change or transfer in the place or use of a water right, may only  
12 consider the scope and validity of the specific portion of the  
13 underlying water right that is subject to the change or transfer in  
14 use. The department may not take an action on the application that  
15 would alter or diminish other water rights, or the total water rights  
16 portfolio, held by the applicant.

17 **Sec. 2.** RCW 90.03.380 and 2011 c 112 s 3 are each amended to read  
18 as follows:

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

32 (b) For purposes of this section, "annual consumptive quantity"  
33 means the estimated or actual annual amount of water diverted pursuant  
34 to the water right, reduced by the estimated annual amount of return  
35 flows, averaged over the two years of greatest use within the most  
36 recent five-year period of continuous beneficial use of the water  
37 right.

1       (c) Before any transfer of such right to use water or change of the  
2 point of diversion of water or change of purpose of use can be made,  
3 any person having an interest in the transfer or change, shall file a  
4 written application therefor with the department to be considered in a  
5 manner consistent with subsection (11) of this section, and the  
6 application shall not be granted until notice of the application is  
7 published as provided in RCW 90.03.280. If it shall appear that such  
8 transfer or such change may be made without injury or detriment to  
9 existing rights, the department shall issue to the applicant a  
10 certificate in duplicate granting the right for such transfer or for  
11 such change of point of diversion or of use. The certificate so issued  
12 shall be filed and be made a record with the department and the  
13 duplicate certificate issued to the applicant may be filed with the  
14 county auditor in like manner and with the same effect as provided in  
15 the original certificate or permit to divert water.

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

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

31       (4) This section shall not apply to trust water rights acquired by  
32 the state through the funding of water conservation projects under  
33 chapter 90.38 RCW or RCW 90.42.010 through 90.42.070.

34       (5)(a) Pending applications for new water rights are not entitled  
35 to protection from impairment, injury, or detriment when an application  
36 relating to an existing surface or ground water right is considered.

37       (b) Applications relating to existing surface or ground water  
38 rights may be processed and decisions on them rendered independently of

1 processing and rendering decisions on pending applications for new  
2 water rights within the same source of supply without regard to the  
3 date of filing of the pending applications for new water rights.

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

18 (d) Nothing in this subsection (5) is intended to stop the  
19 processing of applications for new water rights.

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

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

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

36 (9)(a) The department may only approve an application submitted  
37 after June 30, 2019, for an interbasin water rights transfer after

1 providing notice electronically to the board of county commissioners in  
2 the county of origin upon receipt of an application.

3 (b) For the purposes of this subsection:

4 (i) "Interbasin water rights transfer" means a transfer of a water  
5 right for which the proposed point of diversion is in a different basin  
6 than the proposed place of beneficial use.

7 (ii) "County of origin" means the county from which a water right  
8 is transferred or proposed to be transferred.

9 (c) This subsection applies to counties located east of the crest  
10 of the Cascade mountains.

11 (10)(a) In considering applications under this section, the  
12 department's only consideration must be whether an applied for change  
13 adversely impacts senior water rights holders in instances when the  
14 proposed change either:

15 (i) Moves the point of withdrawal further from a surface water  
16 body;

17 (ii) Moves the point of diversion to a lower level aquifer within  
18 the same watershed, as that term is defined in RCW 90.74.010; or

19 (iii) Is a move within a watershed that discharges into salt water.

20 (b) The department must offer applicants satisfying the conditions  
21 of this subsection with a defined timeline for a decision that reflects  
22 the limited review required by the department for these less complex  
23 applications.

24 (11) The department, upon the receipt of an application for a  
25 change or transfer in the place or use of a water right, may only  
26 consider the scope and validity of the specific portion of the  
27 underlying water right that is subject to the change or transfer in  
28 use. The department may not take an action on the application that  
29 would alter or diminish other water rights, or the total water rights  
30 portfolio, held by the applicant.

