**TITLE OF DOCUMENT:**
An emergency interim ordinance repealing Ordinance No. 2017-057 and adopting amendments to the Whatcom County Comprehensive Plan and the Whatcom County Code Title 15 Buildings and Construction, Title 20 Zoning, Title 21 Land Division Regulations, and Title 24 Health Code, relating to water resources and implementing ESSB 6091.

**ATTACHMENTS:**
- Memorandum
- Draft Ordinance
- ESSB 6091

**SEPA review required?** (x) Yes  ( ) NO  
**SEPA review completed?** (x) Yes  ( ) NO

**Should Clerk schedule a hearing?** (x) Yes  ( ) NO  
**Requested Date:** 2/13/2018

**SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:** (If this item is an ordinance or requires a public hearing, you must provide the language for use in the required public notice. Be specific and cite RCW or WCC as appropriate. Be clear in explaining the intent of the action.)

An emergency interim ordinance repealing Ordinance No. 2017-057 and adopting amendments to the Whatcom County Comprehensive Plan and the Whatcom County Code Title 15 Buildings and Construction, Title 20 Zoning, Title 21 Land Division Regulations, and Title 24 Health Code, relating to water resources and implementing ESSB 6091.

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

**Related County Contract #:** Related File Numbers:  
AB2016-309 *

**Ordinance or Resolution Number:**

**Please Note:** Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County’s website at: www.co.whatcom.wa.us/council.
Memorandum

TO: The Honorable Jack Louws, Whatcom County Executive
    The Honorable Whatcom County Council

FROM: Mark Personius, Assistant Director

DATE: January 23, 2018

SUBJECT: Emergency 60-Day Ordinance – Water Resources

In response to the state legislature approving ESSB 6091, providing a long-term solution to the Hirst decision, staff has prepared an emergency ordinance relating to the use of permit exempt water withdrawals for development purposes. This has been prepared as an emergency ordinance so that the County can immediately comply with state law and process development permit applications dependent upon permit exempt wells consistent with the new law. Staff recommends that you adopt it on January 30, 2018 and schedule it for a public hearing on February 13, 2018. Staff would then prepare a final, permanent ordinance similar to this one to take through our standard public review and approval process within the next 60 days, prior to final GMA compliance proceedings before the Growth Management Hearings Board (GMHB Case No. 12-2-0013).

This ordinance differs from the previous interim water resources ordinances in that, pursuant to ESSB 6091, hydrogeologic instream flow impairment analyses and mitigation are no longer required for new groundwater withdrawal applications. An applicant in WRIA 1 may now obtain approval for a groundwater withdrawal (a well) exempt from permitting under RCW 90.44.050 for domestic use only, with a maximum annual average withdrawal of three thousand gallons per day per connection. They must also pay a fee of $500 dollars ($350 of which the County must forward to the Department of Ecology), and must record any relevant restrictions or limitations associated with water supply with the property title.

ESSB 6091 also contains provisions that immediately add to the County’s watershed management work plan. The most noteworthy is that it directs the Department of Ecology to work with the initiating governments and the planning units described in chapter 90.82 RCW to update the WRIA 1 Watershed Management Plan by February 1, 2019 to identify the potential impacts of exempt well use, identify evidence-based conservation measures, and identify projects to improve watershed health. The Watershed Management Plan Update must include recommendations for projects and actions that will measure, protect, and enhance instream resources and improve watershed functions that support the recovery of threatened and endangered salmonids.

Attachments: Draft Ordinance, Proposed Amendments
ORDINANCE NO. 2018-_____

AN EMERGENCY INTERIM ORDINANCE REPEALING ORDINANCE NO. 2017-057 AND ADOPTING AMENDMENTS TO THE WHATCOM COUNTY COMPREHENSIVE PLAN AND THE WHATCOM COUNTY CODE TITLE 15 BUILDINGS AND CONSTRUCTION, TITLE 20 ZONING, TITLE 21 LAND DIVISION REGULATIONS, AND TITLE 24 HEALTH CODE, RELATING TO WATER RESOURCES

WHEREAS, RCW 36.70A.070(1), requires that the land use element of a county comprehensive plan "shall provide for protection of the quality and quantity of groundwater used for public water supplies"; and,

