
SUBSTITUTE SENATE BILL 5536

State of Washington

62nd Legislature

2011 Regular Session

By Senate Environment, Water & Energy (originally sponsored by Senators Rockefeller, Honeyford, Ranker, Nelson, Shin, and Kline; by request of Department of Ecology)

READ FIRST TIME 02/21/11.

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

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

8 **PART 1**

9 **MITIGATION AND CONSERVATION**

10 **Sec. 101.** RCW 90.03.255 and 1997 c 360 s 2 are each amended to
11 read as follows:

12 (1) The department shall, when evaluating an application for a
13 water right, transfer, or change filed pursuant to RCW 90.03.250 or
14 90.03.380 that includes provision for ~~((any water impoundment or other
15 resource management technique))~~ mitigation of impacts through new or
16 existing storage or other infrastructure, operations, or institutional
17 arrangements, take into consideration the benefits and costs, including
18 environmental effects, of any ~~((water impoundment or other resource~~

1 ~~management~~) mitigation technique that is included as a component of
2 the application. The department's consideration shall extend to any
3 increased water supply that results from ~~((the impoundment or other~~
4 ~~resource management~~) a mitigation technique, including but not limited
5 to any recharge of groundwater that may occur or water banking activity
6 under chapters 90.42 and 90.38 RCW, as a means of making water
7 available or otherwise offsetting the impact of the diversion of
8 surface water proposed in the application for the water right,
9 transfer, or change. Provision for ~~((an impoundment or other resource~~
10 ~~management technique~~) mitigation of impacts in an application shall be
11 made solely at the discretion of the applicant and shall not otherwise
12 be made by the department as a condition for approving an application
13 that does not include such provision, unless the department has adopted
14 a rule closing the source to new appropriations or a rule establishing
15 instream flows that apply to the source.

16 (2) The department may publish guidance on its web site to inform
17 applicants of mitigation strategies, techniques, and institutional
18 arrangements that, where feasible, would ensure that, if the
19 application were granted, the effects of the new diversion or
20 withdrawal would not impair any senior water right or adopted instream
21 flow, or negatively affect any closed water source.

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

25 **Sec. 102.** RCW 90.44.055 and 1997 c 360 s 3 are each amended to
26 read as follows:

27 (1) The department shall, when evaluating an application for a
28 water right or an amendment filed pursuant to RCW 90.44.050 or
29 90.44.100 that includes provision for ~~((any water impoundment or other~~
30 ~~resource management technique~~) mitigation of impacts through new or
31 existing storage or other infrastructure, operations, or institutional
32 arrangements, take into consideration the benefits and costs, including
33 environmental effects, of any ~~((water impoundment or other resource~~
34 ~~management~~) mitigation technique that is included as a component of
35 the application. The department's consideration shall extend to any
36 increased water supply that results from the ~~((impoundment or other~~
37 ~~resource management technique~~) mitigation of impacts, including but

1 not limited to any recharge of groundwater that may occur or water
2 banking activity under chapters 90.42 and 90.38 RCW, as a means of
3 making water available or otherwise offsetting the impact of the
4 withdrawal of groundwater proposed in the application for the water
5 right or amendment in the same water resource inventory area.
6 Provision for ~~((an impoundment or other resource management technique))~~
7 mitigation of impacts in an application shall be made solely at the
8 discretion of the applicant and shall not be made by the department as
9 a condition for approving an application that does not include such
10 provision, unless the department has adopted a rule closing the source
11 to new appropriations or has adopted rules establishing instream flows
12 that apply to the source.

13 (2) The department may publish guidance on its web site to inform
14 applicants of mitigation strategies, techniques, and institutional
15 arrangements that, where feasible, would ensure that, if the
16 application were granted, the effects of the new diversion or
17 withdrawal would not impair any senior water right or adopted instream
18 flow, or negatively affect any closed water source.

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

22 **Sec. 103.** RCW 90.44.050 and 2003 c 307 s 1 are each amended to
23 read as follows:

24 (1) After June 6, 1945, no withdrawal of public groundwaters of the
25 state shall be begun, nor shall any well or other works for such
26 withdrawal be constructed, unless an application to appropriate such
27 waters has been made to the department and a permit has been granted by
28 it as herein provided: EXCEPT, HOWEVER, That any withdrawal of public
29 groundwaters for stock-watering purposes, or for the watering of a lawn
30 or of a noncommercial garden not exceeding one-half acre in area, or
31 for single or group domestic uses in an amount not exceeding five
32 thousand gallons a day, or as provided in RCW 90.44.052, or for an
33 industrial purpose in an amount not exceeding five thousand gallons a
34 day, is and shall be exempt from the provisions of this section, but,
35 to the extent that it is regularly used beneficially, shall be entitled
36 to a right equal to that established by a permit issued under the
37 provisions of this chapter: PROVIDED, HOWEVER, That the department

1 from time to time may require the person or agency making any such
2 small withdrawal to furnish information as to the means for and the
3 quantity of that withdrawal: PROVIDED, FURTHER, That at the option of
4 the party making withdrawals of groundwaters of the state not exceeding
5 five thousand gallons per day, applications under this section or
6 declarations under RCW 90.44.090 may be filed and permits and
7 certificates obtained in the same manner and under the same
8 requirements as is in this chapter provided in the case of withdrawals
9 in excess of five thousand gallons a day.

