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**SENATE BILL 6260**

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**State of Washington**

**66th Legislature**

**2020 Regular Session**

**By** Senator McCoy

1 AN ACT Relating to tribal traditional and cultural interests in  
2 water resources; amending RCW 90.03.290, 90.03.380, 90.03.380,  
3 90.44.100, 90.44.100, and 90.54.020; adding new sections to chapter  
4 90.03 RCW; adding a new section to chapter 43.21C RCW; creating a new  
5 section; providing an effective date; and providing an expiration  
6 date.

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

8 NEW SECTION. **Sec. 1.** The legislature finds that when the  
9 state's water code was adopted in 1917, it recognized preexisting  
10 rights based upon riparian and appropriative uses, but did not  
11 recognize existing tribal traditional and cultural interests in and  
12 uses of water, whether consumptive or nonconsumptive. While many of  
13 these uses are recognized in federal law through treaties, creation  
14 of reservations, and federal statutes protecting sacred sites and  
15 other sites of cultural, ceremonial, spiritual, and traditional  
16 importance, such recognition does not formally extend as such into  
17 the administration of the state's water code unless such rights or  
18 interests have been confirmed and quantified in general stream  
19 adjudications. Because most water sources, if adjudicated at all,  
20 were done so decades ago and with little recognition of these tribal  
21 interests, and because these interests are very significant and

1 legitimate, it is the purpose of this act to modernize the water code  
2 to provide recognition and consideration of such interests when  
3 considering new withdrawals and considering changes and transfers to  
4 existing water withdrawals permitted under the water code.

5 NEW SECTION. **Sec. 2.** A new section is added to chapter 90.03  
6 RCW to read as follows:

7 Any Washington tribe may file with the department a description  
8 of its historical and current uses of a surface or ground water body  
9 that support the cultural, spiritual, ceremonial, and traditional  
10 rights or lifeways of the tribe, including both consumptive and  
11 nonconsumptive uses. When the filing is supported with documentation  
12 that such uses by the tribe have been longstanding, the department  
13 must recognize the traditional and cultural interests in the water  
14 body.

15 **Sec. 3.** RCW 90.03.290 and 2018 c 1 s 303 are each amended to  
16 read as follows:

17 (1) When an application complying with the provisions of this  
18 chapter and with the rules of the department has been filed, the same  
19 shall be placed on record with the department, and it shall be its  
20 duty to investigate the application, and determine what water, if  
21 any, is available for appropriation, and find and determine to what  
22 beneficial use or uses it can be applied. If it is proposed to  
23 appropriate water for irrigation purposes, the department shall  
24 investigate, determine and find what lands are capable of irrigation  
25 by means of water found available for appropriation. If it is  
26 proposed to appropriate water for the purpose of power development,  
27 the department shall investigate, determine and find whether the  
28 proposed development is likely to prove detrimental to the public  
29 interest, having in mind the highest feasible use of the waters  
30 belonging to the public.

31 (2)(a) If the application does not contain, and the applicant  
32 does not promptly furnish sufficient information on which to base  
33 such findings, the department may issue a preliminary permit, for a  
34 period of not to exceed three years, requiring the applicant to make  
35 such surveys, investigations, studies, and progress reports, as in  
36 the opinion of the department may be necessary. If the applicant  
37 fails to comply with the conditions of the preliminary permit, it and  
38 the application or applications on which it is based shall be

1 automatically canceled and the applicant so notified. If the holder  
2 of a preliminary permit shall, before its expiration, file with the  
3 department a verified report of expenditures made and work done under  
4 the preliminary permit, which, in the opinion of the department,  
5 establishes the good faith, intent, and ability of the applicant to  
6 carry on the proposed development, the preliminary permit may, with  
7 the approval of the governor, be extended, but not to exceed a  
8 maximum period of five years from the date of the issuance of the  
9 preliminary permit.

