

**E2SSB 6267** - H COMM AMD

By Committee on Agriculture & Natural Resources

NOT CONSIDERED 03/11/2010

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

3 "NEW SECTION. **Sec. 1.** Water is an essential element for economic  
4 prosperity and it generates new, family-wage jobs and state revenues.  
5 It is the intent of the legislature to provide both water right  
6 applicants and the department of ecology with the necessary tools to  
7 expedite the processing of water right applications depending on the  
8 needs of the project and agency workload.

9 NEW SECTION. **Sec. 2.** Sufficient resources to support the  
10 department of ecology's water resource program are essential for  
11 effective and sustainable water management that provides certainty to  
12 processed applications. The department of ecology shall review current  
13 water resource functions and report to the legislature and the governor  
14 by September 1, 2010, on improvements to make the program more self-  
15 sustaining and efficient.

16 **Sec. 3.** RCW 90.03.265 and 2003 c 70 s 6 are each amended to read  
17 as follows:

18 (1)(a) Any applicant for a new withdrawal or a change, transfer, or  
19 amendment of a water right pending before the department((~~τ~~)) may  
20 initiate a cost-reimbursement agreement with the department to provide  
21 expedited review of the application. A cost-reimbursement agreement  
22 may ((~~only~~)) be initiated under this section if the applicant agrees to  
23 pay for, or as part of a cooperative effort agrees to pay for, the cost  
24 of processing his or her application and all other applications from  
25 the same source of supply which must be acted upon before the  
26 applicant's request because they were filed prior to the date of when  
27 the applicant filed.

1       (b) The requirement to pay for the cost of other applications under  
2 (a) of this subsection does not apply to an application for a new  
3 appropriation that would not diminish the water available to earlier  
4 pending applicants for new appropriations from the same source of  
5 supply.

6       (c) The requirement to pay for the cost of processing other  
7 applications under (a) of this subsection does not apply to an  
8 application for a change, transfer, or other amendment that would not  
9 diminish the water available to earlier pending applicants for changes  
10 or transfers from the same source of supply.

11       (d) In determining whether an application would not diminish the  
12 water available to earlier pending applicants, the department shall  
13 consider any water impoundment or other water resource management  
14 mitigation technique proposed by the applicant under RCW 90.03.255 or  
15 90.44.055.

16       (e) The department may enter into cost-reimbursement agreements  
17 provided resources are available and shall use the process established  
18 under RCW 43.21A.690 for entering into cost-reimbursement agreements.  
19 The department's share of work related to a cost-reimbursement  
20 application, such as final certificate approval, must be prioritized  
21 within the framework of other water right processing needs and as  
22 determined by agency rule.

23       (f) Each individual applicant is responsible for his or her own  
24 appeal costs that may result from a water right decision made by the  
25 department under this section. In the event that the department's  
26 approval of an application under this section is appealed under chapter  
27 43.21B RCW by a third party, the applicant for the water right in  
28 question must reimburse the department for the cost of defending the  
29 decision before the pollution control hearings board unless otherwise  
30 agreed to by the applicant and the department. If an applicant appeals  
31 either an approval or a denial made by the department under this  
32 section, the applicant is responsible only for its own appeal costs.

33       (2) In pursuing a cost-reimbursement project, the department must  
34 determine the source of water proposed to be diverted or withdrawn  
35 from, including the boundaries of the area that delimits the source.  
36 The department must determine if any other water right permit  
37 applications are pending from the same source. A water source may  
38 include surface water only, groundwater only, or surface and

1 groundwater together if the department finds they are hydraulically  
2 connected. The department shall consider technical information  
3 submitted by the applicant in making its determinations under this  
4 subsection. The department may recover from a cost-reimbursement  
5 applicant its own costs in making the same source determination under  
6 this subsection.

7 (3) Upon request of the applicant seeking cost-reimbursement  
8 processing, the department may elect to initiate a coordinated cost-  
9 reimbursement process. To initiate this process, the department must  
10 notify in writing all persons who have pending applications on file for  
11 a new appropriation, change, transfer, or amendment of a water right  
12 from that water source. A water source may include surface water only,  
13 groundwater only, or surface and groundwater together if the department  
14 determines that they are hydraulically connected. The notice must be  
15 posted on the department's web site and published in a newspaper of  
16 general circulation in the area where affected properties are located.  
17 The notice must also be made individually by way of mail to:

18 (a) Inform those applicants that cost-reimbursement processing of  
19 applications within the described water source is being initiated;

20 (b) Provide to individual applicants the criteria under which the  
21 applications will be examined and determined;

22 (c) Provide to individual applicants the estimated cost for having  
23 an application processed on a cost-reimbursement basis;

24 (d) Provide an estimate of how long the cost-reimbursement process  
25 will take before an application is approved or denied; and

26 (e) Provide at least sixty days for the applicants to respond in  
27 writing regarding the applicant's decision to participate in the cost-  
28 reimbursement process.