10 (2) The department may by rule establish quantity and acreage
11 limits for new uses of water related to: The watering of a lawn or of
12 a noncommercial garden not exceeding one-half acre in area; for single
13 or group domestic uses in an amount not exceeding five thousand gallons
14 a day; as provided in RCW 90.44.052; or for an industrial purpose in an
15 amount not exceeding five thousand gallons a day that are lower than
16 those provided in subsection (1) of this section. The rules, which may
17 include rules adopted under RCW 90.54.050, must be specific to a
18 watershed or aquifer that the department determines, in consultation
19 with the department of fish and wildlife, federally recognized Indian
20 tribes, and local jurisdictions, is at or close to being fully
21 appropriated and that lower limits on new uses of groundwater are
22 needed in the interest of conservation and stretching the beneficial
23 use of remaining waters as far as possible.

24 **PART 2**

25 **REVIEW PROCESS**

26 NEW SECTION. Sec. 201. A new section is added to chapter 90.03
27 RCW to read as follows:

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

33 (2) For the purposes of appeal, department tentative determinations
34 under this section do not alone constitute an agency action. Aggrieved
35 parties must appeal the primary action of the department under which
36 the evaluation under this section applies.

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

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

7 **Sec. 202.** RCW 90.03.380 and 2009 c 183 s 15 are each amended to
8 read as follows:

9 (1) The right to the use of water which has been applied to a
10 beneficial use in the state shall be and remain appurtenant to the land
11 or place upon which the same is used: PROVIDED, HOWEVER, That the
12 right may be transferred to another or to others and become appurtenant
13 to any other land or place of use without loss of priority of right
14 theretofore established if such change can be made without detriment or
15 injury to existing rights. The point of diversion of water for
16 beneficial use or the purpose of use may be changed, if such change can
17 be made without detriment or injury to existing rights. A change in
18 the place of use, point of diversion, and/or purpose of use of a water
19 right to enable irrigation of additional acreage or the addition of new
20 uses may be permitted if such change results in no increase in the
21 annual consumptive quantity of water used under the water right. For
22 purposes of this section, "annual consumptive quantity" means the
23 estimated or actual annual amount of water diverted pursuant to the
24 water right, reduced by the estimated annual amount of return flows,
25 averaged over the two years of greatest use within the most recent
26 five-year period of continuous beneficial use of the water right.
27 Before any transfer of such right to use water or change of the point
28 of diversion of water or change of purpose of use can be made, any
29 person having an interest in the transfer or change, shall file a
30 written application therefor with the department, and the application
31 shall not be granted until notice of the application is published as
32 provided in RCW 90.03.280. If it (~~shall~~) appears that (~~such~~) a
33 transfer or (~~such~~) a change may be made without injury or detriment
34 to existing rights or conditioned to avoid injury or detriment to
35 existing rights, the department (~~shall~~) must issue to the applicant
36 an authorization to implement the transfer or change together with any
37 conditions that may be required to avoid injury or detriment to an

1 existing water right. Upon the applicant's showing that the transfer
2 or change has been implemented, the department must issue a certificate
3 in duplicate granting the right for such transfer or for such change of
4 point of diversion or of use. The certificate so issued shall be filed
5 and be made a record with the department and the duplicate certificate
6 issued to the applicant may be filed with the county auditor in like
7 manner and with the same effect as provided in the original certificate
8 or permit to divert water. The time period that the water right was
9 banked under RCW 90.92.070, in an approved local water plan created
10 under RCW 90.92.090, or the water right was subject to an agreement to
11 not divert under RCW 90.92.050 will not be included in the most recent
12 five-year period of continuous beneficial use for the purpose of
13 determining the annual consumptive quantity under this section. If the
14 water right has not been used during the previous five years but the
15 nonuse of which qualifies for one or more of the statutory (~~good~~
16 ~~causes—or~~) exceptions to relinquishment in RCW 90.14.140 and
17 90.44.520, the period of nonuse is not included in the most recent
18 five-year period of continuous beneficial use for purposes of
19 determining the annual consumptive quantity of water under this
20 section.

21 (2) The department's determination of the extent and validity of
22 water rights under this section shall be consistent with section 201 of
23 this act.

24 (3) The department may establish a reasonable schedule for
25 completion of necessary work to effect a change in the purpose, place,
26 or manner of use or for the construction of works to effect an
27 authorized change of point of diversion or withdrawal. Nonuse during
28 such a reasonable schedule is not subject to relinquishment provided
29 the project is pursued in accordance with RCW 90.03.320. Failure to
30 complete all or a portion of the change results in relinquishment of
31 the right unless otherwise excused under RCW 90.14.140.

32 (4) If an application for change proposes to transfer water rights
33 from one irrigation district to another, the department shall, before
34 publication of notice, receive concurrence from each of the irrigation
35 districts that such transfer or change will not adversely affect the
36 ability to deliver water to other landowners or impair the financial
37 integrity of either of the districts.