10 (b) For any application for which a preliminary permit was issued  
11 and for which the availability of water was directly affected by a  
12 moratorium on further diversions from the Columbia river during the  
13 years from 1990 to 1998, the preliminary permit is extended through  
14 June 30, 2002. If such an application and preliminary permit were  
15 canceled during the moratorium, the application and preliminary  
16 permit shall be reinstated until June 30, 2002, if the application  
17 and permit: (i) Are for providing regional water supplies in more  
18 than one urban growth area designated under chapter 36.70A RCW and in  
19 one or more areas near such urban growth areas, or the application  
20 and permit are modified for providing such supplies, and (ii) provide  
21 or are modified to provide such regional supplies through the use of  
22 existing intake or diversion structures. The authority to modify such  
23 a canceled application and permit to accomplish the objectives of  
24 (b)(i) and (ii) of this subsection is hereby granted.

25 (3) The department shall make and file as part of the record in  
26 the matter, written findings of fact concerning all things  
27 investigated, and if it shall find that there is water available for  
28 appropriation for a beneficial use, and the appropriation thereof as  
29 proposed in the application will not impair existing rights ~~((or))~~,  
30 be detrimental to the public welfare, or be detrimental to a tribal  
31 traditional and cultural interest recognized under section 2 of this  
32 act, it shall issue a permit stating the amount of water to which the  
33 applicant shall be entitled and the beneficial use or uses to which  
34 it may be applied: PROVIDED, That where the water applied for is to  
35 be used for irrigation purposes, it shall become appurtenant only to  
36 such land as may be reclaimed thereby to the full extent of the soil  
37 for agricultural purposes. But where there is no unappropriated water  
38 in the proposed source of supply, ~~((or))~~ where the proposed use  
39 conflicts with existing rights, is detrimental to a tribal  
40 traditional and cultural interest recognized under section 2 of this

1 act, or threatens to prove detrimental to the public interest, having  
2 due regard to the highest feasible development of the use of the  
3 waters belonging to the public, it shall be duty of the department to  
4 reject such application and to refuse to issue the permit asked for.

5 (4) If the permit is refused because of conflict with existing  
6 rights and such applicant shall acquire same by purchase or  
7 condemnation under RCW 90.03.040, the department may thereupon grant  
8 such permit. Any application may be approved for a less amount of  
9 water than that applied for, if there exists substantial reason  
10 therefor, and in any event shall not be approved for more water than  
11 can be applied to beneficial use for the purposes named in the  
12 application. In determining whether or not a permit shall issue upon  
13 any application, it shall be the duty of the department to  
14 investigate all facts relevant and material to the application. After  
15 the department approves said application in whole or in part and  
16 before any permit shall be issued thereon to the applicant, such  
17 applicant shall pay the fee provided in RCW 90.03.470: PROVIDED  
18 FURTHER, That in the event a permit is issued by the department upon  
19 any application, it shall be its duty to notify the director of fish  
20 and wildlife of such issuance.

21 (5) The requirements of subsections (1) and (3) of this section  
22 do not apply to water resource mitigation pilot projects for which  
23 permits are issued in reliance upon water resource mitigation of  
24 impacts to instream flows and closed surface water bodies under RCW  
25 90.94.090.

26 **Sec. 4.** RCW 90.03.380 and 2011 c 112 s 3 are each amended to  
27 read as follows:

28 (1) The right to the use of water which has been applied to a  
29 beneficial use in the state shall be and remain appurtenant to the  
30 land or place upon which the same is used: PROVIDED, HOWEVER, That  
31 the right may be transferred to another or to others and become  
32 appurtenant to any other land or place of use without loss of  
33 priority of right theretofore established if such change can be made  
34 without detriment or injury to existing rights or to a tribal  
35 traditional and cultural interest recognized under section 2 of this  
36 act. The point of diversion of water for beneficial use or the  
37 purpose of use may be changed, if such change can be made without  
38 detriment or injury to existing rights or to a tribal traditional and  
39 cultural interest recognized under section 2 of this act. A change in