29 (4) The applicant initiating the cost-reimbursement request must  
30 pay for the cost of the determination under subsections (2) and (3) of  
31 this section and other costs necessary for the initial phase of cost-  
32 reimbursement processing. The cost for each applicant for conducting  
33 processing under a coordinated cost-reimbursement agreement must be  
34 based primarily on the proportionate quantity of water requested by  
35 each applicant. The cost may be adjusted if it appears that an  
36 application will require a disproportionately greater amount of time  
37 and effort to process due to its complexity.

1       (5)(a) Only the department may approve or deny a water right  
2 application processed under this section, and such a final decision  
3 remains solely the responsibility and function of the department. The  
4 department retains full authority to amend, refuse, or approve any work  
5 product provided by any consultant under this section. The department  
6 may recover its costs related to: (i) The review of a consultant to  
7 ensure that no conflict of interest exists; (ii) the management of  
8 consultant contracts and cost-reimbursement agreements; and (iii) the  
9 review of work products provided by participating consultants.

10       (b) For any cost-reimbursement process initiated under subsection  
11 (1) of this section, the applicant may, after consulting with the  
12 department, select a prequalified consultant listed by the department  
13 under subsection (7) of this section or may be assigned such a  
14 prequalified consultant by the department.

15       (c) For any coordinated cost-reimbursement process initiated under  
16 subsection (3) of this section, the applicant may, after consulting  
17 with the department, select a prequalified consultant listed by the  
18 department under subsection (7) of this section or may be assigned a  
19 prequalified consultant by the department.

20       (d) In lieu of having one or more of the work products performed by  
21 a prequalified consultant listed under subsection (7) of this section,  
22 the department may, at its discretion, recognize specific work  
23 completed by an applicant or an applicant's consultant prior to the  
24 initiation of cost-reimbursement processing. The department may also,  
25 at its discretion, authorize the use of such a consultant to perform a  
26 specific scope of the work that would otherwise be assigned to  
27 prequalified consultants listed under subsection (7) of this section.

28       (e) At any point during the cost-reimbursement process, the  
29 department may request or accept technical information, data, and  
30 analysis from the applicant or the applicant's consultant to support  
31 the cost-reimbursement process or the department's decision on the  
32 application.

33       (6) The department is authorized to adopt rules or guidance  
34 providing minimum qualifications and standards for any consultant's  
35 submission of work products under this section, including standards for  
36 submission of technical information, scientific analysis, work product  
37 documentation, review for conflict of interest, and report presentation  
38 that such a consultant must meet.

1 (7) The department must provide notice to potential consultants of  
2 the opportunity to be considered for inclusion on the list of cost-  
3 reimbursement consultants to whom work assignments will be made. The  
4 department must competitively select an appropriate number of  
5 consultants who are qualified by training and experience to investigate  
6 and make recommendations on the disposition of water right  
7 applications. The prequalified consultant list must be renewed at  
8 least every six years, though the department may add qualified cost-  
9 reimbursement consultants to the list at any time. The department must  
10 enter a master contract with each consultant selected and thereafter  
11 make work assignments based on availability and qualifications.

12 (8) The department may remove any consultant from the consultant  
13 list for poor performance, malfeasance, or excessive complaints from  
14 cost-reimbursement participants. The department may interview any  
15 cost-reimbursement consultant to determine whether the person is  
16 qualified for this work, and must spot-check the work of consultants to  
17 ensure that the public is being competently served.

18 (9) When a prequalified cost-reimbursement consultant from the  
19 department's list described in subsection (7) of this section is  
20 assigned or selected to investigate an application or set of  
21 applications, the consultant must document its findings and recommended  
22 disposition in the form of written draft technical reports and  
23 preliminary draft reports of examination. Within two weeks of the  
24 department receiving draft technical reports and preliminary draft  
25 reports of examination, the department shall provide the applicant such  
26 documents for review and comment prior to their completion by the  
27 consultant. The department shall consider such comments by the  
28 applicant prior to the department's issuance of a draft report of  
29 examination. The department may modify the preliminary draft reports  
30 of examination submitted by the consultant. The department's decision  
31 on a permit application is final unless it is appealed to the pollution  
32 control hearings board under chapter 43.21B RCW.

33 (10) If an applicant elects not to participate in a cost-  
34 reimbursement process, the application remains on file with the  
35 department, retains its priority date, and may be processed under  
36 regular processing, priority processing, expedited processing,  
37 coordinated cost-reimbursement processing, cost-reimbursement

1 processing, or through conservancy board processing as authorized under  
2 chapter 90.80 RCW.