31 **Sec. 3.** RCW 90.03.570 and 2003 1st sp.s. c 5 s 14 are each amended  
32 to read as follows:

33 (1) An unperfected surface water right for municipal water supply  
34 purposes or a portion thereof held by a municipal water supplier may be  
35 changed or transferred in the same manner and with the same limitations  
36 as provided by RCW 90.03.380 for any purpose if:



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

5 (b) Instream flows have been established by rule for the water  
6 resource inventory area, as established in chapter 173-500 WAC as it  
7 exists on September 9, 2003, that is the source of the water for the  
8 transfer or change;

9 (c) A watershed plan has been approved for the water resource  
10 inventory area referred to in (b) of this subsection under chapter  
11 90.82 RCW and a detailed implementation plan has been completed that  
12 satisfies the requirements of RCW 90.82.043 or a watershed plan has  
13 been adopted after September 9, 2003, for that water resource inventory  
14 area under RCW 90.54.040(1) and a detailed implementation plan has been  
15 completed that satisfies the requirements of RCW 90.82.043; and

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

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

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

27 (b) Subject to stream flow protection or restoration requirements  
28 contained in: A federally approved habitat conservation plan under the  
29 federal endangered species act, 16 U.S.C. Sec. 1531 et seq., a  
30 hydropower license of the federal energy regulatory commission, or a  
31 watershed agreement established under RCW 90.03.590;

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

35 (d) For resolving or alleviating a public health or safety  
36 emergency caused by a failing public water supply system currently  
37 providing potable water to existing users, as such a system is  
38 described in RCW 90.03.580, and if the change, transfer, or amendment

1 is for correcting the actual or anticipated cause or causes of the  
2 public water system failure. Inadequate water rights for a public  
3 water system to serve existing hookups or to accommodate future  
4 population growth or other future uses do not constitute a public  
5 health or safety emergency.

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

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

14 **Sec. 4.** RCW 82.16.020 and 2011 1st sp.s. c 48 s 7032 are each  
15 amended to read as follows:

16 (1) There is levied and (~~there shall be~~) collected from every  
17 person a tax for the act or privilege of engaging within this state in  
18 any one or more of the businesses herein mentioned. The tax (~~shall~~  
19 ~~be~~) is equal to the gross income of the business, multiplied by the  
20 rate set out after the business, as follows:

21 (a) Express, sewerage collection, and telegraph businesses: Three  
22 and six-tenths percent;

23 (b) Light and power business: Three and sixty-two one-hundredths  
24 percent;

25 (c) Gas distribution business: Three and six-tenths percent;

26 (d) Urban transportation business: Six-tenths of one percent;

27 (e) Vessels under sixty-five feet in length, except tugboats,  
28 operating upon the waters within the state: Six-tenths of one percent;

29 (f) Motor transportation, railroad, railroad car, and tugboat  
30 businesses, and all public service businesses other than ones mentioned  
31 above: One and eight-tenths of one percent;

32 (g) Water distribution business: Four and seven-tenths percent;

33 (h) Log transportation business: One and twenty-eight one-  
34 hundredths percent.

35 (2) An additional tax is imposed equal to the rate specified in RCW  
36 82.02.030 multiplied by the tax payable under subsection (1) of this  
37 section.

1 (3) Twenty percent of the moneys collected under subsection (1) of  
2 this section on water distribution businesses and sixty percent of the  
3 moneys collected under subsection (1) of this section on sewerage  
4 collection businesses shall be deposited in the public works assistance  
5 account created in RCW 43.155.050: PROVIDED, That during the fiscal  
6 year 2011, twenty percent of the moneys collected under subsection (1)  
7 of this section on water distribution businesses and sixty percent of  
8 the moneys collected under subsection (1) of this section on sewerage  
9 collection businesses must be deposited in the general fund for general  
10 purpose expenditures.

11 (4)(a) In addition to the revenue dedication created in subsection  
12 (3) of this section, twenty percent of the moneys collected under  
13 subsection (1) of this section on water distribution businesses must be  
14 distributed as follows:

15 (i) Fifty percent must be deposited into the water rights  
16 processing account created in RCW 90.03.650; and

17 (ii) Fifty percent must be deposited into the safe drinking water  
18 account created in RCW 70.119A.120.

19 (b) The revenue dedication in this subsection is intended to link  
20 revenue provided by water utilities to the services provided to  
21 utilities and their customers by the departments of ecology and health  
22 and is in lieu of additional or increased fee payments for those  
23 services.

