
SECOND SUBSTITUTE HOUSE BILL 1338

State of Washington

58th Legislature

2003 Regular Session

By House Committee on Appropriations (originally sponsored by Representatives Linville, Kirby, Lantz, Rockefeller, Shabro, Jarrett, Grant, Quall, Hunt, Delvin, Wallace, Woods, Benson, Morris and Conway; by request of Governor Locke)

READ FIRST TIME 03/10/03.

1 AN ACT Relating to certainty and flexibility of municipal water
2 rights and efficient use of water; amending RCW 90.03.015, 90.14.031,
3 90.03.260, 90.03.386, 90.03.330, 90.48.495, 90.48.112, and 90.46.120;
4 adding new sections to chapter 90.03 RCW; adding a new section to
5 chapter 90.14 RCW; adding new sections to chapter 70.119A RCW; adding
6 new sections to chapter 43.20 RCW; adding a new section to chapter
7 90.82 RCW; adding a new section to chapter 90.44 RCW; and creating new
8 sections.

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

10 NEW SECTION. **Sec. 1.** The legislature finds that state laws have
11 long recognized that communities are dynamic entities. The legislature
12 also finds that any interpretation of its laws that would require its
13 communities to be ossified or frozen in time or would require their
14 future growth to be precisely predictable defies the needs of human
15 society. The legislature has provided numerous means and considerable
16 guidance to its communities regarding their growth and for providing
17 essential services within them as they grow. While the legislature
18 recognizes that the totality of the statutory law that governs such
19 communities is found in a wide variety of places throughout the

1 codified version of the statute laws, the Revised Code of Washington,
2 the legislature also recognizes that it has not always expressly
3 announced in the portion of those statutes generally referred to as the
4 state's water laws how the nature of water rights held by municipal
5 water suppliers accommodates the growth of and changes in communities
6 and the requirements placed on them and authorities granted to them by
7 other laws. The legislature finds that this is in part because state
8 policies in the administration of the water laws have reflected the
9 dynamic nature of human habitation and population growth from within
10 and from without the state. For a very long time, these policies
11 recognized that a water right for municipal water supply purposes is
12 "perfected" when facilities for diverting or withdrawing and
13 distributing the water are constructed but before all of the water is
14 placed to actual use within the community or communities served.

15 With the enactment of this legislation, the legislature intends to
16 provide within the water laws a curative clarification of the
17 relationship of water rights for municipal water supply purposes to the
18 requirements of other law and the realities of growth.

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

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

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

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

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

27 (4) "Municipal water supply purposes" means a beneficial use of
28 water: (a) For residential purposes through fifteen or more
29 residential service connections or providing residential use of water
30 for a nonresidential population that is, on average, at least twenty-
31 five people for at least sixty days a year; (b) for residential
32 purposes through fifteen or more residential service connections or
33 providing residential use of water for a nonresidential population that
34 is, on average, at least twenty-five people for at least sixty days a
35 year and for commercial, industrial, irrigation of parks and open
36 spaces, governmental, governmental proprietary, or related purposes; or

1 (c) through the delivery of treated or raw water to a public water
2 system for the delivery of water for the purposes in (a) or (b) of this
3 subsection.

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

7 NEW SECTION. Sec. 3. A new section is added to chapter 90.03 RCW
8 to read as follows:

9 Beneficial uses of water under a municipal water supply purposes
10 water right may include water for:

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

13 (2) Uses that are needed to implement environmental obligations
14 called for by a watershed plan approved under chapter 90.82 RCW or a
15 comprehensive watershed plan adopted under RCW 90.54.040(1), a
16 federally approved habitat conservation plan prepared in response to
17 the listing of a species as being endangered or threatened under the
18 federal endangered species act, 16 U.S.C. Sec. 1531 et seq., or a
19 comprehensive irrigation district management plan.

20 NEW SECTION. Sec. 4. A new section is added to chapter 90.03 RCW
21 to read as follows:

22 (1) If a municipal water supplier acquires an existing surface or
23 ground water right or a portion of such a right that is for municipal
24 water supply purposes, the right or that portion of the right remains
25 a water right for municipal water supply purposes. If a municipal
26 water supplier acquires an existing surface or ground water right that
27 is not a municipal water supply purpose right, the right may be changed
28 to municipal water supply purposes upon the approval of the department
29 in accordance with the water right change provisions of this chapter
30 and the amendment provisions of chapter 90.44 RCW.