WHEREAS, RCW 36.70A.070(5)(c)(iv) requires that the rural element of a county comprehensive plan "shall include measures that apply to rural development and protect the rural character of the area, as established by the County, by: ... protecting critical areas...and surface water and groundwater resources"; and,

WHEREAS, RCW 19.27.097(1) requires that applicants for building permits of buildings necessitating potable water provide evidence of an adequate water supply for the intended use of the building; and,

WHEREAS, RCW 58.17.110(2) requires that "A proposed subdivision and dedication shall not be approved unless the... county legislative body makes written findings that... appropriate provisions are made for... potable water supplies..."; and,

WHEREAS, Whatcom County Code (WCC) Chapter 15.04 specifies information required for a complete building permit application; and,

WHEREAS, WCC Chapter 20.97 provides definitions of terms used in the code; and

WHEREAS, WCC Chapters 21.04 and 21.05 contain requirements for water supply in short subdivisions and long subdivisions, respectively; and,

WHEREAS, WCC Chapter 24.11 contains requirements for potable water; and,

WHEREAS, Whatcom County adopted Ordinance 2012-032, amending its Comprehensive Plan to adopt by reference existing development regulations regulating groundwater withdrawals, adding Policy 2DD-2.C.3.6, which adopts by reference WCC 21.04.090 and 21.05.080, and Policy 2DD-2.C.3.7, which adopts by reference WCC 24.11.050 and 24.11.060; and,

WHEREAS, because Comprehensive Plan Policy 2DD-2.C.3.6 adopts by reference WCC 21.04.090 and 21.05.080, and Policy 2DD-2.C.3.7 adopts by reference WCC 24.11.050 and 24.11.060, any amendments to these WCC provisions are also amendments to the Comprehensive Plan; and,

WHEREAS, the Growth Management Hearings Board (Board) found the amended Comprehensive Plan lacked the required measures to protect water resources (GMHB Case No. 12-2-0013); and,

WHEREAS, on October 6, 2016, the Washington State Supreme Court (Court), in reversing a Court of Appeals decision, upheld the Board’s decision that the County’s Comprehensive Plan does not satisfy the GMA requirements to protect water availability,
and stated, "We hold that the Board properly concluded that the GMA requires counties to make determinations of water availability."; and,

WHEREAS, the Court stated, "...the GMA places the burden on counties to protect groundwater resources, and requires counties to assure that water is both factually and legally available before issuing building permits."; and,

WHEREAS, the Court stated, "...The county’s policies incorporate WCC provisions that do not allow water to be withdrawn from ‘an area where [the Department of Ecology] has determined by rule that water for development does not exist.’ ...these ordinances further provide that an application for a permit-exempt appropriation will be approved without any analysis of that withdrawal’s impact on instream flows. The Board found that these provisions result in water withdrawals from closed basins and senior instream flows—flows that the record indicated drop below the minimum levels 100 days out of the year. The Board properly held that this conflicts with the requirement placed on counties to protect water availability under the GMA..."; and,

WHEREAS, Chapter 173-501 WAC Instream Resources Protection Program – Nooksack Water Resource Inventory Area (WRIA) 1 identifies waterbodies in Whatcom County that are closed or partially closed to further appropriation, by listing their status as “closure,” “partial year closure,” “low flow,” or “minimum flow,”; and,

WHEREAS, on October 25, 2016 Whatcom County adopted Ordinance 2016-048, an emergency moratorium on the filing, acceptance, and processing of new applications for project permits for uses that rely on permit-exempt groundwater withdrawals within a closed or partially closed basin, to allow the County time to review its Comprehensive Plan and development regulations in light of the Supreme Court ruling, and to draft and enact the necessary amendments as soon as feasible; and,

WHEREAS, RCW 36.70.790 and RCW 36.70.795 allow for adoption of interim official controls as long as a public hearing is held within 60 days of adoption; and,

WHEREAS, on December 6, 2016 the County Council adopted Ordinance 2016-066, an interim ordinance adopting amendments to the Whatcom County Comprehensive Plan and WCC Title 15, Title 20, Title 21, and Title 24 relating to water resources, which is effective until March 18, 2017, and the County has applied the provisions of the ordinance to project permit applications relying on new permit-exempt groundwater withdrawals; and,