1 the place of use, point of diversion, and/or purpose of use of a  
2 water right to enable irrigation of additional acreage or the  
3 addition of new uses may be permitted if such change results in no  
4 increase in the annual consumptive quantity of water used under the  
5 water right. For purposes of this section, "annual consumptive  
6 quantity" means the estimated or actual annual amount of water  
7 diverted pursuant to the water right, reduced by the estimated annual  
8 amount of return flows, averaged over the two years of greatest use  
9 within the most recent five-year period of continuous beneficial use  
10 of the water right. Before any transfer of such right to use water or  
11 change of the point of diversion of water or change of purpose of use  
12 can be made, any person having an interest in the transfer or change,  
13 shall file a written application therefor with the department, and  
14 the application shall not be granted until notice of the application  
15 is published as provided in RCW 90.03.280. If it shall appear that  
16 such transfer or such change may be made without injury or detriment  
17 to existing rights, the department shall issue to the applicant a  
18 certificate in duplicate granting the right for such transfer or for  
19 such change of point of diversion or of use. The certificate so  
20 issued shall be filed and be made a record with the department and  
21 the duplicate certificate issued to the applicant may be filed with  
22 the county auditor in like manner and with the same effect as  
23 provided in the original certificate or permit to divert water. The  
24 time period that the water right was banked under RCW 90.92.070, in  
25 an approved local water plan created under RCW 90.92.090, or the  
26 water right was subject to an agreement to not divert under RCW  
27 90.92.050 will not be included in the most recent five-year period of  
28 continuous beneficial use for the purpose of determining the annual  
29 consumptive quantity under this section. If the water right has not  
30 been used during the previous five years but the nonuse of which  
31 qualifies for one or more of the statutory good causes or exceptions  
32 to relinquishment in RCW 90.14.140 and 90.44.520, the period of  
33 nonuse is not included in the most recent five-year period of  
34 continuous beneficial use for purposes of determining the annual  
35 consumptive quantity of water under this section.

36 (2) If an application for change proposes to transfer water  
37 rights from one irrigation district to another, the department shall,  
38 before publication of notice, receive concurrence from each of the  
39 irrigation districts that such transfer or change will not adversely

1 affect the ability to deliver water to other landowners or impair the  
2 financial integrity of either of the districts.

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

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

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

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

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

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

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

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

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

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

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

26 (b) For the purposes of this subsection:

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

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

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

34 **Sec. 5.** RCW 90.03.380 and 2011 c 112 s 3 are each amended to  
35 read as follows:

36 (1) The right to the use of water which has been applied to a  
37 beneficial use in the state shall be and remain appurtenant to the  
38 land or place upon which the same is used: PROVIDED, HOWEVER, That  
39 the right may be transferred to another or to others and become

1 appurtenant to any other land or place of use without loss of  
2 priority of right theretofore established if such change can be made  
3 without detriment or injury to existing rights or to a tribal  
4 traditional and cultural interest recognized under section 2 of this  
5 act. The point of diversion of water for beneficial use or the  
6 purpose of use may be changed, if such change can be made without  
7 detriment or injury to existing rights or to a tribal traditional and  
8 cultural interest recognized under section 2 of this act. A change in  
9 the place of use, point of diversion, and/or purpose of use of a  
10 water right to enable irrigation of additional acreage or the  
11 addition of new uses may be permitted if such change results in no  
12 increase in the annual consumptive quantity of water used under the  
13 water right. For purposes of this section, "annual consumptive  
14 quantity" means the estimated or actual annual amount of water  
15 diverted pursuant to the water right, reduced by the estimated annual  
16 amount of return flows, averaged over the two years of greatest use  
17 within the most recent five-year period of continuous beneficial use  
18 of the water right. Before any transfer of such right to use water or  
19 change of the point of diversion of water or change of purpose of use  
20 can be made, any person having an interest in the transfer or change,  
21 shall file a written application therefor with the department, and  
22 the application shall not be granted until notice of the application  
23 is published as provided in RCW 90.03.280. If it shall appear that  
24 such transfer or such change may be made without injury or detriment  
25 to existing rights, the department shall issue to the applicant a  
26 certificate in duplicate granting the right for such transfer or for  
27 such change of point of diversion or of use. The certificate so  
28 issued shall be filed and be made a record with the department and  
29 the duplicate certificate issued to the applicant may be filed with  
30 the county auditor in like manner and with the same effect as  
31 provided in the original certificate or permit to divert water.

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

38 (3) A change in place of use by an individual water user or users  
39 of water provided by an irrigation district need only receive  
40 approval for the change from the board of directors of the district

1 if the use of water continues within the irrigation district, and  
2 when water is provided by an irrigation entity that is a member of a  
3 board of joint control created under chapter 87.80 RCW, approval need  
4 only be received from the board of joint control if the use of water  
5 continues within the area of jurisdiction of the joint board and the  
6 change can be made without detriment or injury to existing rights.

