

2SHB 1338 - H AMD 260

By Representative Linville

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature finds that state laws have
4 long recognized that communities are dynamic entities. The legislature
5 also finds that any interpretation of its laws that would require its
6 communities to be ossified or frozen in time or would require their
7 future growth to be precisely predictable defies the needs of human
8 society. The legislature has provided numerous means and considerable
9 guidance to its communities regarding their growth and for providing
10 essential services within them as they grow. While the legislature
11 recognizes that the totality of the statutory law that governs such
12 communities is found in a wide variety of places throughout the
13 codified version of the statute laws, the Revised Code of Washington,
14 the legislature also recognizes that it has not always expressly
15 announced in the portion of those statutes generally referred to as the
16 state's water laws how the nature of water rights held by municipal
17 water suppliers accommodates the growth of and changes in communities
18 and the requirements placed on them and authorities granted to them by
19 other laws. The legislature finds that this is in part because state
20 policies in the administration of the water laws have reflected the
21 dynamic nature of human habitation and population growth from within
22 and from without the state. For a very long time, these policies
23 recognized that a water right for municipal water supply purposes is
24 "perfected" when facilities for diverting or withdrawing and
25 distributing the water are constructed but before all of the water is
26 placed to actual use within the community or communities served.

27 With the enactment of this legislation, the legislature intends to
28 provide within the water laws a curative clarification of the

1 relationship of water rights for municipal water supply purposes to the
2 requirements of other law and the realities of growth.

3 **Sec. 2.** RCW 90.03.015 and 1987 c 109 s 65 are each amended to read
4 as follows:

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

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

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

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

11 (4) "Municipal water supply purposes" means a beneficial use of
12 water: (a) For residential purposes through fifteen or more
13 residential service connections or for providing residential use of
14 water for a nonresidential population that is, on average, at least
15 twenty-five people for at least sixty days a year; (b) for governmental
16 or governmental proprietary purposes; or (c) indirectly for the
17 purposes in (a) or (b) of this subsection through the delivery of
18 treated or raw water to a public water system for such use. If water
19 is beneficially used under a water right for the purposes listed in
20 (a), (b), or (c) of this subsection, any other beneficial use of water
21 under the right generally associated with the use of water within a
22 municipality is also for "municipal water supply purposes," including,
23 but not limited to, beneficial use for commercial, industrial,
24 irrigation of parks and open spaces, or related purposes.

25 (5) "Person" means any firm, association, water users' association,
26 corporation, irrigation district, or municipal corporation, as well as
27 an individual.

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

30 Beneficial uses of water under a municipal water supply purposes
31 water right may include water for:

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

34 (2) Uses that are needed to implement environmental obligations
35 called for by a watershed plan approved under chapter 90.82 RCW or a
36 comprehensive watershed plan adopted under RCW 90.54.040(1), a

1 federally approved habitat conservation plan prepared in response to
2 the listing of a species as being endangered or threatened under the
3 federal endangered species act, 16 U.S.C. Sec. 1531 et seq., a
4 hydropower license of the federal energy regulatory commission, or a
5 comprehensive irrigation district management plan.

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

8 When requested by a municipal water supplier or when processing a
9 change or amendment to the right, the department shall amend the water
10 right documents and related records to ensure that water rights that
11 are for municipal water supply purposes, as defined in RCW 90.03.015,
12 are correctly identified as being for municipal water supply purposes.

13 NEW SECTION. **Sec. 5.** A new section is added to chapter 90.14 RCW
14 to read as follows:

15 When a municipal water supplier acquires an existing water right
16 that is not a municipal water supply purpose right, that right is not
17 subject to relinquishment for nonuse occurring during the time that the
18 acquirer diligently seeks the department's approval to change the right
19 to municipal water supply purposes. Once a change to municipal water
20 supply purposes is approved by the department, the right is thereafter
21 subject to the exception from relinquishment in RCW 90.14.140(2)(d).