1 ~~((+3+))~~ (5) A change in place of use by an individual water user or
2 users of water provided by an irrigation district need only receive
3 approval for the change from the board of directors of the district if
4 the use of water continues within the irrigation district, and when
5 water is provided by an irrigation entity that is a member of a board
6 of joint control created under chapter 87.80 RCW, approval need only be
7 received from the board of joint control if the use of water continues
8 within the area of jurisdiction of the joint board and the change can
9 be made without detriment or injury to existing rights.

10 ~~((+4+))~~ (6) This section shall not apply to trust water rights
11 acquired by the state through the funding of water conservation
12 projects under chapter 90.38 RCW or RCW 90.42.010 through 90.42.070.

13 ~~((+5+))~~ (7)(a) Pending applications for new water rights are not
14 entitled to protection from impairment, injury, or detriment when an
15 application relating to an existing surface or ground water right is
16 considered.

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

22 (c) Notwithstanding any other existing authority to process
23 applications, including but not limited to the authority to process
24 applications under WAC 173-152-050 as it existed on January 1, 2001, an
25 application relating to an existing surface or ground water right may
26 be processed ahead of a previously filed application relating to an
27 existing right when sufficient information for a decision on the
28 previously filed application is not available and the applicant for the
29 previously filed application is sent written notice that explains what
30 information is not available and informs the applicant that processing
31 of the next application will begin. The previously filed application
32 does not lose its priority date and if the information is provided by
33 the applicant within sixty days, the previously filed application shall
34 be processed at that time. This subsection ~~((+5+))~~ (7)(c) does not
35 affect any other existing authority to process applications.

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

1 (~~(6)~~) (8) No applicant for a change, transfer, or amendment of a
2 water right may be required to give up any part of the applicant's
3 valid water right or claim to a state agency, the trust water rights
4 program, or to other persons as a condition of processing the
5 application.

6 (~~(7)~~) (9) In revising the provisions of this section and adding
7 provisions to this section by chapter 237, Laws of 2001, the
8 legislature does not intend to imply legislative approval or
9 disapproval of any existing administrative policy regarding, or any
10 existing administrative or judicial interpretation of, the provisions
11 of this section not expressly added or revised.

12 (~~(8)~~) (10) The development and use of a small irrigation
13 impoundment, as defined in RCW 90.03.370(8), does not constitute a
14 change or amendment for the purposes of this section. The exemption
15 expressly provided by this subsection shall not be construed as
16 requiring a change or transfer of any existing water right to enable
17 the holder of the right to store water governed by the right.

18 (~~(9)~~) (11) This section does not apply to a water right involved
19 in an approved local water plan created under RCW 90.92.090, a water
20 right that is subject to an agreement not to divert under RCW
21 90.92.050, or a banked water right under RCW 90.92.070.

22 **Sec. 203.** RCW 90.03.380 and 2003 c 329 s 2 are each amended to
23 read as follows:

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

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

30 (2) The department's determination of the extent and validity of
31 water rights under this section shall be consistent with section 201 of
32 this act.

33 (3) The department may establish a reasonable schedule for
34 completion of necessary work to effect a change in the purpose, place,
35 or manner of use or for the construction of works to effect an
36 authorized change of point of diversion or withdrawal. Nonuse during
37 such a reasonable schedule is not subject to relinquishment provided

1 the project is pursued in accordance with RCW 90.03.320. Failure to
2 complete all or a portion of the change results in relinquishment of
3 the right unless otherwise excused under RCW 90.14.140.

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

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

19 ((+4)) (6) This section shall not apply to trust water rights
20 acquired by the state through the funding of water conservation
21 projects under chapter 90.38 RCW or RCW 90.42.010 through 90.42.070.

22 ((+5)) (7)(a) Pending applications for new water rights are not
23 entitled to protection from impairment, injury, or detriment when an
24 application relating to an existing surface or ground water right is
25 considered.

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

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

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

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

9 (~~((+6+))~~) (8) No applicant for a change, transfer, or amendment of a
10 water right may be required to give up any part of the applicant's
11 valid water right or claim to a state agency, the trust water rights
12 program, or to other persons as a condition of processing the
13 application.

14 (~~((+7+))~~) (9) In revising the provisions of this section and adding
15 provisions to this section by chapter 237, Laws of 2001, the
16 legislature does not intend to imply legislative approval or
17 disapproval of any existing administrative policy regarding, or any
18 existing administrative or judicial interpretation of, the provisions
19 of this section not expressly added or revised.

20 (~~((+8+))~~) (10) The development and use of a small irrigation
21 impoundment, as defined in RCW 90.03.370(8), does not constitute a
22 change or amendment for the purposes of this section. The exemption
23 expressly provided by this subsection shall not be construed as
24 requiring a change or transfer of any existing water right to enable
25 the holder of the right to store water governed by the right.

26 **Sec. 204.** RCW 90.44.100 and 2009 c 183 s 16 are each amended to
27 read as follows:

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

35 (2) An amendment to construct replacement or a new additional well
36 or wells at a location outside of the location of the original well or
37 wells or to change the manner or place of use of the water shall be

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

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

37 (4) As used in this section, the "location of the original well or

1 wells" is the area described as the point of withdrawal in the original
2 public notice published for the application for the water right for the
3 well.

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

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

13 (7) The department's tentative determination of the extent and
14 validity of water rights under this section must be consistent with
15 section 201 of this act.