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

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

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

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

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

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

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

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

13 (9)(a) The department may only approve an application submitted  
14 after June 30, 2019, for an interbasin water rights transfer after  
15 providing notice electronically to the board of county commissioners  
16 in the county of origin upon receipt of an application.

17 (b) For the purposes of this subsection:

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

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

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

25 **Sec. 6.** RCW 90.44.100 and 2009 c 183 s 16 are each amended to  
26 read as follows:

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

34 (2) An amendment to construct replacement or a new additional  
35 well or wells at a location outside of the location of the original  
36 well or wells or to change the manner or place of use of the water  
37 shall be issued only after publication of notice of the application  
38 and findings as prescribed in the case of an original application.  
39 Such amendment shall be issued by the department only on the

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

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

36 (4) As used in this section, the "location of the original well  
37 or wells" is the area described as the point of withdrawal in the  
38 original public notice published for the application for the water  
39 right for the well.

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  
3 amendment for the purposes of this section. The exemption expressly  
4 provided by this subsection shall not be construed as requiring an  
5 amendment of any existing water right to enable the holder of the  
6 right to store water governed by the right.

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

10 **Sec. 7.** RCW 90.44.100 and 2003 c 329 s 3 are each amended to  
11 read as follows:

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

19 (2) An amendment to construct replacement or a new additional  
20 well or wells at a location outside of the location of the original  
21 well or wells or to change the manner or place of use of the water  
22 shall be issued only after publication of notice of the application  
23 and findings as prescribed in the case of an original application.  
24 Such amendment shall be issued by the department only on the  
25 conditions that: (a) The additional or replacement well or wells  
26 shall tap the same body of public groundwater as the original well or  
27 wells; (b) where a replacement well or wells is approved, the use of  
28 the original well or wells shall be discontinued and the original  
29 well or wells shall be properly decommissioned as required under  
30 chapter 18.104 RCW; (c) where an additional well or wells is  
31 constructed, the original well or wells may continue to be used, but  
32 the combined total withdrawal from the original and additional well  
33 or wells shall not enlarge the right conveyed by the original permit  
34 or certificate; ~~((and))~~ (d) other existing rights shall not be  
35 impaired; and (e) tribal traditional and cultural interests  
36 recognized under section 2 of this act are not impaired. The  
37 department may specify an approved manner of construction and shall  
38 require a showing of compliance with the terms of the amendment, as  
39 provided in RCW 90.44.080 in the case of an original permit.

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

21 (4) As used in this section, the "location of the original well  
22 or wells" is the area described as the point of withdrawal in the  
23 original public notice published for the application for the water  
24 right for the well.

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

31 **Sec. 8.** RCW 90.54.020 and 2007 c 445 s 8 are each amended to  
32 read as follows:

33 Utilization and management of the waters of the state shall be  
34 guided by the following general declaration of fundamentals:

35 (1) Uses of water for domestic, stock watering, industrial,  
36 commercial, agricultural, irrigation, hydroelectric power production,  
37 mining, fish and wildlife maintenance and enhancement, recreational,  
38 and thermal power production purposes, and preservation of  
39 environmental and aesthetic values, and all other uses compatible

1 with the enjoyment of the public waters of the state, are declared to  
2 be beneficial.

3 (2) Allocation of waters among potential uses and users shall be  
4 based generally on the securing of the maximum net benefits for the  
5 people of the state. Maximum net benefits shall constitute total  
6 benefits less costs including opportunities lost.

7 (3) The quality of the natural environment shall be protected  
8 and, where possible, enhanced as follows:

9 (a) Perennial rivers and streams of the state shall be retained  
10 with base flows necessary to provide for preservation of wildlife,  
11 fish, scenic, aesthetic and other environmental values, ~~((and))~~  
12 navigation values, and the protection of tribal traditional and  
13 cultural interests recognized under section 2 of this act. Lakes and  
14 ponds shall be retained substantially in their natural condition.  
15 Withdrawals of water which would conflict therewith shall be  
16 authorized only in those situations where it is clear that overriding  
17 considerations of the public interest will be served.