31 (2) When requested by a municipal water supplier or when processing
32 a change or amendment to the right, the department shall amend the
33 water right documents and related records to ensure that municipal
34 supply purpose rights are correctly identified.

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

3 When a municipal water supplier acquires an existing water right
4 that is not a municipal water supply purpose right, that right is not
5 subject to relinquishment for nonuse occurring during the time that the
6 acquirer diligently seeks the department's approval to change the right
7 to municipal water supply purposes. Once a change to municipal water
8 supply purposes is approved by the department, the right is thereafter
9 subject to the exception from relinquishment in RCW 90.14.140(2)(d).

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

12 ~~((Unless a different meaning is plainly required by the context,~~
13 ~~the following words and phrases as used in RCW 90.14.031 through~~
14 ~~90.14.121 shall have the following meanings:))~~

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

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

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

21 (2) The definitions in this subsection apply throughout RCW
22 90.14.031 through 90.14.121 unless the context clearly requires
23 otherwise.

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

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

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

34 (1) Each application for permit to appropriate water shall set
35 forth the name and post office address of the applicant, the source of
36 water supply, the nature and amount of the proposed use, the time

1 during which water will be required each year, the location and
2 description of the proposed ditch, canal, or other work, the time
3 within which the completion of the construction and the time for the
4 complete application of the water to the proposed use.

5 (2) If for agricultural purposes, ((it)) the application shall give
6 the legal subdivision of the land and the acreage to be irrigated, as
7 near as may be, and the amount of water expressed in acre feet to be
8 supplied per season. If for power purposes, it shall give the nature
9 of the works by means of which the power is to be developed, the head
10 and amount of water to be utilized, and the uses to which the power is
11 to be applied.

12 (3) If for construction of a reservoir, ((it)) the application
13 shall give the height of the dam, the capacity of the reservoir, and
14 the uses to be made of the impounded waters.

15 (4) If for community or multiple domestic water supply, the
16 application shall give the projected number of service connections
17 sought to be served. However, for a municipal water supplier that has
18 an approved water system plan under chapter 43.20 RCW or an approval
19 from the department of health to serve a specified number of service
20 connections, the service connection figure in the application or any
21 subsequent water right document is not an attribute limiting exercise
22 of the water right.

23 (5) If for municipal water supply, ((it)) the application shall
24 give the present population to be served, and, as near as may be
25 estimated, the future requirement of the municipality. However, for a
26 municipal water supplier that has an approved water system plan under
27 chapter 43.20 RCW or an approval from the department of health to serve
28 a specified number of service connections, the population figures in
29 the application or any subsequent water right document are not an
30 attribute limiting exercise of the water right.

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

34 (7) All applications shall be accompanied by such maps and
35 drawings, in duplicate, and such other data, as may be required by the
36 department, and such accompanying data shall be considered as a part of
37 the application.

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

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

7 (2) The effect of the department of health's approval of a planning
8 or engineering document that describes a municipal water supplier's
9 service area under chapter 43.20 RCW, or the local legislative
10 authority's approval of service area boundaries in accordance with
11 procedures adopted pursuant to chapter 70.116 RCW, is that the place of
12 use of a surface water right or ground water right used by the supplier
13 is equivalent to, and coexistent with, the approved service area if the
14 supplier is in compliance with the terms of the water system plan or
15 small water system management program, including those regarding water
16 conservation.

17 (3) A municipal water supplier must implement cost-effective water
18 conservation in accordance with the requirements of sections 10 and 11
19 of this act as part of its approved water system plan or small water
20 system management program. With regard to water diverted or withdrawn
21 by the municipal water supplier under a particular surface or ground
22 water right, the municipal water supplier must fully utilize the water
23 resulting from its conservation activities affecting water use under
24 the right before it utilizes any inchoate portion of the water right.
25 When establishing or extending a surface or ground water right
26 construction schedule under RCW 90.03.320, the department must take
27 into consideration the public water system's use of conserved water.