16 **Sec. 205.** RCW 90.44.100 and 2003 c 329 s 3 are each amended to
17 read as follows:

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

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

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

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

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

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

37 (6) The department's tentative determination of the extent and

1 validity of water rights under this section must be consistent with
2 section 201 of this act.

3 **PART 3**

4 **WATERSHED MANAGEMENT**

5 **Sec. 301.** RCW 90.82.040 and 2003 1st sp.s. c 4 s 2 are each
6 amended to read as follows:

7 (1) Once a WRIA planning unit has been initiated under RCW
8 90.82.060 and a lead agency has been designated, it shall notify the
9 department and may apply to the department for funding assistance for
10 conducting the planning and implementation. Funds shall be provided
11 from and to the extent of appropriations made by the legislature to the
12 department expressly for this purpose.

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

17 (i) Initiating governments may apply for an initial organizing
18 grant of up to fifty thousand dollars for a single WRIA or up to
19 seventy-five thousand dollars for a multi-WRIA management area in
20 accordance with RCW 90.82.060(4);

21 (ii)(A) A planning unit may apply for up to two hundred thousand
22 dollars for each WRIA in the management area for conducting watershed
23 assessments in accordance with RCW 90.82.070, except that a planning
24 unit that chooses to conduct a detailed assessment or studies under
25 (a)(ii)(B) of this subsection or whose initiating governments choose or
26 have chosen to include an instream flow or water quality component in
27 accordance with RCW 90.82.080 or 90.82.090 may apply for up to one
28 hundred thousand additional dollars for each instream flow and up to
29 one hundred thousand additional dollars for each water quality
30 component included for each WRIA to conduct an assessment on that
31 optional component and for each WRIA in which the assessments or
32 studies under (a)(ii)(B) of this subsection are conducted.

33 (B) A planning unit may elect to apply for up to one hundred
34 thousand additional dollars to conduct a detailed assessment of
35 multipurpose water storage opportunities or for studies of specific

1 multipurpose storage projects which opportunities or projects are
2 consistent with and support the other elements of the planning unit's
3 watershed plan developed under this chapter; and

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

11 (b) A planning unit may request a different amount for phase two or
12 phase three of watershed planning than is specified in (a) of this
13 subsection, provided that the total amount of funds awarded do not
14 exceed the maximum amount the planning unit is eligible for under (a)
15 of this subsection. The department shall approve such an alternative
16 allocation of funds if the planning unit identifies how the proposed
17 alternative will meet the goals of this chapter and provides a proposed
18 timeline for the completion of planning. However, the up to one
19 hundred thousand additional dollars in funding for instream flow and
20 water quality components and for water storage assessments or studies
21 that a planning unit may apply for under (a)(ii)(A) and (B) of this
22 subsection may be used only for those instream flow, water quality, and
23 water storage purposes.

24 (c) (~~By December 1, 2001, or~~) Within one year of initiating phase
25 one of watershed planning, (~~whichever occurs later,~~) the initiating
26 governments for each planning unit must inform the department whether
27 they intend to have the planning unit establish or amend instream flows
28 as part of its planning process. If they elect to have the planning
29 unit establish or amend instream flows, the planning unit is eligible
30 to receive one hundred thousand dollars for that purpose in accordance
31 with (a)(ii)(A) of this subsection. If the initiating governments for
32 a planning unit elect not to establish or amend instream flows as part
33 of the unit's planning process, the department shall retain one hundred
34 thousand dollars to carry out an assessment to support establishment of
35 instream flows and to establish such flows in accordance with RCW
36 90.54.020(3)(a) and chapter 90.22 RCW. The department shall not use
37 these funds to amend an existing instream flow unless requested to do
38 so by the initiating governments for a planning unit.

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

5 (e) A planning unit may apply for a matching grant for phase four
6 watershed plan implementation following approval under the provisions
7 of RCW 90.82.130. ~~((A match of ten percent is required and))~~ For years
8 one, two, three, four, and five of phase four, a match of ten percent
9 is required. For years six, seven, eight, and nine of phase four, a
10 match of fifty percent is required. For all years in phase four, the
11 match may include financial contributions or in-kind goods and services
12 directly related to coordination, plan, or project implementation, and
13 oversight functions. The match can be provided by the planning unit or
14 by the combined commitments from federal agencies, tribal governments,
15 local governments, special districts, or other local organizations.
16 The phase four grant may be up to one hundred thousand dollars for each
17 planning unit for each of the first three years of implementation. At
18 the end of the three-year period, a two-year extension may be available
19 for up to fifty thousand dollars each year. Subject to the
20 availability of amounts appropriated for this specific purpose, at the
21 end of five years and for years six and seven, a two-year matching
22 grant extension may be applied for with funding up to fifty thousand
23 dollars each year. For years eight and nine, planning units may apply
24 for another two-year matching grant extension with funding up to fifty
25 thousand dollars each year. For planning units that cover more than
26 one WRIA, additional matching funds of up to twenty-five thousand
27 dollars may be available for each additional WRIA per year for the
28 first three years of implementation, and up to twelve thousand five
29 hundred dollars per WRIA per year for each of the fourth ~~((and fifth~~
30 years)), fifth, sixth, seventh, eighth, and ninth years.