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

5 The water rights processing account is created in the state  
6 treasury. All receipts from the fees collected under sections 5, 7,  
7 and 12 of this act must be deposited into the account. Money in the  
8 account may be spent only after appropriation. Expenditures from the  
9 account may only be used to support the processing of water right  
10 applications for a new appropriation, change, transfer, or amendment of  
11 a water right as provided in this chapter and chapters 90.42 and 90.44  
12 RCW or for the examination, certification, and renewal of certification  
13 of water right examiners as provided in section 7 of this act.

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

16 (1) The department may expedite processing of applications within  
17 the same source of water on its own volition when there is interest  
18 from a sufficient number of applicants or upon receipt of written  
19 requests from at least ten percent of the applicants within the same  
20 source of water.

21 (2) If the conditions of subsection (1) of this section have been  
22 met and the department determines that the public interest is best  
23 served by expediting applications within a water source, the department  
24 must notify in writing all persons who have pending applications on  
25 file for a new appropriation, change, transfer, or amendment of a water  
26 right from that water source. A water source may include surface water  
27 only, groundwater only, or surface and groundwater together if the  
28 department determines that they are hydraulically connected. The  
29 notice must be posted on the department's web site and published in a  
30 newspaper of general circulation in the area where affected properties  
31 are located. The notice must also be made individually by way of mail  
32 to:

33 (a) Inform those applicants that expedited processing of  
34 applications within the described water source is being initiated;

35 (b) Provide to individual applicants the criteria under which the  
36 applications will be examined and determined;

1 (c) Provide to individual applicants the estimated cost for having  
2 an application processed on an expedited basis;

3 (d) Provide an estimate of how long the expedited process will take  
4 before an application is approved or denied; and

5 (e) Provide at least sixty days for the applicants to respond in  
6 writing regarding the applicant's decision to participate in the  
7 expedited processing of their applications.

8 (3) In addition to the application fees provided in RCW 90.03.470,  
9 the department must recover the full cost of processing all the  
10 applications from applicants who elect to participate within the water  
11 source through expedited processing fees. The department must  
12 calculate an expedited processing fee based primarily on the  
13 proportionate quantity of water requested by each applicant and may  
14 adjust the fee if it appears that the application will require a  
15 disproportionately greater amount of time and effort to process due to  
16 its complexity. Any application fees that were paid by the applicant  
17 under RCW 90.03.470 must be credited against the applicant's share of  
18 the cost of processing applications under the provisions of this  
19 section.

20 (4) The expedited processing fee must be collected by the  
21 department prior to the expedited processing of an application.  
22 Revenue collected from these fees must be deposited into the water  
23 rights processing account created in section 4 of this act. An  
24 applicant who has stated in writing that he or she wants his or her  
25 application processed using the expedited procedures in this section  
26 must transmit the processing fee within sixty days of the written  
27 request. Failure to do so will result in the applicant not being  
28 included in expedited processing for that water source.

29 (5) If an applicant elects not to participate in expedited  
30 processing, the application remains on file with the department, the  
31 applicant retains his or her priority date, and the application may be  
32 processed through regular processing, priority processing, expedited  
33 processing, coordinated cost-reimbursement processing, cost-  
34 reimbursement processing, or through conservancy board processing as  
35 authorized under chapter 90.80 RCW. Such an application may not be  
36 processed through expedited processing within twelve months after the  
37 department's issuance of decisions on participating applications at the  
38 conclusion of expedited processing unless the applicant agrees to pay

1 the full proportionate share that would otherwise have been paid during  
2 such processing. Any proceeds collected from an applicant under this  
3 delayed entry into expedited processing shall be used to reimburse the  
4 other applicants who participated in the previous expedited processing  
5 of applications, provided sufficient proceeds remain to fully cover the  
6 department's cost of processing the delayed entry application and the  
7 department's estimated administrative costs to reimburse the previously  
8 expedited applicants.

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

11 The department must post notice on its web site and provide  
12 additional electronic notice and opportunity for comment to affected  
13 federally recognized tribal governments concurrently when providing  
14 notice to applicants under RCW 90.03.265 and sections 5 and 12 of this  
15 act.

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

18 (1) The department shall establish and maintain a list of certified  
19 water right examiners. Certified water right examiners on the list are  
20 eligible to perform final proof examinations of permitted water uses  
21 leading to the issuance of a water right certificate under RCW  
22 90.03.330. The list must be updated annually and must be made  
23 available to the public through written and electronic media.