24 **Sec. 5.** RCW 82.16.020 and 2011 1st sp.s. c 48 s 7033 are each  
25 amended to read as follows:

26 (1) There is levied and (~~there shall be~~) collected from every  
27 person a tax for the act or privilege of engaging within this state in  
28 any one or more of the businesses herein mentioned. The tax (~~shall~~  
29 ~~be~~) is equal to the gross income of the business, multiplied by the  
30 rate set out after the business, as follows:

31 (a) Express, sewerage collection, and telegraph businesses: Three  
32 and six-tenths percent;

33 (b) Light and power business: Three and sixty-two one-hundredths  
34 percent;

35 (c) Gas distribution business: Three and six-tenths percent;

36 (d) Urban transportation business: Six-tenths of one percent;

1 (e) Vessels under sixty-five feet in length, except tugboats,  
2 operating upon the waters within the state: Six-tenths of one percent;

3 (f) Motor transportation, railroad, railroad car, and tugboat  
4 businesses, and all public service businesses other than ones mentioned  
5 above: One and eight-tenths of one percent;

6 (g) Water distribution business: Four and seven-tenths percent.

7 (2) An additional tax is imposed equal to the rate specified in RCW  
8 82.02.030 multiplied by the tax payable under subsection (1) of this  
9 section.

10 (3) Twenty percent of the moneys collected under subsection (1) of  
11 this section on water distribution businesses and sixty percent of the  
12 moneys collected under subsection (1) of this section on sewerage  
13 collection businesses shall be deposited in the public works assistance  
14 account created in RCW 43.155.050: PROVIDED, That during the fiscal  
15 year 2011, twenty percent of the moneys collected under subsection (1)  
16 of this section on water distribution businesses and sixty percent of  
17 the moneys collected under subsection (1) of this section on sewerage  
18 collection businesses must be deposited in the general fund for general  
19 purpose expenditures.

20 (4)(a) In addition to the revenue dedication created in subsection  
21 (3) of this section, twenty percent of the moneys collected under  
22 subsection (1) of this section on water distribution businesses must be  
23 distributed as follows:

24 (i) Fifty percent must be deposited into the water rights  
25 processing account created in RCW 90.03.650; and

26 (ii) Fifty percent must be deposited into the safe drinking water  
27 account created in RCW 70.119A.120.

28 (b) The revenue dedication in this subsection is intended to link  
29 revenue provided by water utilities to the services provided to  
30 utilities and their customers by the departments of ecology and health  
31 and is in lieu of additional or increased fee payments for those  
32 services.

33 **Sec. 6.** RCW 90.03.650 and 2010 c 285 s 4 are each amended to read  
34 as follows:

35 The water rights processing account is created in the state  
36 treasury. All receipts from the fees collected under RCW 90.03.655,  
37 90.03.665, and 90.44.540 and the identified portion of taxes collected

1 under RCW 82.16.020 must be deposited into the account. Money in the  
2 account may be spent only after appropriation. Expenditures from the  
3 account may only be used to support the processing of water right  
4 applications for a new appropriation, change, transfer, or amendment of  
5 a water right as provided in this chapter and chapters 90.42 and 90.44  
6 RCW or for the examination, certification, and renewal of certification  
7 of water right examiners as provided in RCW 90.03.665.

8 **Sec. 7.** RCW 70.119A.120 and 1991 c 304 s 6 are each amended to  
9 read as follows:

10 The safe drinking water account is created in the general fund of  
11 the state treasury. All receipts from the operating permit fees  
12 required to be paid under RCW 70.119A.110 and the identified portion of  
13 taxes collected under RCW 82.16.020 shall be deposited into the  
14 account. Moneys in the account may be spent only after appropriation.  
15 Expenditures from the account may be used by the department of health  
16 to carry out the purposes of chapter 304, Laws of 1991 and to carry out  
17 contracts with local governments in accordance with this chapter.

18 **Sec. 8.** RCW 90.03.015 and 2003 1st sp.s. c 5 s 1 are each amended  
19 to read as follows:

20 The definitions in this section apply throughout this chapter  
21 unless the context clearly requires otherwise.

22 (1) "Department" means the department of ecology.

23 (2) "Director" means the director of ecology.