31 (f) When evaluating requests from watershed planning units and lead
32 agencies to implement an adopted watershed plan and a detailed
33 implementation plan for funding consistent with (e) of this subsection
34 and for phase four years two through nine, the department must give
35 priority consideration to grant proposals that directly support
36 activities or implement projects that:

37 (i) Integrate watershed plan implementation with the goals,

1 objectives, or work plans of other local, regional, or statewide water
2 resource, water quality, or fish recovery programs and plans;

3 (ii) Develop new or improve the existing assessment of water supply
4 as required under RCW 90.82.070; or

5 (iii) Develop or implement strategies and priorities to enhance,
6 restore, or augment stream flows.

7 (g) In addition to the eligibility requirements and priority
8 considerations of this subsection and subsection (3) of this section,
9 the department must consider the following when making grant award
10 decisions for phase four:

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

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

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

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

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

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

32 (i) The planning unit meets all of the requirements of this
33 chapter;

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

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

1 (iv) The application and supporting information shows the grantee
2 is ready to proceed.

3 ~~(c) ((In ranking grant applications submitted at each stage of the~~
4 ~~grants program, the department shall give preference to applications in~~
5 ~~the following order of priority:~~

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

8 ~~(ii) Applications that address protection and enhancement of))~~ When
9 making decisions on the priority of funding grant applications
10 submitted during phases one, two, and three as identified in this
11 section, and in addition to priority considerations for funding phase
12 four grants in subsection (2) of this section, the department shall
13 give preference to applications that will:

14 (i) Protect and enhance fish habitat in watersheds that have
15 aquatic fish species listed or proposed to be listed as endangered or
16 threatened under the federal endangered species act, 16 U.S.C. Sec.
17 1531 et seq. and for which there is evidence of an inability to supply
18 adequate water for the existing population, or for projected population
19 growth and economic growth ~~((from:~~

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

21 ~~(B) Second, single WRIA planning;~~

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

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

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

28 ~~(B) Second, single WRIA planning)).~~

29 (d) Except for phase four watershed plan implementation, the
30 department may not impose any local matching fund requirement as a
31 condition for grant eligibility or as a preference for receiving a
32 grant.

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

35 ~~(5))~~ Planning and implementation under this chapter ~~((should))~~
36 must be completed as expeditiously as possible, with the focus being on
37 local stakeholders cooperating to meet local needs and partnering with

1 other regional, state, or federal entities and initiatives to address
2 water management problems, issues, and challenges.

3 ~~((6) Funding provided under this section shall be considered a~~
4 ~~contractual obligation against the moneys appropriated for this~~
5 ~~purpose.))~~

6 **Sec. 302.** RCW 90.82.043 and 2007 c 445 s 6 are each amended to
7 read as follows:

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

13 (2) Each implementation plan must contain strategies to provide
14 sufficient water for: (a) Production agriculture; (b) commercial,
15 industrial, and residential use; and (c) instream flows. Each
16 implementation plan must contain timelines to achieve these strategies
17 and interim milestones to measure progress.

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

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

26 (5)~~((a))~~ By ~~((December 1, 2003, and by))~~ December 1st of each
27 ~~((subsequent))~~ odd-numbered year, the director of the department shall
28 report to the appropriate legislative standing committees regarding
29 statutory changes necessary to enable state agency approval or permit
30 decision making needed to implement a plan approved under this chapter.

31 ~~((b) Beginning with the December 1, 2007, report, and then every~~
32 ~~two years thereafter, the director shall include in each report the~~
33 ~~extent to which reclaimed water has been identified in the watershed~~
34 ~~plans as potential sources or strategies to meet future water needs,~~
35 ~~and provisions in any watershed implementation plans that discuss~~
36 ~~barriers to implementation of the water reuse elements of those plans.~~

1 ~~The department's report shall include an estimate of the potential cost~~
2 ~~of reclaimed water facilities and identification of potential sources~~
3 ~~of funding for them.))~~

4 **Sec. 303.** RCW 90.82.060 and 2009 c 183 s 18 are each amended to
5 read as follows:

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

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

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

34 (c) For purposes of this chapter, WRIA 29 shall be divided such
35 that the portion of the WRIA located entirely within the White Salmon
36 subbasin and the subbasins east thereof shall be considered WRIA 29b
37 and the remaining portion shall be considered WRIA 29a. Planning may

1 be conducted separately for WRIA 29a and 29b. WRIA 29a shall be
2 eligible for one-half of the funding available for a single WRIA and
3 WRIA 29b shall be eligible for one-half of the funding available for a
4 single WRIA, for phases one, two, and three. Both WRIs 29a and 29b
5 are eligible for the full amounts of funding allotted to a whole WRIA
6 for planning units in phase four.

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

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

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

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

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

1 public meetings as deemed necessary to develop a proposed scope of work
2 and a proposed composition of the planning unit. In developing a
3 proposed composition of the planning unit, the initiating governments
4 shall provide for representation of a wide range of water resource
5 interests.

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

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

20 (9) A planning unit is dissolved when the department approves a
21 water management board, as authorized in RCW 90.92.030, and all assets,
22 funds, files, planning documents, pending plans and grant applications,
23 and other current activities of the planning unit are transferred to
24 the approved water management board. The approved water management
25 board must assume the duties, responsibilities, and activities of the
26 planning unit and the initiating governments, as required in this
27 chapter.