22 **Sec. 6.** RCW 90.14.031 and 1969 ex.s. c 284 s 12 are each amended
23 to read as follows:

24 ~~((Unless a different meaning is plainly required by the context,~~
25 ~~the following words and phrases as used in RCW 90.14.031 through~~
26 ~~90.14.121 shall have the following meanings:))~~

27 (1) The definitions in this subsection apply throughout this
28 chapter unless the context clearly requires otherwise.

29 (a) "Municipal water supplier" has the same meaning as defined in
30 RCW 90.03.015.

31 (b) "Municipal water supply purpose" has the same meaning as
32 defined in RCW 90.03.015.

33 (2) The definitions in this subsection apply throughout RCW
34 90.14.031 through 90.14.121 unless the context clearly requires
35 otherwise.

1 (a) "Person" shall mean an individual, partnership, association,
2 public or private corporation, city or other municipality, county, or
3 a state agency, and the United States of America when claiming water
4 rights established under the laws of the state of Washington.

5 ~~((+2))~~ (b) "Beneficial use" shall include, but not be limited to,
6 use for domestic water, irrigation, fish, shellfish, game and other
7 aquatic life, municipal, recreation, industrial water, generation of
8 electric power, and navigation.

9 **Sec. 7.** RCW 90.03.260 and 1987 c 109 s 84 are each amended to read
10 as follows:

11 (1) Each application for permit to appropriate water shall set
12 forth the name and post office address of the applicant, the source of
13 water supply, the nature and amount of the proposed use, the time
14 during which water will be required each year, the location and
15 description of the proposed ditch, canal, or other work, the time
16 within which the completion of the construction and the time for the
17 complete application of the water to the proposed use.

18 (2) If for agricultural purposes, ~~((it))~~ the application shall give
19 the legal subdivision of the land and the acreage to be irrigated, as
20 near as may be, and the amount of water expressed in acre feet to be
21 supplied per season. If for power purposes, it shall give the nature
22 of the works by means of which the power is to be developed, the head
23 and amount of water to be utilized, and the uses to which the power is
24 to be applied.

25 (3) If for construction of a reservoir, ~~((it))~~ the application
26 shall give the height of the dam, the capacity of the reservoir, and
27 the uses to be made of the impounded waters.

28 (4) If for community or multiple domestic water supply, the
29 application shall give the projected number of service connections
30 sought to be served. However, for a municipal water supplier that has
31 an approved water system plan under chapter 43.20 RCW or an approval
32 from the department of health to serve a specified number of service
33 connections, the service connection figure in the application or any
34 subsequent water right document is not an attribute limiting exercise
35 of the water right as long as the number of service connections to be
36 served under the right is consistent with the approved water system
37 plan or specified number.

1 (5) If for municipal water supply, (~~it~~) the application shall
2 give the present population to be served, and, as near as may be
3 estimated, the future requirement of the municipality. However, for a
4 municipal water supplier that has an approved water system plan under
5 chapter 43.20 RCW or an approval from the department of health to serve
6 a specified number of service connections, the population figures in
7 the application or any subsequent water right document are not an
8 attribute limiting exercise of the water right as long as the
9 population to be provided water under the right is consistent with the
10 approved water system plan or specified number.

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

14 (7) All applications shall be accompanied by such maps and
15 drawings, in duplicate, and such other data, as may be required by the
16 department, and such accompanying data shall be considered as a part of
17 the application.

18 **Sec. 8.** RCW 90.03.386 and 1991 c 350 s 2 are each amended to read
19 as follows:

20 (1) Within service areas established pursuant to chapter(~~s~~) 43.20
21 (~~and~~) or 70.116 RCW, the department of ecology and the department of
22 health shall coordinate approval procedures to ensure compliance and
23 consistency with the approved water system plan.