WHEREAS, on March 7, 2017 the County Council adopted Ordinance 2017-008, a second interim ordinance; and,

WHEREAS, on April 18, 2017 the County Council adopted Ordinance 2017-008, a third interim ordinance; and,

WHEREAS, on October 10, 2017, the County Council adopted Ordinance 2017-057, a fourth interim ordinance, which is effective until March 30, 2018; and,

WHEREAS, on January 18, 2018, the Washington State Legislature adopted ESSB 6091, which requires the Department of Ecology to work with the initiating governments and the planning unit in WRIA I to review existing watershed plans to identify the potential impacts of exempt well use, identify evidence-based conservation measures, and identify projects to improve watershed health. Until rules are adopted that specify otherwise, Section 202(5), which effectively reverses the Court’s decision in Hirst, allows new domestic water uses in WRIA 1 that rely on groundwater withdrawals exempt from permitting under RCW 90.44.050, provided that applicants pay a fee of five hundred dollars to the permitting authority and limit their maximum annual average withdrawal of three thousand gallons per day, per connection, and record this limitation on the property title; and,
WHEREAS, ESSB 6091, in Section 101(5), also provides that “[a]ny permit-exempt groundwater withdrawal authorized under RCW 90.44.050 associated with a water well constructed in accordance with the provisions of chapter 18.104 RCW before the effective date of this section is deemed to be evidence of adequate water supply under this section”; and,

WHEREAS, the amendments proposed by this ordinance are consistent with the aforementioned requirements of ESSB 6091 and are therefore consistent with the GMA, as specifically addressed in Section 102 of ESSB 6091; and,

WHEREAS, WAC 197-11-880 provides an exemption from SEPA review for “Actions that must be undertaken immediately or within a time too short to allow full compliance with this chapter to avoid an imminent threat to public health or safety....”; and

WHEREAS, ESSB 6091 was signed by Governor Inslee on January 19, 2018, and, pursuant to the emergency clause in Section 307, it became effective immediately as the Legislature declared that it was "necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing institutions . . ."; and,

WHEREAS, with the enactment of ESSB 6091, Ordinance No. 2017-057 is no longer necessary to ensure that Whatcom County is in compliance with state law; and,

WHEREAS, pursuant to Section 2.40 of the Whatcom County Charter, an emergency ordinance “necessary for the immediate preservation of the public peace, health, or safety or support of the County government and its existing institutions” may be passed by a two-thirds vote of the County Council and then take effect immediately upon the approval of the County Executive; and,

WHEREAS, an ordinance adopted pursuant to Section 2.40 of the County Charter shall expire as of the sixty-first day following the date on which the ordinance became law; and,

WHEREAS, it is necessary for this ordinance to take effect immediately in order for property owners to be allowed to proceed with their development plans forthwith and thus obtain relief from the impacts of Hirst; and,

WHEREAS, in accordance with RCW 36.70A.106, Whatcom County Planning and Development Services notified the Department of Commerce of the proposed emergency interim amendments contained herein; and,

WHEREAS, the County Council is scheduled to hold a public hearing on this ordinance on February 13, 2018;

NOW, THEREFORE, BE IT ORDAINED that the Whatcom County Council adopts the above "WHEREAS" recitals as findings of fact in support of its action as required by RCW 36.70A.390.

BE IT FURTHER ORDAINED that Ordinance No. 2017-057 is hereby repealed in its entirety upon the effective date of this ordinance.

BE IT FURTHER ORDAINED that the Whatcom County Council finds that a public emergency exists due to the impact the Hirst decision has had on many rural property owners and their ability to develop their land; therefore, this ordinance shall take effect immediately and shall expire as of the sixty-first (61st) day following the date on which this ordinance becomes law, unless previously repealed or extended.
EXHIBIT A
Whatcom County Code
AMENDMENTS

TITLE 15 BUILDINGS AND CONSTRUCTION
CHAPTER 15.04 BUILDING CODES

15.04.020 Amendments to the International Building Code.
A. The IBC is amended as follows:

5. Section 105.3, Application for Permit, is amended to include the following:

To obtain the permit, the applicant shall first file an application therefor in writing on a form
furnished by the Department of Building Safety for that purpose. Such application shall:

1. Identify and describe the work to be covered by the permit for which application is
   made.

2. Describe the land on which the proposed work is to be done by legal description, street
   address or similar description that will readily identify and definitely locate the
   proposed building or work.