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

30 (1) Upon a showing satisfactory to the department that any
31 appropriation has been perfected in accordance with the provisions of
32 this chapter, it shall be the duty of the department to issue to the
33 applicant a certificate stating such facts in a form to be prescribed
34 by ((him)) the director, and such certificate shall thereupon be
35 recorded with the department. Any original water right certificate
36 issued, as provided by this chapter, shall be recorded with the
37 department and thereafter, at the expense of the party receiving the

1 same, be transmitted by the department (~~transmitted~~) to the county
2 auditor of the county or counties where the distributing system or any
3 part thereof is located, and be recorded in the office of such county
4 auditor, and thereafter be transmitted to the owner thereof.

5 (2) Except as provided for the issuance of certificates under RCW
6 90.03.240 and for the issuance of certificates following the approval
7 of a change, transfer, or amendment under RCW 90.03.380 or 90.44.100,
8 the department shall not revoke or diminish a certificate issued for a
9 surface or ground water right for municipal water supply purposes
10 unless the certificate was issued with ministerial errors or was
11 obtained through misrepresentation. The department may adjust such a
12 certificate under this subsection if ministerial errors are discovered,
13 but only to the extent necessary to correct the ministerial errors.
14 The department may diminish the right represented by such a certificate
15 if the certificate was obtained through a misrepresentation on the part
16 of the applicant or permit holder, but only to the extent of the
17 misrepresentation. The authority provided by this subsection does not
18 include revoking, diminishing, or adjusting a certificate based on any
19 change in policy regarding the issuance of such certificates that has
20 occurred since the certificate was issued. This subsection may not be
21 construed as providing any authority to the department to revoke,
22 diminish, or adjust a certificate for a water right for any purpose
23 other than municipal water supply purposes.

24 (3) This subsection applies to the water right represented by a
25 water right certificate issued prior to the effective date of this
26 section for municipal water supply purposes where the certificate was
27 issued based on an administrative policy for issuing such certificates
28 once works for diverting or withdrawing and distributing water for
29 municipal supply purposes were constructed rather than after the water
30 had been placed to actual beneficial use. Such a water right is a
31 right in good standing as long as the potential use and use of water
32 under the right is consistent with the principles of the administrative
33 policy that led to its being issued, as that policy existed when the
34 certificate was issued.

35 (4) After the effective date of this section, the department must
36 issue a new certificate under subsection (1) of this section only for
37 the perfected portion of a water right as demonstrated through actual
38 beneficial use of water.

1 NEW SECTION. **Sec. 10.** A new section is added to chapter 70.119A
2 RCW to read as follows:

3 (1) The purpose of this section is to establish water use
4 efficiency requirements designed to ensure efficient use of water while
5 maintaining system financial viability, improving affordability of
6 supplies, and enhancing system reliability. The requirements apply to
7 all municipal water suppliers, as defined in RCW 90.03.015, and must be
8 tailored to be appropriate for a system's size, forecasted demand, and
9 supply constraints.

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

11 (a) Establish water distribution system leakage standards to ensure
12 that municipal water suppliers are taking appropriate steps to reduce
13 and maintain leakage rates. The standards must include a graduated
14 system of requirements based on levels of water system leakage and must
15 be limited to a percentage of the total water supplied. A municipal
16 water supplier must select one or more control methods appropriate for
17 addressing leakage in its water system or systems;

18 (b) Establish minimum requirements for collecting and reporting
19 source production, purchased water, and water consumption data that
20 will allow an identification of water use patterns among different
21 customer classes and evaluations of the effectiveness of the system's
22 conservation program. The requirements for a system, including its
23 frequency of reporting, must be appropriate for the size and complexity
24 of the system. The data must be reported to the department and must be
25 available to the public. The department must submit a report to the
26 governor and the appropriate committees of the legislature by December
27 15th of each year summarizing the information received during the
28 previous twelve months;

29 (c) Establish criteria that identify how the department will
30 determine whether municipal water suppliers are fulfilling the
31 obligations established for them in section 11 of this act when the
32 department reviews the conservation elements of water system plans and
33 small water system management programs, submitted to it under chapter
34 43.20 RCW or submitted as part of coordinated water system planning
35 under chapter 70.116 RCW. The criteria must take into consideration
36 the historic conservation performance and conservation investment of
37 the supplier, regional climate variations, and the supplier's customer
38 base demographics, forecasted demand, and system supply constraints;

1 (d) Establish minimum requirements for water demand forecast
2 methodologies to be used by municipal water suppliers; and

3 (e) Ensure compliance with the provisions of this section and
4 section 11 of this act. The compliance processes established under
5 this section must incorporate the graduated approach specified for the
6 enforcement of water laws in RCW 90.03.605(1) (a) through (c).