24 (2) The effect of the department of health's approval of a planning
25 or engineering document that describes a municipal water supplier's
26 service area under chapter 43.20 RCW, or the local legislative
27 authority's approval of service area boundaries in accordance with
28 procedures adopted pursuant to chapter 70.116 RCW, is that the place of
29 use of a surface water right or ground water right used by the supplier
30 is equivalent to, and coexistent with, the approved service area if the
31 supplier is in compliance with the terms of the water system plan or
32 small water system management program, including those regarding water
33 conservation, and the alteration of the place of use is not
34 inconsistent, regarding an area added to the place of use, with: Any
35 comprehensive plans or development regulations adopted under chapter
36 36.70A RCW; any other comprehensive plan, land use plan, or development

1 regulation adopted by a city, town, or county; or any watershed plan
2 approved under chapter 90.82 RCW.

3 (3) A municipal water supplier must implement cost-effective water
4 conservation in accordance with the requirements of sections 10 and 11
5 of this act as part of its approved water system plan or small water
6 system management program. With regard to water diverted or withdrawn
7 by the municipal water supplier under a particular surface or ground
8 water right a portion of which is an inchoate right, a municipal
9 supplier with one thousand or more service connections must document an
10 improvement in the efficiency of water use or delivery under the right
11 over the last six years before it may divert or withdraw further
12 amounts of its inchoate right for beneficial use. When establishing or
13 extending a surface or ground water right construction schedule under
14 RCW 90.03.320, the department must take into consideration the public
15 water system's use of conserved water.

16 **Sec. 9.** RCW 90.03.330 and 1987 c 109 s 89 are each amended to read
17 as follows:

18 (1) Upon a showing satisfactory to the department that any
19 appropriation has been perfected in accordance with the provisions of
20 this chapter, it shall be the duty of the department to issue to the
21 applicant a certificate stating such facts in a form to be prescribed
22 by ((him)) the director, and such certificate shall thereupon be
23 recorded with the department. Any original water right certificate
24 issued, as provided by this chapter, shall be recorded with the
25 department and thereafter, at the expense of the party receiving the
26 same, be transmitted by the department ((transmitted)) to the county
27 auditor of the county or counties where the distributing system or any
28 part thereof is located, and be recorded in the office of such county
29 auditor, and thereafter be transmitted to the owner thereof.

30 (2) Except as provided for the issuance of certificates under RCW
31 90.03.240 and for the issuance of certificates following the approval
32 of a change, transfer, or amendment under RCW 90.03.380 or 90.44.100,
33 the department shall not revoke or diminish a certificate for a surface
34 or ground water right for municipal water supply purposes as defined in
35 RCW 90.03.015 unless the certificate was issued with ministerial errors
36 or was obtained through misrepresentation. The department may adjust
37 such a certificate under this subsection if ministerial errors are

1 discovered, but only to the extent necessary to correct the ministerial
2 errors. The department may diminish the right represented by such a
3 certificate if the certificate was obtained through a misrepresentation
4 on the part of the applicant or permit holder, but only to the extent
5 of the misrepresentation. The authority provided by this subsection
6 does not include revoking, diminishing, or adjusting a certificate
7 based on any change in policy regarding the issuance of such
8 certificates that has occurred since the certificate was issued. This
9 subsection may not be construed as providing any authority to the
10 department to revoke, diminish, or adjust a certificate for a water
11 right for any purpose other than municipal water supply purposes.

12 (3) This subsection applies to the water right represented by a
13 water right certificate issued prior to the effective date of this
14 section for municipal water supply purposes as defined in RCW 90.03.015
15 where the certificate was issued based on an administrative policy for
16 issuing such certificates once works for diverting or withdrawing and
17 distributing water for municipal supply purposes were constructed
18 rather than after the water had been placed to actual beneficial use.
19 Such a water right is a right in good standing as long as the potential
20 use and use of water under the right is consistent with the principles
21 of the administrative policy that led to its being issued, as that
22 policy existed when the certificate was issued.

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

28 NEW SECTION. Sec. 10. A new section is added to chapter 70.119A
29 RCW to read as follows:

30 (1) The purpose of this section is to establish water use
31 efficiency requirements designed to ensure efficient use of water while
32 maintaining system financial viability, improving affordability of
33 supplies, and enhancing system reliability. The requirements apply to
34 all municipal water suppliers, as defined in RCW 90.03.015, and must be
35 tailored to be appropriate for a system's size, forecasted demand, and
36 supply constraints.