24 (2) In order to qualify, an individual must be registered in  
25 Washington as a professional engineer, professional land surveyor, or  
26 registered hydrogeologist, or an individual must demonstrate at least  
27 five years of applicable experience to the department, or be a board  
28 member of a water conservancy board. Qualified individuals must also  
29 pass a written examination prior to being certified by the department.  
30 Such an examination must be administered by either the department or an  
31 entity formally approved by the department. Each certified water right  
32 examiner must demonstrate knowledge and competency regarding:

33 (a) Water law in the state of Washington;

34 (b) Measurement of the flow of water through open channels and  
35 enclosed pipes;

36 (c) Water use and water level reporting;



- 1 (d) Estimation of the capacity of reservoirs and ponds;
- 2 (e) Irrigation crop water requirements;
- 3 (f) Aerial photo interpretation;
- 4 (g) Legal descriptions of land parcels;
- 5 (h) Location of land and water infrastructure through the use of
- 6 maps and global positioning;
- 7 (i) Proper construction and sealing of well bores; and
- 8 (j) Other topics related to the preparation and certification of
- 9 water rights in Washington state.

10 (3) Except as provided in subsection (9) of this section, upon  
11 completion of a water appropriation and putting water to beneficial  
12 use, in order to receive a final water right certificate, the permit  
13 holder must secure the services of a certified water right examiner who  
14 has been tested and certified by the department. The examiner shall  
15 carry out a final examination of the project to verify its completion  
16 and to determine and document for the permit holder and the department  
17 the amount of water that has been appropriated for beneficial use, the  
18 location of diversion or withdrawal and conveyance facilities, and the  
19 actual place of use. The examiner shall take measurements or make  
20 estimates of the maximum diversion or withdrawal, the capacity of water  
21 storage facilities, the acreage irrigated, the type and number of  
22 residences served, the type and number of stock watered, and other  
23 information relevant to making a final determination of the amount of  
24 water beneficially used. The examiner shall take photographs of the  
25 facilities to document the use or uses of water and the photographs  
26 must be submitted with the examiner's report to the department. The  
27 department shall specify the format and required content of the reports  
28 and may provide a form for that purpose.

29 (4) The department may suspend or revoke a certification based on  
30 poor performance, malfeasance, failure to acquire continuing education  
31 credits, or excessive complaints from the examiner's customers. The  
32 department may require the retesting of an examiner. The department  
33 may interview any examiner to determine whether the person is qualified  
34 for this work. The department shall spot-check the work of examiners  
35 to ensure that the public is being competently served. Any person  
36 aggrieved by an order of the department including the granting, denial,  
37 revocation, or suspension of a certificate issued by the department  
38 under this chapter may appeal pursuant to chapter 43.21B RCW.

1 (5) The decision regarding whether to issue a final water right  
2 certificate is solely the responsibility and function of the  
3 department.

4 (6) The department shall make its final decision under RCW  
5 90.03.330 within sixty days of the date of receipt of the proof of  
6 examination from the certified water right examiner, unless otherwise  
7 requested by the applicant or returned for correction by the  
8 department. The department may return an initial proof of examination  
9 for correction within thirty days of the department's receipt of such  
10 initial proof from a certified water right examiner. Such proof must  
11 be returned to both the certified water right examiner and the  
12 applicant. Within thirty days of the department's receipt of such  
13 returned proof from the certified water right examiner, the department  
14 shall make its final decision under RCW 90.03.330, unless otherwise  
15 requested by the applicant.

16 (7) Each certified water right examiner must complete eight hours  
17 annually of qualifying continuing education in the water resources  
18 field. The department shall determine and specify the qualifying  
19 continuing education and shall inform examiners of the opportunities.  
20 The department shall track whether examiners are current in their  
21 continuing education and may suspend the certification of an examiner  
22 who has not complied with the continuing education requirement.

23 (8) Each certified water right examiner must be bonded for at least  
24 fifty thousand dollars.

25 (9) The department may waive the requirement to secure the services  
26 of a certified water right examiner in situations in which the  
27 department has already conducted a final proof of examination or finds  
28 it unnecessary for purposes of issuing a certificate of water right.

29 (10) The department shall establish and collect fees for the  
30 examination, certification, and renewal of certification of water right  
31 examiners. Revenue collected from these fees must be deposited into  
32 the water rights processing account created in section 4 of this act.  
33 Pursuant to RCW 43.135.055, the department is authorized to set fees  
34 for examination, certification, and renewal of certification for water  
35 right examiners.

36 (11) The department may adopt rules appropriate to carry out the  
37 purposes of this section.

1       **Sec. 8.** RCW 90.14.065 and 1987 c 93 s 1 are each amended to read  
2 as follows:

3       (1)(a) Any person or entity, or successor to such person or entity,  
4 having a statement of claim on file with the water rights claims  
5 registry (~~on April 20, 1987,~~) may submit to the department of ecology  
6 for filing(~~(7)~~) an amendment to such a statement of claim if the  
7 submitted amendment is based on:

8       (~~(1)~~) (i) An error in estimation of the quantity of the  
9 applicant's water claim prescribed in RCW 90.14.051 if the applicant  
10 provides reasons for the failure to claim such right in the original  
11 claim;

12       (~~(2)~~) (ii) A change in circumstances not foreseeable at the time  
13 the original claim was filed, if such change in circumstances relates  
14 only to the manner of transportation or diversion of the water and not  
15 to the use or quantity of such water; or

16       (~~(3)~~) (iii) The amendment is ministerial in nature.