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

26 (4) "Municipal water supply purposes" means a (~~beneficial~~)  
27 documented intent to beneficially use (~~of~~) water: (a) For  
28 residential purposes through fifteen or more residential service  
29 connections or for providing residential use of water for a  
30 nonresidential population that is, on average, at least twenty-five  
31 people for at least sixty days a year; (b) for governmental or  
32 governmental proprietary purposes by a city, town, public utility  
33 district, county, sewer district, or water district; or (c) indirectly  
34 for the purposes in (a) or (b) of this subsection through the delivery  
35 of treated or raw water to a public water system for such use. If  
36 water is beneficially used under a water right for the purposes listed

1 in (a), (b), or (c) of this subsection, any other beneficial use of  
2 water under the right generally associated with the use of water within  
3 a municipality is also for "municipal water supply purposes,"  
4 including, but not limited to, beneficial use for commercial,  
5 industrial, irrigation of parks and open spaces, institutional,  
6 landscaping, fire flow, water system maintenance and repair, or related  
7 purposes. If a governmental entity holds a water right that is for the  
8 purposes listed in (a), (b), or (c) of this subsection, its use of  
9 water or its delivery of water for any other beneficial use generally  
10 associated with the use of water within a municipality is also for  
11 "municipal water supply purposes," including, but not limited to,  
12 beneficial use for commercial, industrial, irrigation of parks and open  
13 spaces, institutional, landscaping, fire flow, water system maintenance  
14 and repair, or related purposes.

15 (5) "Person" means any firm, association, water users' association,  
16 corporation, irrigation district, or municipal corporation, as well as  
17 an individual.

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

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

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

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

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

29 (4) As used in this section, the "location of the original well or  
30 wells" is the area described as the point of withdrawal in the original  
31 public notice published for the application for the water right for the  
32 well.

33 (5) ~~(a) The ((development and use of a small irrigation impoundment,~~  
34 ~~as defined in RCW 90.03.370(8),))~~ following does not constitute a  
35 change or amendment for the purposes of this section:

36 (i) The development and use of a small irrigation impoundment, as  
37 defined in RCW 90.03.370(8); and

1        (ii) The pooling of multiple water rights or permits from the same  
2 aquifer by a public water utility that holds multiple rights or permits  
3 in that aquifer as long as the annual quantity of water and  
4 instantaneous quantity of water of the pooled water rights and permits  
5 does not exceed the annual quantity of water and instantaneous quantity  
6 of water of the combined individual, underlying water rights or  
7 permits.

8        (b) The exemptions expressly provided by this subsection shall not  
9 be construed as requiring an amendment of any existing water right to  
10 enable the holder of the right to store or use water governed by the  
11 right.

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

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

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

24        (2) An amendment to construct replacement or a new additional well  
25 or wells at a location outside of the location of the original well or  
26 wells or to change the manner or place of use of the water shall be  
27 issued only after publication of notice of the application and findings  
28 as prescribed in the case of an original application. Such amendment  
29 shall be issued by the department only on the conditions that: (a) The  
30 additional or replacement well or wells shall tap the same body of  
31 public groundwater as the original well or wells; (b) where a  
32 replacement well or wells is approved, the use of the original well or  
33 wells shall be discontinued and the original well or wells shall be  
34 properly decommissioned as required under chapter 18.104 RCW; (c) where  
35 an additional well or wells is constructed, the original well or wells  
36 may continue to be used, but the combined total withdrawal from the  
37 original and additional well or wells shall not enlarge the right



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

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

26 (4) As used in this section, the "location of the original well or  
27 wells" is the area described as the point of withdrawal in the original  
28 public notice published for the application for the water right for the  
29 well.

30 (5)~~(a) The ((development and use of a small irrigation impoundment,~~  
31 ~~as defined in RCW 90.03.370(8),))~~ following does not constitute a  
32 change or amendment for the purposes of this section:

33 (i) The development and use of a small irrigation impoundment, as  
34 defined in RCW 90.03.370(8); and

35 (ii) The pooling of multiple water rights or permits from the same  
36 aquifer by a public water utility that holds multiple rights or permits  
37 in that aquifer as long as the annual quantity of water and  
38 instantaneous quantity of water of the pooled water rights and permits

1 does not exceed the annual quantity of water and instantaneous quantity  
2 of water of the combined individual, underlying water rights or  
3 permits.

4 (b) The exemptions expressly provided by this subsection shall not  
5 be construed as requiring an amendment of any existing water right to  
6 enable the holder of the right to store or use water governed by the  
7 right.

8 NEW SECTION. **Sec. 11.** (1) Sections 1 and 9 of this act expire  
9 June 30, 2019.

10 (2) Section 4 of this act expires June 30, 2013.

11 NEW SECTION. **Sec. 12.** (1) Sections 2 and 10 of this act take  
12 effect June 30, 2019.

13 (2) Section 5 of this act takes effect June 30, 2013.

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