7 (3) The department must establish an advisory committee to assist
8 it in developing rules under this section. The advisory committee must
9 include representatives from public water system customers,
10 environmental interest groups, business interest groups, a
11 representative cross-section of municipal water suppliers, tribal
12 governments, the department of ecology, and any other members
13 determined necessary by the department.

14 (4) The department must provide, upon request, technical assistance
15 to public water systems and local governments regarding water
16 conservation. The assistance must be available regarding, but is not
17 limited to, the development of best management practices for water
18 conservation programs, conservation landscape ordinances, conservation
19 rate structures for public water systems, and general public education
20 programs on water conservation.

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

23 A municipal water supplier, as defined in RCW 90.03.015, must
24 integrate conservation planning into its overall system operation and
25 management and must appropriately fund conservation activities. A
26 municipal water supplier must adopt and achieve water conservation
27 objectives as part of its water system plan or small water system
28 management program developed under chapter 43.20 RCW or as part of a
29 coordinated water system plan under chapter 70.116 RCW. The objectives
30 must be for improving the efficiency of its water system or systems
31 over time, relative to past performance. Conservation performance
32 objectives must be established by the supplier in an open public forum
33 and must include, but are not limited to, the following:

34 (1) Timelines for setting and achieving conservation objectives to
35 ensure that progress is being made toward the objectives;

36 (2) A range of reasonably achievable targets for reductions in
37 consumption per equivalent residential unit, or other measurable

1 criteria, over time. If a municipal water supplier determines that
2 further reductions in consumption are not reasonably achievable, it
3 must identify how current consumption levels will be maintained;

4 (3) A selection of cost-effective measures to achieve the system's
5 water conservation objectives;

6 (4) An evaluation of water delivery rate structures that encourage
7 water conservation; and

8 (5) The development and updating of a water demand forecast for
9 each of the municipal water supplier's water supply systems.

10 Prior to the date by which the department must adopt rules under
11 section 10(2) of this act and for the purposes of chapter 90.03 RCW, a
12 municipal water supplier with one thousand or more service connections
13 is in compliance with the terms of its water system plan regarding
14 water conservation if the supplier is in compliance with the
15 conservation elements of its current plan or program and it can
16 document an improvement in the efficiency of water use or delivery in
17 the system over the last six years.

18 NEW SECTION. **Sec. 12.** A new section is added to chapter 43.20 RCW
19 to read as follows:

20 The department shall consult with the departments of ecology, fish
21 and wildlife, and community, trade, and economic development when it
22 approves water system plans of public water systems. In approving such
23 a plan, the department shall ensure the plan accommodates the duty of
24 the public water system to provide water for new residential use within
25 its service area as described in section 13 of this act.

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

28 The first choice of water supply for a new residential use of water
29 within the service area of public water system, for which a public
30 water system plan is required under this chapter, is water service from
31 the public water system. The public water system has a duty to provide
32 the water service within its service area if its service can be
33 available in a timely and cost-effective manner and it has sufficient
34 water rights to provide the service. The service is available in a
35 timely manner if the water can be provided within one hundred twenty
36 days, unless the party representing the new residential use requests a

1 longer period. The service is available in a cost-effective manner if
2 the total cost to obtain the water from the public water system,
3 including but not limited to construction and engineering costs,
4 connection fees, and operating costs, does not exceed one hundred
5 twenty percent of the total cost of providing water service from a well
6 for the new residential use under the permit exemption of RCW
7 90.44.050.

8 **Sec. 14.** RCW 90.48.495 and 1989 c 348 s 10 are each amended to
9 read as follows:

10 The department of ecology shall require sewer plans to include a
11 discussion of water conservation measures considered or underway that
12 would reduce flows to the sewerage system and an analysis of their
13 anticipated impact on public sewer service and treatment capacity. The
14 plans must consider the feasibility of providing assistance to
15 implement water conservation measures as an alternative to constructing
16 new or expanded treatment capacity.