28 **Sec. 304.** RCW 90.82.060 and 2008 c 210 s 1 are each amended to
29 read as follows:

30 (1) Planning conducted under this chapter must provide for a
31 process to allow the local citizens within a WRIA or multi-WRIA area to
32 join together in an effort to: (a) Assess the status of the water
33 resources of their WRIA or multi-WRIA area; and (b) determine how best
34 to manage the water resources of the WRIA or multi-WRIA area to balance
35 the competing resource demands for that area within the parameters
36 under RCW 90.82.120.

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

12 (b) For purposes of this chapter, WRIA 40 shall be divided such
13 that the portion of the WRIA located entirely within the Stemilt and
14 Squilchuck subbasins shall be considered WRIA 40a and the remaining
15 portion shall be considered WRIA 40b. Planning may be conducted
16 separately for WRIA 40a and 40b. WRIA 40a shall be eligible for one-
17 fourth of the funding available for a single WRIA, and WRIA 40b shall
18 be eligible for three-fourths of the funding available for a single
19 WRIA, for phases one, two, and three. Both WRIs 40a and 40b are
20 eligible for the full amounts of funding allotted to a whole WRIA for
21 planning units in phase four.

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

32 (d) For purposes of this chapter, WRIA 14 shall be divided such
33 that the portion of the WRIA where surface waters drain into Hood Canal
34 shall be considered WRIA 14b, and the remaining portion shall be
35 considered WRIA 14a. Planning for WRIA 14b under this chapter shall be
36 conducted by the WRIA 16 planning unit. WRIA 14b shall be eligible for
37 one-half of the funding available for a single WRIA, and WRIA 14a shall
38 be eligible for one-half of the funding available for a single WRIA,

1 for phases one, two, and three. Both WRIAs 14a and 14b are eligible
2 for the full amounts of funding allotted to a whole WRIA for planning
3 units in phase four.

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

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

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

15 (6) The organizing grant shall be used to organize the planning
16 unit and to determine the scope of the planning to be conducted. In
17 determining the scope of the planning activities, consideration shall
18 be given to all existing plans and related planning activities. The
19 scope of planning must include water quantity elements as provided in
20 RCW 90.82.070, and may include water quality elements as contained in
21 RCW 90.82.090, habitat elements as contained in RCW 90.82.100, and
22 instream flow elements as contained in RCW 90.82.080. The initiating
23 governments shall work with state government, other local governments
24 within the management area, and affected tribal governments, in
25 developing a planning process. The initiating governments may hold
26 public meetings as deemed necessary to develop a proposed scope of work
27 and a proposed composition of the planning unit. In developing a
28 proposed composition of the planning unit, the initiating governments
29 shall provide for representation of a wide range of water resource
30 interests.

31 (7) Each state agency with regulatory or other interests in the
32 WRIA or multi-WRIA area to be planned shall assist the local citizens
33 in the planning effort to the greatest extent practicable, recognizing
34 any fiscal limitations. In providing such technical assistance and to
35 facilitate representation on the planning unit, state agencies may
36 organize and agree upon their representation on the planning unit.
37 Such technical assistance must only be at the request of and to the
38 extent desired by the planning unit conducting such planning. The

1 number of state agency representatives on the planning unit shall be
2 determined by the initiating governments in consultation with the
3 governor's office.

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

7 **PART 4**
8 **WATER RESOURCES COST RECOVERY**

9 **Sec. 401.** RCW 90.03.470 and 2005 c 412 s 2 are each amended to
10 read as follows:

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

14 (1) For the ~~((examination))~~ filing of an application for a permit
15 to appropriate water for a single domestic use that has a single
16 purpose, a ~~((minimum))~~ filing fee of fifty dollars must be remitted
17 with the application. For the filing of an application for a permit to
18 appropriate water other than for a single domestic use that has a
19 single purpose, a filing fee of two hundred dollars must be remitted
20 with the application. ~~((For an amount of water exceeding one half~~
21 cubic foot per second, the examination fee shall be assessed at the
22 rate of one dollar per one hundredth cubic foot per second. In no case
23 will the examination fee be less than fifty dollars or more than
24 twenty five thousand dollars.)) No fee is required under this
25 subsection (1) for an application filed by a party to a cost-
26 reimbursement agreement made under RCW 90.03.265.

27 (2) For the ~~((examination))~~ filing of an application to store
28 water, a fee of ~~((two dollars for each acre foot of storage proposed~~
29 ~~shall be charged, but a minimum fee of fifty))~~ two hundred dollars must
30 be remitted with the application. ~~((In no case will the examination~~
31 ~~fee for a storage project be less than fifty dollars or more than~~
32 ~~twenty five thousand dollars.))~~ No fee is required under this
33 subsection (2) for an application filed by a party to a
34 cost-reimbursement agreement made under RCW 90.03.265.

35 (3)(a) For the ~~((examination))~~ filing of an application to
36 transfer, change, or amend a water right certificate, permit, or claim

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

14 (b) The ~~((examination))~~ filing fee for a temporary or seasonal
15 change under RCW 90.03.390 is ~~((fifty))~~ one hundred dollars and must be
16 remitted with the application.