37 (2) By December 31, 2005, the department must adopt rules that:

1 (a) Establish performance measures to be used in measuring the
2 progress a municipal water supplier is making in achieving its water
3 conservation objectives under section 11 of this act which include, but
4 are not limited to, those regarding water distribution system leakage,
5 collection and reporting of source production and water consumption
6 data, and timelines for setting and achieving cost-effective
7 conservation objectives over time;

8 (b) Establish criteria that identify how the department will
9 determine whether municipal water suppliers are fulfilling the
10 obligations established for them in section 11 of this act when the
11 department reviews the conservation elements of water system plans and
12 small water system management programs, submitted to it under chapter
13 43.20 RCW or submitted as part of coordinated water system planning
14 under chapter 70.116 RCW. The criteria must take into consideration
15 the historic conservation performance and conservation investment of
16 the supplier, regional climate variations, and the supplier's customer
17 base demographics, forecasted demand, and system supply constraints;

18 (c) Establish minimum requirements for water demand forecast
19 methodologies to be used by municipal water suppliers; and

20 (d) Ensure compliance with the provisions of this section and
21 section 11 of this act. The compliance processes established under
22 this section must incorporate the graduated approach specified for the
23 enforcement of water laws in RCW 90.03.605(1) (a) through (c).

24 (3) The rules adopted by the department under subsection (2) of
25 this section must not establish state conservation requirements that
26 are less stringent than those in effect on the effective date of this
27 section. For the reporting required by subsection (2)(a) of this
28 section, the rules shall require that municipal water suppliers
29 document that they are maintaining or improving conservation
30 performance at the water system level.

31 (4) The department must establish an advisory committee to assist
32 it in developing rules under this section. The advisory committee must
33 include representatives from public water system customers,
34 environmental interest groups, business interest groups, a
35 representative cross-section of municipal water suppliers, a person
36 employed by a municipal water supplier as a water conservation expert,
37 tribal governments, the department of ecology, and any other members
38 determined necessary by the department.

1 (5) The department must provide, upon request, technical assistance
2 to public water systems and local governments regarding water
3 conservation. The assistance must be available regarding, but is not
4 limited to, the development of best management practices for water
5 conservation programs, conservation landscape ordinances, conservation
6 rate structures for public water systems, and general public education
7 programs on water conservation.

8 NEW SECTION. **Sec. 11.** A new section is added to chapter 70.119A
9 RCW to read as follows:

10 A municipal water supplier, as defined in RCW 90.03.015, must
11 integrate conservation planning into its overall system operation and
12 management and must appropriately fund conservation activities. A
13 municipal water supplier must adopt and achieve water conservation
14 objectives as part of its water system plan or small water system
15 management program developed under chapter 43.20 RCW or as part of a
16 coordinated water system plan under chapter 70.116 RCW. A municipal
17 water supplier must improve the efficiency of its water system or
18 systems over time, relative to past performance, and must assist the
19 users of its water in improving the efficiency of their water use.

20 Prior to the date by which the department must adopt rules under
21 section 10(2) of this act and for the purposes of chapter 90.03 RCW, a
22 municipal water supplier with one thousand or more service connections
23 is in compliance with the terms of its water system plan regarding
24 water conservation if the supplier is in compliance with the
25 conservation elements of its current plan and it can document an
26 improvement in the efficiency of water use or delivery in the system
27 over the last six years and there is no loss of conservation
28 performance prior to the adoption of the rules.

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

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

1 NEW SECTION. **Sec. 13.** A new section is added to chapter 43.20 RCW
2 to read as follows:

3 The department shall consult with the departments of ecology, fish
4 and wildlife, and community, trade, and economic development when it
5 approves water system plans of public water systems. In approving such
6 a plan, the department shall ensure that water service to be provided
7 by the system under the plan for any new industrial, commercial, or
8 residential use is consistent with the requirements of any
9 comprehensive plans or development regulations adopted under chapter
10 36.70A RCW or any other comprehensive plan, land use plan, or
11 development regulation adopted by a city, town, or county for the
12 service area. The department shall also ensure that the plan
13 accommodates the duty of the public water system to provide water for
14 new residential use within its service area as described in section 14
15 of this act.