17 **Sec. 15.** RCW 90.48.112 and 1997 c 444 s 9 are each amended to read
18 as follows:

19 The evaluation of any plans submitted under RCW 90.48.110 must
20 include consideration of opportunities for the use of reclaimed water
21 as defined in RCW 90.46.010. Wastewater plans submitted under RCW
22 90.48.110 must include a statement describing how applicable
23 reclamation and reuse elements will be coordinated as required under
24 RCW 90.46.120(2).

25 **Sec. 16.** RCW 90.46.120 and 1997 c 444 s 1 are each amended to read
26 as follows:

27 (1) The owner of a wastewater treatment facility that is reclaiming
28 water with a permit issued under this chapter has the exclusive right
29 to any reclaimed water generated by the wastewater treatment facility.
30 Use and distribution of the reclaimed water by the owner of the
31 wastewater treatment facility is exempt from the permit requirements of
32 RCW 90.03.250 and 90.44.060. Revenues derived from the reclaimed water
33 facility shall be used only to offset the cost of operation of the
34 wastewater utility fund or other applicable source of system-wide
35 funding.

1 (2) If the proposed use or uses of reclaimed water are intended to
2 augment or replace potable water supplies or create the potential for
3 the development of additional potable water supplies, such use or uses
4 shall be considered in the development of the regional water supply
5 plan or plans addressing potable water supply service by multiple water
6 purveyors. The owner of a wastewater treatment facility that proposes
7 to reclaim water shall be included as a participant in the development
8 of such regional water supply plan or plans.

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

16 **NEW SECTION. Sec. 17.** A new section is added to chapter 90.03 RCW
17 to read as follows:

18 (1) The right to use water under an unperfected surface water right
19 for municipal water supply purposes or a portion thereof held by a
20 municipal water supplier may be changed or transferred in the same
21 manner as provided by RCW 90.03.380 for any purpose if:

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

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

30 (c) A comprehensive watershed plan has been approved for the water
31 resource inventory area under chapter 90.82 RCW that satisfies the
32 requirements of sections 5, 6, and 7, chapter . . . , Laws of 2003
33 (sections 5, 6, and 7 of SHB 1336) or has been adopted under RCW
34 90.54.040(1) that satisfies the requirements of section 9, chapter
35 . . . , Laws of 2003 (section 9 of SHB 1336); and

36 (d) Stream flows that satisfy the instream flows referred to in (b)

1 of this subsection are met or the milestones for satisfying those
2 instream flows referred to in (c) of this subsection are being met.

3 (2) If the criteria listed in subsection (1)(a) through (d) of this
4 section are not satisfied, the right to use water under an unperfected
5 surface water right for municipal water supply purposes or a portion
6 thereof held by a municipal water supplier may nonetheless be changed
7 or transferred in the same manner as provided by RCW 90.03.380 if the
8 change or transfer is:

9 (a) Subject to stream flow protection or restoration requirements
10 contained in: A federally approved habitat conservation plan under the
11 federal endangered species act, 16 U.S.C. Sec. 1531 et seq., a
12 hydropower license of the federal energy regulatory commission, or a
13 watershed agreement established under section 19 of this act; or

14 (b) For resolving or alleviating a public health or safety
15 emergency caused by a failing public water supply system currently
16 providing potable water to existing users, as such a system is
17 described in section 18 of this act, and if the change, transfer, or
18 amendment is for correcting the actual or anticipated cause or causes
19 of the public water system failure. Inadequate water rights for a
20 public water system to serve existing hookups or to accommodate future
21 population growth or other future uses do not constitute a public
22 health or safety emergency.

23 (3) If the recipient of water under a change, transfer, or
24 amendment authorized by subsection (1) of this section is a water
25 supply system, the receiving system must also be in compliance with the
26 terms of an approved water system plan or small water system management
27 program under chapter 43.20 or 70.116 RCW that applies to the system,
28 including those regarding water conservation.