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

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

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

23 (iii) An application filed with a water conservancy board according
24 to chapter 90.80 RCW ~~((or for the review of a water conservancy board's
25 record of decision submitted to the department according to chapter
26 90.80 RCW))~~; or

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

29 (d) For a change, transfer, or amendment involving a single project
30 operating under more than one water right, including related secondary
31 diversion rights, or involving the consolidation of multiple water
32 rights, only one ~~((examination))~~ filing fee and one certificate fee are
33 required to be paid.

34 (4) ~~((The fifty-dollar minimum fee payable with the application
35 shall be a credit to the total amount whenever the examination fee
36 totals more than fifty dollars under the schedule specified in
37 subsections (1) through (3) of this section and in such case the
38 further fee due shall be the total computed amount, less the amount~~

1 ~~previously paid. Within five working days from receipt of an~~
2 ~~application, the department shall notify the applicant by registered~~
3 ~~mail of any additional fees due under subsections (1) through (3) of~~
4 ~~this section.~~

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

11 ~~((6))~~ (5) For applying for each extension of time for beginning
12 construction work under a permit to appropriate water, for completion
13 of construction work, or for completing application of water to a
14 beneficial use, a fee of fifty dollars or the department's actual cost
15 to process the extension, whichever is greater is required. These fees
16 also apply to similar extensions of time requested under a change or
17 transfer authorization.

18 ~~((7))~~ (6) For the inspection of any hydraulic works to ~~((insure))~~
19 ensure safety to life and property, a fee based on the actual cost of
20 the inspection, including the expense incident thereto, is required
21 except as follows: (a) For any hydraulic works less than ten years
22 old, that the department examined and approved the construction plans
23 and specifications as to its safety when required under RCW 90.03.350,
24 there shall be no fee charged; or (b) for any hydraulic works more than
25 ten years old, but less than twenty years old, that the department
26 examined and approved the construction plans and specifications as to
27 its safety when required under RCW 90.03.350, the fee charged shall not
28 exceed the fee for a significant hazard dam.

29 ~~((8))~~ (7) For the examination of plans and specifications as to
30 safety of controlling works for storage of ten acre feet or more of
31 water, a minimum fee of ten dollars, or a fee equal to the actual cost,
32 is required.

33 ~~((9))~~ (8) For recording an assignment either of a permit to
34 appropriate water or of an application for such a permit, a fee of
35 fifty dollars or the department's actual cost to process the
36 assignment, whichever is greater is required.

37 ~~((10))~~ (9) For preparing and issuing all water right

1 certificates, a fee of fifty dollars or the department's actual cost,
2 whichever is greater is required.

3 ~~((+11))~~ (10) For filing and recording a formal protest against
4 granting any application, a fee of fifty dollars is required. No fee
5 is required to submit a comment, by mail or otherwise, regarding an
6 application.

7 ~~((+12))~~ (11) For ~~((filing))~~ the department's determination on an
8 application to amend a water right claim filed under chapter 90.14 RCW,
9 a fee of fifty dollars or the department's actual cost, whichever is
10 greater is required.

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

26 ~~((+14))~~ (13) For purposes of calculating fees for groundwater
27 filings, one cubic foot per second shall be regarded as equivalent to
28 four hundred fifty gallons per minute.

29 (14) ~~((+15) Eighty percent of the fees collected by the department~~
30 ~~under this section shall be deposited in the state general fund.~~
31 ~~Twenty percent of the fees collected by the department under this~~
32 ~~section shall be deposited in the water rights tracking system account~~
33 ~~established in RCW 90.14.240)) Fees collected by the department under~~
34 this section must be deposited in the water rights processing account
35 established in RCW 90.03.650.

36 ~~((+16) Except for the fees relating to the inspection of hydraulic~~
37 ~~works and the examination of plans and specifications of controlling~~
38 ~~works provided for in subsections (7) and (8) of this section, nothing~~

1 ~~in this section is intended to grant authority to the department to~~
2 ~~amend the fees in this section by adoption of rules or otherwise))~~
3 (15)(a) In addition to the other fees in this section, the department
4 must recover from applicants the full cost of processing all
5 applications for new water rights and applications for change,
6 transfer, or amendment received after or awaiting the initiation of
7 application processing as of the effective date of this section. The
8 department shall only charge the fees due in advance of each phase of
9 processing as provided in (c) and (d) of this subsection. In
10 processing applications the department must continue to improve
11 efficiency, including fully utilizing technology to streamline
12 processes.

13 (b) After an application for a new water right is filed and the
14 filing fee is paid as provided in subsections (1) and (2) of this
15 section and prior to initiating the first phase of evaluation of the
16 application, the department must provide in writing an initial
17 assessment that estimates the cost and scope of issues likely involved
18 in processing the applications from a water source. The purpose of
19 this initial assessment is to assist the applicant in making a decision
20 whether to proceed with having the department make a formal
21 determination on their water right application. Such an assessment
22 must be made with the department's best professional judgment based on
23 the information available to the department at that time. If
24 additional information will need to be collected or studies will have
25 to be conducted to answer the applicable tests for issuing a permit or
26 change approval, the department must, to the extent possible, disclose
27 to the applicant the time and cost that the department estimates will
28 be incurred. The department's initial assessment under this subsection
29 does not constitute an appealable action or a final decision by the
30 department. The department must recover the department's cost of
31 performing an initial water right processing assessment from those
32 applicants who elect to proceed with having a formal determination made
33 on their application.