16 NEW SECTION. **Sec. 14.** A new section is added to chapter 43.20 RCW
17 to read as follows:

18 The first choice of water supply for a new residential use of water
19 within the service area of public water system, for which a public
20 water system plan is required under this chapter, is water service from
21 the public water system. The public water system has a duty to provide
22 the water service within its service area if its service can be
23 available in a timely and cost-effective manner and it has sufficient
24 water rights to provide the service. Any water service provided shall
25 be consistent with the requirements of any comprehensive plans or
26 development regulations adopted under chapter 36.70A RCW or any other
27 comprehensive plan, land use plan, or development regulation adopted by
28 a city, town, or county for the service area. The service is available
29 in a timely manner if the water can be provided within one hundred
30 twenty days of the date the request for water service is made to the
31 system by the party representing the new residential use, unless the
32 party requests a longer period. The service is available in a cost-
33 effective manner if the total cost to obtain the water from the public
34 water system, including but not limited to construction and engineering
35 costs, connection fees, and operating costs, does not exceed one
36 hundred twenty percent of the total cost of providing water service

1 from a well for the new residential use under the permit exemption of
2 RCW 90.44.050.

3 NEW SECTION. **Sec. 15.** A new section is added to chapter 43.20 RCW
4 to read as follows:

5 When a water system plan is regularly submitted to the department
6 for review and approval, which on the effective date of this section
7 occurs every six years, the plan must demonstrate that any new use of
8 the inchoate water right of the system under the plan will be
9 consistent with meeting the timelines and interim milestones
10 established under section 5, chapter . . . , Laws of 2003 (section 5,
11 Engrossed Substitute House Bill No. 2336) or section 8, chapter . . . ,
12 Laws of 2003 (section 8, Engrossed Substitute House Bill No. 1336) for
13 achieving instream flows in the watershed in which water is diverted or
14 withdrawn under the right. Public water systems shall provide public
15 notice before submitting a water system plan or major revisions to a
16 water system plan for approval under this chapter or under chapter
17 70.116 RCW. This section applies only to water systems for which a
18 water system plan must be approved under this chapter or chapter 70.116
19 RCW.

20 **Sec. 16.** RCW 90.48.495 and 1989 c 348 s 10 are each amended to
21 read as follows:

22 The department of ecology shall require sewer plans to include a
23 discussion of water conservation measures considered or underway that
24 would reduce flows to the sewerage system and an analysis of their
25 anticipated impact on public sewer service and treatment capacity.

26 **Sec. 17.** RCW 90.48.112 and 1997 c 444 s 9 are each amended to read
27 as follows:

28 The evaluation of any plans submitted under RCW 90.48.110 must
29 include consideration of opportunities for the use of reclaimed water
30 as defined in RCW 90.46.010. Wastewater plans submitted under RCW
31 90.48.110 must include a statement describing how applicable
32 reclamation and reuse elements will be coordinated as required under
33 RCW 90.46.120(2).

1 **Sec. 18.** RCW 90.46.120 and 1997 c 444 s 1 are each amended to read
2 as follows:

3 (1) The owner of a wastewater treatment facility that is reclaiming
4 water with a permit issued under this chapter has the exclusive right
5 to any reclaimed water generated by the wastewater treatment facility.
6 Use and distribution of the reclaimed water by the owner of the
7 wastewater treatment facility is exempt from the permit requirements of
8 RCW 90.03.250 and 90.44.060. Revenues derived from the reclaimed water
9 facility shall be used only to offset the cost of operation of the
10 wastewater utility fund or other applicable source of system-wide
11 funding.

12 (2) If the proposed use or uses of reclaimed water are intended to
13 augment or replace potable water supplies or create the potential for
14 the development of additional potable water supplies, such use or uses
15 shall be considered in the development of the regional water supply
16 plan or plans addressing potable water supply service by multiple water
17 purveyors. The owner of a wastewater treatment facility that proposes
18 to reclaim water shall be included as a participant in the development
19 of such regional water supply plan or plans.