17       (b) The department shall accept any such submission and file the  
18 same in the registry unless the department by written determination  
19 concludes that the requirements of (a)(i), (ii), or (iii) of this  
20 subsection (~~(1), (2), or (3) of this section~~) have not been  
21 satisfied.

22       (2) In addition to subsection (1) of this section, a surface water  
23 right claim may be changed or transferred in the same manner as a  
24 permit or certificate under RCW 90.03.380, and a water right claim for  
25 groundwater may be changed or transferred as provided under RCW  
26 90.03.380 and 90.44.100.

27       (3) Any person aggrieved by a determination of the department may  
28 obtain a review thereof by filing a petition for review with the  
29 pollution control hearings board within thirty days of the date of the  
30 determination by the department. The provisions of RCW 90.14.081 shall  
31 apply to any amendment filed or approved under this section.

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

34       (1) After an application to, and upon the issuance by the  
35 department of an amendment to the appropriate permit or certificate of  
36 groundwater right, the holder of a valid right to withdraw public  
37 groundwaters may, without losing the holder's priority of right,

1 construct wells or other means of withdrawal at a new location in  
2 substitution for or in addition to those at the original location, or  
3 the holder may change the manner or the place of use of the water.

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

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

1 well it might interfere with; (f) the department may specify an  
2 approved manner of construction of the well; and (g) the department  
3 shall require a showing of compliance with the conditions of this  
4 subsection (3).

5 (4) As used in this section, the "location of the original well or  
6 wells" of a water right permit or certificate is the area described as  
7 the point of withdrawal in the original public notice published for the  
8 application for the water right for the well. The location of the  
9 original well or wells of a water right claim filed under chapter 90.14  
10 RCW is the area located within a one-quarter mile radius of the current  
11 well or wells.

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

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

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

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

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

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

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

32 (4) As used in this section, the "location of the original well or  
33 wells" of a water right permit or certificate is the area described as  
34 the point of withdrawal in the original public notice published for the  
35 application for the water right for the well. The location of the  
36 original well or wells of a water right claim filed under chapter 90.14  
37 RCW is the area located within a one-quarter mile radius of the current  
38 well or wells.

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

7 NEW SECTION. **Sec. 11.** A new section is added to chapter 90.44 RCW  
8 to read as follows:

9 Applications to appropriate groundwater under a cost-reimbursement  
10 agreement must be processed in accordance with RCW 90.03.265 when an  
11 applicant requests the assignment of a cost-reimbursement consultant as  
12 provided in RCW 43.21A.690.

13 NEW SECTION. **Sec. 12.** A new section is added to chapter 90.44 RCW  
14 to read as follows:

15 (1) The department may expedite processing of applications within  
16 the same source of water on its own volition when there is interest  
17 from a sufficient number of applicants or upon receipt of written  
18 requests from at least ten percent of the applicants within the same  
19 source of water.

20 (2) If the conditions of subsection (1) of this section have been  
21 met and the department determines that the public interest is best  
22 served by expediting applications within a water source, the department  
23 must notify in writing all persons who have pending applications on  
24 file for a new appropriation, change, transfer, or amendment of a water  
25 right from that water source. A water source may include surface water  
26 only, groundwater only, or surface and groundwater together if the  
27 department determines that they are hydraulically connected. The  
28 notice must be posted on the department's web site and published in a  
29 newspaper of general circulation in the area where affected properties  
30 are located. The notice must also be made individually by way of mail  
31 to:

32 (a) Inform those applicants that expedited processing of  
33 applications within the described water source is being initiated;

34 (b) Provide to individual applicants the criteria under which the  
35 applications will be examined and determined;

1 (c) Provide to individual applicants the estimated cost for having  
2 an application processed on an expedited basis;

3 (d) Provide an estimate of how long the expedited process will take  
4 before an application is approved or denied; and

5 (e) Provide at least sixty days for the applicants to respond in  
6 writing regarding the applicant's decision to participate in expedited  
7 processing of their applications.

8 (3) In addition to the application fees provided in RCW 90.03.470,  
9 the department must recover the full cost of processing all the  
10 applications from applicants who elect to participate within the water  
11 source through expedited processing fees. The department must  
12 calculate an expedited processing fee based primarily on the  
13 proportionate quantity of water requested by each applicant and may  
14 adjust the fee if it appears that an application will require a  
15 disproportionately greater amount of time and effort to process due to  
16 its complexity. Any application fees that were paid by the applicant  
17 under RCW 90.03.470 must be credited against the applicant's share of  
18 the cost of processing applications under the provisions of this  
19 section.