18 (b) Waters of the state shall be of high quality. Regardless of  
19 the quality of the waters of the state, all wastes and other  
20 materials and substances proposed for entry into said waters shall be  
21 provided with all known, available, and reasonable methods of  
22 treatment prior to entry. Notwithstanding that standards of quality  
23 established for the waters of the state would not be violated, wastes  
24 and other materials and substances shall not be allowed to enter such  
25 waters which will reduce the existing quality thereof, except in  
26 those situations where it is clear that overriding considerations of  
27 the public interest will be served. Technology-based effluent  
28 limitations or standards for discharges for municipal water treatment  
29 plants located on the Chehalis, Columbia, Cowlitz, Lewis, or Skagit  
30 river shall be adjusted to reflect credit for substances removed from  
31 the plant intake water if:

32 (i) The municipality demonstrates that the intake water is drawn  
33 from the same body of water into which the discharge is made; and

34 (ii) The municipality demonstrates that no violation of receiving  
35 water quality standards or appreciable environmental degradation will  
36 result.

37 (4) The development of multipurpose water storage facilities  
38 shall be a high priority for programs of water allocation, planning,  
39 management, and efficiency. The department, other state agencies, and  
40 local governments ~~((, and planning units formed under section 107 or~~

1 ~~108 of this act~~) shall evaluate the potential for the development of  
2 new storage projects and the benefits and effects of storage in  
3 reducing damage to stream banks and property, increasing the use of  
4 land, providing water for municipal, industrial, agricultural, power  
5 generation, and other beneficial uses, and improving streamflow  
6 regimes for fisheries and other instream uses.

7 (5) Adequate and safe supplies of water shall be preserved and  
8 protected in potable condition to satisfy human domestic needs.

9 (6) Multiple-purpose impoundment structures are to be preferred  
10 over single-purpose structures. Due regard shall be given to means  
11 and methods for protection of fishery resources in the planning for  
12 and construction of water impoundment structures and other artificial  
13 obstructions.

14 (7) Federal, state, and local governments, individuals,  
15 corporations, groups and other entities shall be encouraged to carry  
16 out practices of conservation as they relate to the use of the waters  
17 of the state. In addition to traditional development approaches,  
18 improved water use efficiency, conservation, and use of reclaimed  
19 water shall be emphasized in the management of the state's water  
20 resources and in some cases will be a potential new source of water  
21 with which to meet future needs throughout the state. Use of  
22 reclaimed water shall be encouraged through state and local planning  
23 and programs with incentives for state financial assistance  
24 recognizing programs and plans that encourage the use of conservation  
25 and reclaimed water use, and state agencies shall continue to review  
26 and reduce regulatory barriers and streamline permitting for the use  
27 of reclaimed water where appropriate.

28 (8) Development of water supply systems, whether publicly or  
29 privately owned, which provide water to the public generally in  
30 regional areas within the state shall be encouraged. Development of  
31 water supply systems for multiple domestic use which will not serve  
32 the public generally shall be discouraged where water supplies are  
33 available from water systems serving the public.

34 (9) Full recognition shall be given in the administration of  
35 water allocation and use programs to the natural interrelationships  
36 of surface and groundwaters.

37 (10) Expressions of the public interest will be sought at all  
38 stages of water planning and allocation discussions.

1 (11) Water management programs, including but not limited to,  
2 water quality, flood control, drainage, erosion control and storm  
3 runoff are deemed to be in the public interest.

4 NEW SECTION. **Sec. 9.** A new section is added to chapter 43.21C  
5 RCW to read as follows:

6 The department of ecology may not categorically exempt from the  
7 requirements of this chapter an application for a new withdrawal from  
8 a surface or groundwater body in which there is a tribal historical  
9 and cultural interest recognized under section 2 of this act.

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

12 This act is intended to expand the recognition of tribal  
13 traditional and cultural interests in the administration of the state  
14 water code, and nothing in this act is intended to otherwise affect  
15 or diminish the right of any tribe or any person regarding the state  
16 water resources management provisions of this chapter and chapters  
17 90.44 and 90.54 RCW.

18 NEW SECTION. **Sec. 11.** Sections 4 and 6 of this act expire June  
19 30, 2021.

20 NEW SECTION. **Sec. 12.** Sections 5 and 7 of this act take effect  
21 June 30, 2021.

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