20 (3) Where opportunities for the use of reclaimed water exist within
21 the period of time addressed by a water supply plan or coordinated
22 water system plan developed under chapter 43.20 or 70.116 RCW, these
23 plans must be developed and coordinated to ensure that opportunities
24 for reclaimed water are evaluated. The requirements of this subsection
25 (3) do not apply to water system plans developed under chapter 43.20
26 RCW for utilities serving less than one thousand service connections.

27 NEW SECTION. **Sec. 19.** A new section is added to chapter 90.03 RCW
28 to read as follows:

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

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

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

5 (c) A comprehensive watershed plan has been approved for the water
6 resource inventory area under chapter 90.82 RCW that satisfies the
7 requirements of sections 5, 6, and 7, chapter . . . , Laws of 2003
8 (sections 5, 6, and 7 of SHB 1336) or has been adopted under RCW
9 90.54.040(1) that satisfies the requirements of section 9, chapter
10 . . . , Laws of 2003 (section 9 of SHB 1336); and

11 (d) Stream flows that satisfy the instream flows referred to in (b)
12 of this subsection are met or the milestones for satisfying those
13 instream flows referred to in (c) of this subsection are being met.

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

20 (a) Subject to stream flow protection or restoration requirements
21 contained in: A federally approved habitat conservation plan under the
22 federal endangered species act, 16 U.S.C. Sec. 1531 et seq., a
23 hydropower license of the federal energy regulatory commission, or a
24 watershed agreement established under section 21 of this act;

25 (b) For a water right that is subject to instream flow requirements
26 or agreements with the department and the change or transfer is also
27 subject to those instream flow requirements or agreements; or

28 (c) For resolving or alleviating a public health or safety
29 emergency caused by a failing public water supply system currently
30 providing potable water to existing users, as such a system is
31 described in section 20 of this act, and if the change, transfer, or
32 amendment is for correcting the actual or anticipated cause or causes
33 of the public water system failure. Inadequate water rights for a
34 public water system to serve existing hookups or to accommodate future
35 population growth or other future uses do not constitute a public
36 health or safety emergency.

37 (3) If the recipient of water under a change or transfer authorized
38 by subsection (1) of this section is a water supply system, the

1 receiving system must also be in compliance with the terms of an
2 approved water system plan or small water system management program
3 under chapter 43.20 or 70.116 RCW that applies to the system, including
4 those regarding water conservation.

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

7 NEW SECTION. **Sec. 20.** A new section is added to chapter 90.03 RCW
8 to read as follows:

9 To be considered a failing public water system for the purposes of
10 section 19 of this act, the department of health, in consultation with
11 the department and the local health authority, must make a
12 determination that the system meets one or more of the following
13 conditions:

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

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

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

28 NEW SECTION. **Sec. 21.** A new section is added to chapter 90.03 RCW
29 to read as follows:

30 (1) On a pilot project basis, the department may enter into
31 watershed agreements with one or more municipal water suppliers in a
32 watershed to meet the objectives established in a water resource
33 management program approved or being developed under chapter 90.82 RCW.
34 The term of an agreement may not exceed ten years, but the agreement
35 may be renewed or amended upon agreement of the parties.

36 (2) Watershed agreements must be consistent with:

- 1 (a) Growth management plans developed under chapter 36.70A RCW
2 where these plans are adopted and in effect;
- 3 (b) Water supply plans and small water system management programs
4 approved under chapter 43.20 or 70.116 RCW;
- 5 (c) Coordinated water supply plans approved under chapter 70.116
6 RCW; and
- 7 (d) Water use efficiency and conservation requirements and
8 standards established by the state department of health or such
9 requirements and standards as are provided in an approved watershed
10 plan, whichever are the more stringent.
- 11 (3) A watershed agreement must:
- 12 (a) Require the public water system operated by the participating
13 municipal water supplier to meet obligations under the watershed plan;
- 14 (b) Establish performance measures and timelines for measures to be
15 completed;
- 16 (c) Provide for monitoring of stream flows and metering of water
17 use as needed to ensure that the terms of the agreement are met; and
- 18 (d) Require annual reports from the water users regarding
19 performance under the agreement.
- 20 (4) As needed to implement watershed agreement activities, the
21 department may provide or receive funding, or both, under its existing
22 authorities.
- 23 (5) The department must provide opportunity for public review of a
24 proposed agreement before it is executed. The department must make
25 proposed and executed watershed agreements and annual reports available
26 on the department's internet web site.
- 27 (6) The department must consult with affected local governments and
28 the state departments of health and fish and wildlife before executing
29 an agreement.
- 30 (7) Before executing a watershed agreement, the department must
31 conduct a government-to-government consultation with affected tribal
32 governments. The municipal water suppliers operating the public water
33 systems that are proposing to enter the agreements must be invited to
34 participate in the consultations. During these consultations, the
35 department and the municipal water suppliers shall explore the
36 potential interest of the tribal governments or governments in
37 participating in the agreement.

1 (8) Any person aggrieved by the department's failure to satisfy the
2 requirements in subsection (3) of this section as embodied in the
3 department's decision to enter a watershed agreement under this section
4 may, within thirty days of the execution of such an agreement, appeal
5 the department's decision to the pollution control hearings board under
6 chapter 43.21B RCW.

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

12 (10) The departments of ecology and fish and wildlife must select,
13 with the approval of the county legislative authorities of the counties
14 involved, up to two areas engaged in watershed planning under this
15 chapter to participate on a voluntary basis in the pilot project. The
16 pilot areas selected should be planning areas that are relatively
17 advanced in the development and adoption of their plans.

18 (11) Before December 31, 2003, and December 31, 2004, the
19 department must report to the appropriate committees of the legislature
20 the results of the pilot projects provided for in this section. Based
21 on the experience of the pilot project areas, the department must offer
22 any suggested changes in law that would improve, facilitate, and
23 maximize the implementation of watershed plans adopted under this
24 chapter.

25 NEW SECTION. **Sec. 22.** A new section is added to chapter 90.03 RCW
26 to read as follows:

27 The department may not enter into new watershed agreements under
28 section 21 of this act after July 1, 2008. This section does not apply
29 to the renewal of agreements in effect prior to that date.

30 NEW SECTION. **Sec. 23.** A new section is added to chapter 90.03 RCW
31 to read as follows:

32 The department shall give priority to processing new water right
33 applications under RCW 90.03.290, reservoir permits under RCW
34 90.03.370, and applications for changes and transfers under RCW
35 90.03.380 through 90.03.397, whenever necessary to provide for timely
36 and effective implementation of a watershed plan adopted under chapter

1 90.82 RCW or RCW 90.54.040(1) or a watershed agreement authorized under
2 section 21 of this act. This section applies only to the sequence of
3 application processing and does not affect the relative priority date
4 of any resulting water rights.

5 NEW SECTION. **Sec. 24.** A new section is added to chapter 90.44 RCW
6 to read as follows:

7 The department shall give priority to processing new water right
8 applications under RCW 90.44.050, and applications for changes and
9 transfers under RCW 90.44.100 and 90.44.105, whenever necessary to
10 provide for timely and effective implementation of a watershed plan
11 adopted under chapter 90.82 RCW or RCW 90.54.040(1) or a watershed
12 agreement authorized under section 21 of this act. This section
13 applies only to the sequence of application processing and does not
14 affect the relative priority date of any resulting water rights.

15 NEW SECTION. **Sec. 25.** The legislature does not intend to
16 appropriate additional funds for the implementation of this act and
17 expects all affected state agencies to implement this act's provisions
18 within existing funds.

19 NEW SECTION. **Sec. 26.** If any provision of this act or its
20 application to any person or circumstance is held invalid, the
21 remainder of the act or the application of the provision to other
22 persons or circumstances is not affected."

23 Correct the title.

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