20 (4) The expedited processing fee must be collected by the  
21 department prior to the expedited processing of an application.  
22 Revenue collected from these fees must be deposited into the water  
23 rights processing account created in section 4 of this act. An  
24 applicant who has stated in writing that he or she wants his or her  
25 application processed using the expedited procedures in this section  
26 must transmit the processing fee within sixty days of the written  
27 request. Failure to do so will result in the applicant not being  
28 included in expedited processing for that water source.

29 (5) If an applicant elects not to participate in expedited  
30 processing, the application remains on file with the department, the  
31 applicant retains his or her priority date, and the application may be  
32 processed through regular processing, priority processing, expedited  
33 processing, coordinated cost-reimbursement processing, cost-  
34 reimbursement processing, or through conservancy board processing as  
35 authorized under chapter 90.80 RCW. Such an application may not be  
36 processed through expedited processing within twelve months after the  
37 department's issuance of decisions on participating applications at the  
38 conclusion of expedited processing unless the applicant agrees to pay



1 the full proportionate share that would otherwise have been paid during  
2 such processing. Any proceeds collected from an applicant under this  
3 delayed entry into expedited processing shall be used to reimburse the  
4 other applicants who participated in the previous expedited processing  
5 of applications, provided sufficient proceeds remain to fully cover the  
6 department's cost of processing the delayed entry application and the  
7 department's estimated administrative costs to reimburse the previously  
8 expedited applicants.

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

11 Nothing in this act affects or diminishes the processing of water  
12 right applications under any other existing authority, including but  
13 not limited to existing authority for the priority processing of  
14 applications by the department.

15 NEW SECTION. **Sec. 14.** Section 9 of this act expires June 30,  
16 2019.

17 NEW SECTION. **Sec. 15.** Section 10 of this act takes effect June  
18 30, 2019.

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

25 The water rights processing and dam safety account is created in  
26 the state treasury. All receipts from the fees collected under RCW  
27 90.03.470 must be deposited into the account. Moneys in the account  
28 may be spent only after appropriation. Expenditures from the account  
29 may be used only to support the processing of water right applications  
30 and change applications as provided in this chapter and chapters 90.38,  
31 90.42, and 90.44 RCW and the safety inspection of hydraulic works and  
32 plans and specifications for such works.

1       **Sec. 18.** RCW 90.03.470 and 2005 c 412 s 2 are each amended to read  
2 as follows:

3       The fees specified in this section shall be collected by the  
4 department in advance of the requested action.

5       ~~(1) ((For the examination of an application for a permit to  
6 appropriate water, a minimum fee of fifty dollars must be remitted with  
7 the application.~~

8       ~~For an amount of water exceeding one half cubic foot per second,  
9 the examination fee shall be assessed at the rate of one dollar per one  
10 hundredth cubic foot per second. In no case will the examination fee  
11 be less than fifty dollars or more than twenty five thousand dollars.  
12 No fee is required under this subsection (1) for an application filed  
13 by a party to a cost reimbursement agreement made under RCW  
14 90.03.265.))~~ For the examination of an application for a permit to  
15 appropriate water or for an application to change, transfer, or amend  
16 an existing water right, an examination fee equal to thirty-five  
17 dollars for each one-hundredth of a cubic foot per second must be  
18 remitted with the application, but in no case may the examination fee  
19 be less than one thousand dollars or more than thirty-five thousand  
20 dollars.

21       (2) The following fees apply for the examination of an application  
22 to store water((, a fee of two dollars for each acre foot of storage  
23 proposed shall be charged, but a minimum fee of fifty dollars must be  
24 remitted with the application. In no case will the examination fee for  
25 a storage project be less than fifty dollars or more than twenty five  
26 thousand dollars. No fee is required under this subsection (2) for an  
27 application filed by a party to a cost reimbursement agreement made  
28 under RCW 90.03.265)) and for an application to change a storage right:

29       (a) For storage of less than one hundred acre feet of water, an  
30 examination fee of one thousand dollars must be remitted with the  
31 application.

32       (b) For storage of more than one hundred acre feet of water but  
33 less than or equal to one thousand acre feet of water, an examination  
34 fee of two thousand dollars must be remitted with the application.

35       (c) For storage of more than one thousand acre feet of water but  
36 less than or equal to ten thousand acre feet of water, an examination  
37 fee of seven thousand five hundred dollars must be remitted with the  
38 application.

1 (d) For storage of more than ten thousand acre feet of water, an  
2 examination fee of fifteen thousand dollars must be remitted with the  
3 application.