3. Indicate the use and occupancy for which the proposed work is intended.

4. Be accompanied by construction documents and other information as required in
   Section 107.

5. State the valuation of the proposed work.

6. Be signed by the applicant, or the applicant’s authorized agent.

7. Include signature by the applicant or the applicant’s authorized agent of a statement for
   guarantee of fee payment. The statement must be signed in the presence of County
   staff or staff will provide a statement which includes verification of signature by a
   licensed notary public.

8. Provide verification of approval to connect to a public sewer system or a septic system
   installation permit issued by the Whatcom County Environmental Health Department
   for any permit application that requires sewage disposal. The approval to connect or
   issued septic system permit shall be specific to the project application.

9. For buildings requiring potable water, provide evidence of an adequate water supply (as
    defined in WCC 20.97.451) for the intended use of the building(s).
10. Provide additional data and information in the designated sequence, as required by the Building Official.

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15.04.030 Amendments to the International Residential Code.

D. Section R105.3, Application for permit, is amended to include the following:

To obtain the permit, the applicant shall first file an application therefore in writing on a form furnished by the Department of Building Safety for that purpose. Such application shall:

1. Identify and describe the work to be covered by the permit for which application is made.

2. Describe the land on which the proposed work is to be done by legal description, street address or similar description that will readily identify and definitely locate the proposed building or work.

3. Indicate the use and occupancy for which the proposed work is intended.

4. Be accompanied by construction documents and other information as required in Section 107.

5. State the valuation of the proposed work.

6. Be signed by the applicant, or the applicant’s authorized agent.

7. Include signature by the applicant or the applicant’s authorized agent of a statement for guarantee of fee payment. The statement must be signed in the presence of County staff or staff will provide a statement which includes verification of signature by a licensed notary public.

8. Provide verification of approval to connect to a public sewer system or a septic system installation permit issued by the Whatcom County Environmental Health Department for any permit application that requires sewage disposal. The approval to connect or issued system permit shall be specific to the project application.

9. For buildings requiring potable water provide evidence of an adequate water supply (as defined in WCC 20.97.451) for the intended use of the building(s).

10. Provide additional data and information in the designated sequence, as required by the Building Official.

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TITLE 20 ZONING

CHAPTER 20.84 VARIANCES, CONDITIONAL USES, ADMINISTRATIVE APPROVAL USES AND APPEALS

20.84.200 Conditional uses.

20.84.220 Criteria.
Before approving an application for a conditional use permit, the hearing examiner shall ensure that any specific standards of the use district defining the conditional use are fulfilled, and shall find adequate evidence showing that the proposed conditional use at the proposed location:

(5) Will be serviced adequately by necessary public facilities such as highways, streets, police and fire protection, drainage structures, refuse disposal, adequate water supply (as defined in WCC 20.97.451), and sewers, and schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services.

CHAPTER 20.97 DEFINITIONS

20.97.451 Water Supply, Adequate
"Adequate water supply” means a supply of potable water adequate to serve a land use associated with a project permit in terms of quality, quantity, and legal availability, as documented by a water availability notification signed by the director of the Whatcom County Health Department, per WCC 24.11.060.

TITLE 21 LAND DIVISION REGULATIONS

CHAPTER 21.04 SHORT SUBDIVISIONS

21.04.090 Water supply.
(1) Water from a public water system(s) shall be provided to serve each lot in a short plat, except as specified in subsection (2) of this section.
(2) For a residential short subdivision, private water supplies may be utilized under the following circumstances:

(a) All lots served by the private water supplies are five acres or larger, unless smaller because of clustering. If the lots are smaller because of clustering, the gross density of the short subdivision shall not exceed one dwelling per five acres; and

(b) The withdrawal is not from a defined portion of an aquifer of known regional groundwater contamination that exceeds state standards and that has been identified by the director of the Whatcom County Health Department and confirmed by the Health Board; and