34 (c) After the initial assessment, processing of the application
35 must be made in the following phases with the fees for each phase
36 payable before the department undertakes the action in that phase of
37 processing:

38 (i) Determination of the availability of water;

1 (ii) Determination of whether any existing water right or the
2 public interest would be impaired;

3 (iii) Preparation of a report of examination and issuance and
4 recording of a permit to appropriate water.

5 (d) After an application for a change, transfer, or amendment of a
6 water right is filed and the filing fee is paid as provided in
7 subsection (3) of this section, processing of the application must be
8 made in the following phases with the fees for each phase payable
9 before the department undertakes the action in that phase of
10 processing:

11 (i) Review of the extent and validity of the water right proposed
12 for change, transfer, or amendment;

13 (ii) Determination of whether approval of the change would impair
14 any other water right or, if applicable, the public interest;

15 (iii) Preparation of a report of examination and issuance of an
16 authorization to change, transfer, or amend the water right.

17 (e) An applicant may withdraw an application at any phase of the
18 sequence of processing provided in (c) or (d) of this subsection by
19 declining to pay the fee. Upon receiving such a notice or upon an
20 applicant's nonresponsiveness to a notice to remit fees, the department
21 shall cancel the application.

22 (f) The department must calculate the fee for each phase of
23 processing an application based primarily on the department's projected
24 workload and cost to process the application to a decision and the
25 proportionate quantity of water requested by each applicant when the
26 department is batch processing multiple applications from the same
27 source. For the purposes of assessing the full cost of water right
28 processing under this section, the department must ensure that
29 applicants are charged only for services necessarily related to the
30 processing of their applications.

31 (g) Any filing fees that were paid by the applicant under other
32 requirements of this section must be credited against the applicant's
33 share of the cost of processing applications under this subsection.

34 (h) An applicant for municipal supply or community domestic supply
35 may request that processing of an application be deferred due to the
36 applicant not being ready to proceed with development of the proposed
37 water use at that time. A request to defer an application must be
38 accompanied by a statement of the reason that deferral is necessary,

1 including the projected timing for development of the water under the
2 application. A deferred application retains its priority date if an
3 annual fee is paid that is equal to ten percent of the estimated cost
4 to process the application under this section.

5 (i) Revenue collected from these fees must be deposited into the
6 water rights processing account created in RCW 90.03.650. The
7 applicant must transmit the processing fee within ninety days of the
8 department's notice of fees due.

9 (j) If the department does not have sufficient technical staff
10 resources or specialized expertise needed to make its determinations on
11 applications, it may elect to utilize a consultant from its cost-
12 reimbursement consultant list established under RCW 90.03.265. The
13 cost of the consultant must be included in the processing fees.

14 (k) The department must fully recover its costs related to
15 providing water users mitigation credits, issued as a result of water
16 banking under chapters 90.42 and 90.38 RCW.

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

21 NEW SECTION. Sec. 402. A new section is added to chapter 90.03
22 RCW to read as follows:

23 The department may adopt a new fee schedule by rule to implement
24 the requirements of RCW 90.03.470. The fees must be based on the
25 department's actual cost to carry out the actions for which fees are
26 charged in RCW 90.03.470.

27 NEW SECTION. Sec. 403. A new section is added to chapter 90.03
28 RCW to read as follows:

29 (1) The department must submit a report to the governor and the
30 legislature on the status of water rights processing by November 30,
31 2012, and by November 30th of every even-numbered year thereafter
32 through 2020. The report must include the numbers of applications
33 received, decisions rendered, applications pending, decisions appealed,
34 decisions rendered by conservancy boards, decisions made through use of
35 cost-reimbursement contractors, decisions made under expedited

1 processing provisions, number of staff assigned to processing water
2 rights, and efficiency measures implemented. The department shall also
3 develop and report on performance measures for water rights processing.

4 (2) By September 1, 2011, the department shall explore ways to make
5 the state's water resource management program financially self-
6 sufficient and shall submit a report to the office of financial
7 management and appropriate committees of the legislature regarding
8 recommended actions and legislation needed to implement a preferred
9 approach.

10 **PART 5**

11 **GENERAL PROVISIONS**

12 NEW SECTION. **Sec. 501.** Sections 202, 204, and 303 of this act
13 expire June 30, 2019.

14 NEW SECTION. **Sec. 502.** Sections 203, 205, and 304 of this act
15 take effect June 30, 2019.

16 NEW SECTION. **Sec. 503.** RCW 90.14.240 (Water rights tracking
17 system account) and 2005 c 412 s 3 are each repealed.

18 NEW SECTION. **Sec. 504.** Nothing in this act may be interpreted or
19 administered in a manner that impairs or diminishes a valid water
20 right, including rights established under state law and rights
21 established under federal law.

22 NEW SECTION. **Sec. 505.** If any provision of this act or its
23 application to any person or circumstance is held invalid, the
24 remainder of the act or the application of the provision to other
25 persons or circumstances is not affected.

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