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

18 ~~(b)) (i) The fee paid to the department for an application for~~  
19 ~~change filed with a water conservancy board under chapter 90.80 RCW~~  
20 ~~must be one-fifth of the amounts provided in subsections (1) and (2) of~~  
21 ~~this section. A conservancy board may charge its own processing fees~~  
22 ~~in accordance with RCW 90.80.060.~~

23 (ii) The fees in subsections (1) and (2) of this section do not  
24 apply to applicants that have entered into a cost-reimbursement  
25 agreement with the department under RCW 90.03.265.

26 (b) The examination fee for a temporary or seasonal change under  
27 RCW 90.03.390 is ((fifty)) two hundred dollars and must be remitted  
28 with the application.

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

30 (i) An application to process a change relating to donation of a  
31 trust water right to the state; or

32 (ii) An application to process a change when the department  
33 otherwise acquires a trust water right for purposes of improving  
34 instream flows or for other public purposes( (+

35 ~~(iii) An application filed with a water conservancy board according~~  
36 ~~to chapter 90.80 RCW or for the review of a water conservancy board's~~  
37 ~~record of decision submitted to the department according to chapter~~  
38 ~~90.80 RCW; or~~

1       ~~(iv) An application filed by a party to a cost reimbursement~~  
2 ~~agreement made under RCW 90.03.265)).~~

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

8       ~~(4) ((The fifty-dollar minimum fee payable with the application~~  
9 ~~shall be a credit to the total amount whenever the examination fee~~  
10 ~~totals more than fifty dollars under the schedule specified in~~  
11 ~~subsections (1) through (3) of this section and in such case the~~  
12 ~~further fee due shall be the total computed amount, less the amount~~  
13 ~~previously paid. Within five working days from receipt of an~~  
14 ~~application, the department shall notify the applicant by registered~~  
15 ~~mail of any additional fees due under subsections (1) through (3) of~~  
16 ~~this section.))~~ (a) The fee amounts specified in this section apply to  
17 applications received after the effective date of this section and to  
18 all applications that have not been acted on by the department by  
19 issuance of a report of examination as of the effective date of this  
20 section. For pending applications that were filed prior to the  
21 effective date of this section, any fees that were paid under a  
22 previous fee schedule must be credited to the amounts required by  
23 subsections (1), (2), and (3) of this section. When the department is  
24 prepared to take action on an application that was filed prior to the  
25 effective date of this section, the department shall notify the  
26 applicant that additional fees are due and give the applicant sixty  
27 days to remit the additional fees. If the applicant fails to remit the  
28 additional fees within the time provided, the department shall cancel  
29 the application and inform the applicant of the cancellation.

30       (b) If the department receives a water right, change, transfer,  
31 amendment, or storage application that does not include remittance of  
32 the fee amounts required by this section, the department shall return  
33 the application to the applicant with instructions on the proper fee  
34 amount to be remitted. An application does not establish a priority  
35 date until the proper fee is remitted.

36       ~~(5) The ((fees specified in subsections (1) through (3) of this~~  
37 ~~section do not apply to any filings))~~ fee for filing an emergency  
38 withdrawal authorization(~~(s)~~) or temporary drought-related water right

1 change(~~s~~) authorized under RCW 43.83B.410 that (~~are~~) is received by  
2 the department while a drought condition order issued under RCW  
3 43.83B.405 is in effect is one hundred dollars.

4 (6) For applying for each extension of time for beginning  
5 construction work under a permit to appropriate water, for completion  
6 of construction work, or for completing application of water to a  
7 beneficial use, a fee of two hundred fifty dollars is required. These  
8 fees also apply to similar extensions of time requested under a change  
9 or transfer authorization.

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

21 (8) For the examination of plans and specifications as to safety of  
22 controlling works for storage of ten acre feet or more of water, a  
23 minimum fee of (~~ten~~) five hundred dollars, or a fee equal to the  
24 actual cost, is required.

25 (9) For recording an assignment either of a permit to appropriate  
26 water or of an application for such a permit, a fee of (~~fifty~~) two  
27 hundred dollars is required.

28 (10) For preparing and issuing all water right certificates, a fee  
29 of (~~fifty~~) two hundred dollars is required.

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

33 (12) For filing an application to amend a water right claim filed  
34 under chapter 90.14 RCW, a fee of (~~fifty~~) two hundred dollars is  
35 required.

36 (13)(a) Each person who holds a water right permit application, a  
37 reservoir permit application, or a change, transfer, or amendment  
38 application that is pending at any time between the effective date of

1 this section and June 30, 2011, must remit a one-time fee of two  
2 hundred dollars to the department to retain an application in good  
3 standing. The department shall provide written notice by certified  
4 mail to each holder of an application for the fees that are due under  
5 this section. The notice must require that the fees be paid within  
6 sixty days of the date of receipt, but in no case may payment be due  
7 later than June 30, 2011. For ease of administration, the department  
8 may distribute the issuance of the notices by geographic area. The  
9 surcharge paid under this subsection is a credit against the  
10 application fees required in this section.