(c) The water source is groundwater and not surface water; and

(d) The applicant demonstrates that an adequate water supply (as defined in WCC 20.97.451) exists to serve the short subdivision; and

(e) The short subdivision is not located within the designated water service area of a public water purveyor, as shown on the coordinated water system plan map, or within one-half mile of an existing water purveyor's water line; or

(f) If the short subdivision is located within the designated water service area of a public water purveyor, that as is shown on the coordinated water system plan map, or within one-half mile of an existing water purveyor’s water lines and:

(i) The purveyor cannot be provided water service to the applicant within 120 calendar days of submitting a written request and applicable fees to the purveyor unless specified otherwise by the Hearing Examiner or County Council; or

(ii) The purveyor states in writing that it is unable or unwilling to provide the service; or

(iii) The purveyor and applicant are unable to achieve an agreement on the schedule and terms of provision of service within 120 calendar days.

(3) If a public water supply is required, all the requirements of Chapter 246-290 WAC, Group A Public Water Systems, or Chapter 246-291 WAC, Group B Public Water Systems, must be met prior to final plat approval.


CHAPTER 21.05 PRELIMINARY LONG SUBDIVISIONS


21.05.080 Water supply.

(1) Water from a public water system(s) shall be provided to serve each lot in a subdivision, except as specified in subsection (2) of this section.

(2) For a residential subdivision with six or fewer residences, private water supplies may be utilized under the following circumstances:

(a) All lots served by the private water supplies are five acres or larger, unless smaller because of clustering. If the lots are smaller because of clustering, the gross density of
the subdivision shall not exceed one dwelling per five acres and the number of clustered lots shall not exceed four; and

(b) The withdrawal is not from a defined portion of an aquifer of known regional ground water contamination that exceeds state standards and that has been identified by the director of the Whatcom County Health Department and confirmed by the Health Board; and

(c) The water source is groundwater and not surface water; and

(d) The long subdivision is not located within the designated water service area of a public water purveyor, as shown on the coordinated water system plan map, or within one-half mile of an existing water purveyor’s water line; or

(e) The subdivision is located within the designated water service area of a public water purveyor that is shown on the coordinated water system plan map or within one-half mile of an existing water purveyor’s water lines and:

(i) The purveyor water cannot be provided water service to the applicant within 120 calendar days of submitting a written request and applicable fees to the purveyor unless specified otherwise by the hearing examiner or county council; or

(ii) The purveyor states in writing that it is unable or unwilling to provide the service; or

(iii) The purveyor and applicant are unable to achieve an agreement on the schedule and terms of provision of service within 120 calendar days.

(3) The applicant shall demonstrate that adequate water right(s) supply (as defined in WCC 20.97.451) exists to serve the subdivision, except when water withdrawal is exempt from obtaining a water right permit under RCW 90.44.050.

(4) If a Group B public water system is created to serve the subdivision, the number of wells shall be limited to the minimum needed to serve the water needs of the subdivision as determined by the Whatcom County Health Department.

(5) If a public water supply is required, all the requirements of Chapter 246-290 WAC, Group A Public Water Systems, or Chapter 246-291 WAC, Group B Public Water Systems, must be met prior to final plat approval.

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**TITLE 24 HEALTH CODE**

**CHAPTER 24.11 DRINKING WATER**

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24.11.050 General requirements.

A. Applicants must submit all required forms, letters, and documents to the director.
B. The director will consider applications for water availability proposing to use groundwater, spring water, surface water, sea water or rainwater.

C. The director shall evaluate the availability of a public water system prior to approving the use of a private water system. If it is determined that a public water system is available and willing to provide water, the applicant must connect to that public water system when:

1. The applicant proposes to use surface water, spring water, rainwater, or contaminated groundwater; or
2. The applicant proposes to build on a lot located in a short subdivision or long subdivision that Whatcom County approved based on the availability of public water; or
3. The existing public water system has water lines adjacent to the property line of the applicant and connection is consistent with RCW 36.70A.110(4); or
4. The existing public water system has defined a “service area boundary” in accordance with the Whatcom County Coordinated Water System Plan which includes the property of the applicant.