29 NEW SECTION. **Sec. 18.** A new section is added to chapter 90.03 RCW
30 to read as follows:

31 To be considered a failing public water system for the purposes of
32 section 17 of this act, the department of health, in consultation with
33 the department and the local health authority, must make a
34 determination that the system meets one or more of the following
35 conditions:

36 (1) A public water system has failed, or is in danger of failing

1 within two years, to meet state board of health standards for the
2 delivery of potable water to existing users in adequate quantity or
3 quality to meet basic human drinking, cooking, and sanitation needs;

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

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

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

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

21 (2) Watershed agreements must be consistent with:

22 (a) Growth management plans developed under chapter 36.70A RCW
23 where these plans are adopted and in effect;

24 (b) Water supply plans and small water system management programs
25 approved under chapter 43.20 or 70.116 RCW;

26 (c) Coordinated water supply plans approved under chapter 70.116
27 RCW; and

28 (d) Water use efficiency and conservation requirements and
29 standards established by the state department of health or such
30 requirements and standards as are provided in an approved watershed
31 plan, whichever are the more stringent.

32 (3) A watershed agreement must:

33 (a) Require the public water system operated by the participating
34 municipal water supplier to meet obligations under the watershed plan;

35 (b) Establish performance measures and timelines for measures to be
36 completed;

1 (c) Provide for monitoring of stream flows and metering of water
2 use as needed to ensure that the terms of the agreement are met; and

3 (d) Require annual reports from the water users regarding
4 performance under the agreement.

5 (4) As needed to implement watershed agreement activities, the
6 department may provide or receive funding, or both, under its existing
7 authorities.

8 (5) The department must provide opportunity for public review of a
9 proposed agreement before it is executed. The department must make
10 proposed and executed watershed agreements and annual reports available
11 on the department's internet web site.

12 (6) The department must consult with affected local governments and
13 the state departments of health and fish and wildlife before executing
14 an agreement.

15 (7) Before executing a watershed agreement, the department must
16 conduct a government-to-government consultation with affected tribal
17 governments. The municipal water suppliers operating the public water
18 systems that are proposing to enter the agreements must be invited to
19 participate in the consultations. During these consultations, the
20 department and the municipal water suppliers shall explore the
21 potential interest of the tribal governments or governments in
22 participating in the agreement.

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

29 (9) Any projects implemented by a municipal water system under the
30 terms of an agreement reached under this section may be continued and
31 maintained by the municipal water system after the agreement expires or
32 is terminated.

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

1 (11) Before December 31, 2003, and December 31, 2004, the
2 department must report to the appropriate committees of the legislature
3 the results of the pilot projects provided for in this section. Based
4 on the experience of the pilot project areas, the department must offer
5 any suggested changes in law that would improve, facilitate, and
6 maximize the implementation of watershed plans adopted under this
7 chapter.

8 NEW SECTION. **Sec. 20.** A new section is added to chapter 90.82 RCW
9 to read as follows:

10 The department may not enter into new watershed agreements under
11 section 19 of this act after July 1, 2008. This section does not apply
12 to the renewal of agreements in effect prior to that date.

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

15 The department shall give priority to processing new water right
16 applications under RCW 90.03.290, reservoir permits under RCW
17 90.03.370, and applications for changes and transfers under RCW
18 90.03.380 through 90.03.397, whenever necessary to provide for timely
19 and effective implementation of a watershed plan adopted under chapter
20 90.82 RCW or RCW 90.54.040(1) or a watershed agreement authorized under
21 section 19 of this act. This section applies only to the sequence of
22 application processing and does not affect the relative priority date
23 of any resulting water rights.

24 NEW SECTION. **Sec. 22.** A new section is added to chapter 90.44 RCW
25 to read as follows:

26 The department shall give priority to processing new water right
27 applications under RCW 90.44.050, and applications for changes and
28 transfers under RCW 90.44.100 and 90.44.105, whenever necessary to
29 provide for timely and effective implementation of a watershed plan
30 adopted under chapter 90.82 RCW or RCW 90.54.040(1) or a watershed
31 agreement authorized under section 19 of this act. This section
32 applies only to the sequence of application processing and does not
33 affect the relative priority date of any resulting water rights.

1 NEW SECTION. **Sec. 23.** The legislature does not intend to
2 appropriate additional funds for the implementation of this act and
3 expects all affected state agencies to implement this act's provisions
4 within existing funds.

5 NEW SECTION. **Sec. 24.** If any provision of this act or its
6 application to any person or circumstance is held invalid, the
7 remainder of the act or the application of the provision to other
8 persons or circumstances is not affected.

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