11 (b) Applications not in good standing must be canceled. The  
12 department shall issue an order to any holder of an application who  
13 fails to pay the fee within the prescribed time. The order must state  
14 that the application is canceled unless payment is received within  
15 thirty days.

16 (c) The department shall advise an applicant and provide an  
17 opportunity for an applicant to withdraw their application without  
18 further payment of fees if the department determines that the  
19 application would not likely be approved. The department shall  
20 summarize the basis for its conclusion to the applicant. The  
21 department shall further advise that the applicant has the option of  
22 providing an amended application that could include storage or other  
23 resource management technique that might make it approvable under RCW  
24 90.03.255 or 90.44.055. The department's advice is not subject to  
25 appeal. If the applicant decides to retain the application on file and  
26 pays the fee required in this subsection, the department shall maintain  
27 the application in good standing until it is able to render a final  
28 decision on the application. The final decision is subject to appeal  
29 to the pollution control hearings board as provided under chapter  
30 43.21B RCW.

31 (14) An application or request for an action as provided for under  
32 this section is incomplete unless accompanied by the fee or the minimum  
33 fee. If no fee or an amount less than the minimum fee accompanies an  
34 application or other request for an action as provided under this  
35 section, the department shall return the application or request to the  
36 applicant with advice as to the fee that must be remitted with the  
37 application or request for it to be accepted for processing. If  
38 additional fees are due, the department shall provide timely

1 notification by certified mail with return receipt requested to the  
2 applicant. No action may be taken by the department until the fee is  
3 paid in full. Failure to remit fees within sixty days of the  
4 department's notification is grounds for rejecting the application or  
5 request or canceling the permit. Cash shall not be accepted. Fees  
6 must be paid by check or money order and are nonrefundable.

7 ~~((14))~~ (15) For purposes of calculating fees for groundwater  
8 filings, one cubic foot per second shall be regarded as equivalent to  
9 four hundred fifty gallons per minute.

10 ~~((15) Eighty percent of the fees collected by the department under  
11 this section shall be deposited in the state general fund. Twenty  
12 percent of the fees collected by the department under this section  
13 shall be deposited in the water rights tracking system account  
14 established in RCW 90.14.240.~~

15 ~~(16) Except for the fees relating to the inspection of hydraulic  
16 works and the examination of plans and specifications of controlling  
17 works provided for in subsections (7) and (8) of this section, nothing  
18 in this section is intended to grant authority to the department to  
19 amend the fees in this section by adoption of rules or otherwise.)~~

20 (16) The fees collected by the department under this section must be  
21 deposited in the water rights processing and dam safety account created  
22 in section 17 of this act.

23 (17)(a) The fees specified in this section are effective until the  
24 department adopts rules that modify them in accordance with section 20  
25 of this act, except that the fees required in subsections (7) and (8)  
26 of this section may be modified at any time.

27 (b) When information has been previously obtained that directly  
28 relates to the processing of an application in subsections (1) and (2)  
29 of this section, the department must proportionately reduce the fees  
30 associated with that application as a result of the reduced workload of  
31 the department.

32 NEW SECTION. Sec. 19. A new section is added to chapter 90.03 RCW  
33 to read as follows:

34 (1) The department must establish by rule a program for the  
35 distribution of hardship grant money to assist applicants in the  
36 payment of fees required in RCW 90.03.470.

1 (2) The department shall submit the list of hardship applicants  
2 that meet the qualifications established by the department in this  
3 section along with the applicant's requested grant amount to the office  
4 of financial management for consideration in the governor's budget  
5 request.

6 (3) The department shall also provide the list of hardship  
7 applicants that meet the qualifications established by the department  
8 in this section along with the applicant's requested grant amount to  
9 the legislature by October 1st of each year.

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

12 The department may periodically adopt rules to adjust the fees  
13 established in RCW 90.03.470. Any subsequent fees adopted by rule  
14 supersede those provided in RCW 90.03.470. Before proposing to adopt  
15 any changes to the fees, the department shall consult with the policy  
16 committees of the legislature that review water resources legislation.

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

19 (1) The department shall submit a report to the legislature prior  
20 to December 31, 2012, and biennially thereafter until December 31,  
21 2020, on the status of the backlog of applications for water right  
22 permits, the effectiveness of processing water right permit  
23 applications to a conclusion within twelve months, and the  
24 appropriateness of the fee amounts.

25 (2) This section expires January 1, 2021.

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

28 (1) The department may not require withdrawals of groundwater to be  
29 metered or measured for wells authorized under the provisions of RCW  
30 90.44.050 constructed prior to the effective date of this section for  
31 single or group domestic uses that do not exceed withdrawing five  
32 thousand gallons a day.

33 (2) This section does not apply to wells the department has  
34 required to be metered or measured as of the effective date of this  
35 section."



1 Correct the title.

--- END ---