D. The director will only approve a private or Non-Group B two-party well for proposed short subdivisions or long subdivisions when analytical results of untreated water samples for primary inorganic or organic contaminants do not exceed a maximum contaminant level (MCL) adopted by Washington State Department of Health.

E. Purveyors of public water systems and private water system applicants must comply with Washington State Department of Ecology water right requirements and must demonstrate that they have an adequate water supply for their proposed service per WCC 24.11.060. Compliance will include at a minimum, possession of a water right permit or certificate for:

1. All surface water sources excluding seawater.
2. All groundwater sources using more than 5,000 gallons per day.
3. Irrigating more than one-half acre of lawn or noncommercial garden.

24.11.060 Water availability required.

A. Prior to issuance of a building or other project permit, and unless exempt pursuant to subsection (C), the applicant must provide Whatcom County Planning and Development Services evidence of adequate water supply as documented by a water availability notification signed by the director, to Whatcom County planning and development services (PDS) except when: The water availability notification shall document a supply of potable water adequate to serve a land use associated with a project permit in terms of quality, quantity, and legal availability.

B. The applicant must provide evidence of legal availability in the form of:

1. A water right permit from the Department of Ecology; or,
2. A letter from an approved public water purveyor with sufficient water rights, stating the ability to provide water; or,
3. Evidence that a permit-exempt groundwater withdrawal (authorized under RCW 90.44.050) is associated with a well constructed (in accordance with the provisions of RCW Chapter 18.104) prior to January 19, 2018; or,

4. Documentation that water can be supplied by a rainwater catchment system approved by the Whatcom County Health Department, per Department of Ecology Policy 1017; or,

5. Documentation that water will be supplied by a new withdrawal exempt from permitting under RCW 90.44.050 and the well site is located in WRIA 3 (Lower Skagit-Samish) or in Point Roberts, Eliza Island, or Lummi Island, as shown in Figure 24.11.060.

6. Documentation that water will be supplied by a new withdrawal exempt from permitting under RCW 90.44.050 and the well site is located in those Limited Coastal Areas that may not be in hydraulic continuity with regulated surface waterbodies, as shown on Figure 24.11.060, and:

   a. A study prepared by a qualified hydrogeologist licensed in the State of Washington demonstrating a proposed groundwater withdrawal would not impair a senior water right, including instream flows established in Chapter 173-501 WAC where applicable, in accordance with current statutes and case law. Such documentation must be verified by the county either through consultation with the Department of Ecology, or a qualified technical review team appointed by the county. The county may require a third party review by an independent qualified hydrogeologist if the county determines additional technical expertise is needed. The cost of the third party review shall be borne by the County; or,

   b. A mitigation plan prepared by a qualified hydrogeologist licensed in the State of Washington, and approved by Whatcom County. The plan shall include:

      i. Evidence that the proposed withdrawal with mitigation in place will not impair a senior water right, including instream flows established in Chapter 173-501 WAC where applicable, in accordance with current statutes and case law. Such documentation must be verified by the county either through consultation with the Department of Ecology, or a qualified technical review team appointed by the county. The county may require a third party review by an independent qualified hydrogeologist if the county determines additional technical expertise is needed. The cost of the third party review shall be borne by the County.

      ii. A monitoring and reporting plan, including a quality assurance/quality control plan.

      iii. Documentation adequate to demonstrate that the mitigation will remain in place for the duration of the impact, including, for example, financial assurances or documentation of permanent dedication of water for mitigation purposes.

7. Except in Point Roberts, Eliza Island, or Lummi Island, for new permit-exempt groundwater withdrawals per RCW 90.44.050 within WRIA 1 (Nooksack) or within those
Limited Coastal Areas where the applicant has not met subsection (B)(6), the applicant may obtain approval for a withdrawal exempt from permitting pursuant to RCW 90.44.050 under the following conditions:

1. Water shall be for domestic use only, with a maximum annual average withdrawal of 3,000 gallons per day per connection.
2. The applicant shall record with the property title any relevant restrictions or limitations associated with water supply; and
3. The applicant shall pay to the permitting authority any applicable fees for each project permit.

C. A water availability notification is not required for:

1. A building—A project permit that does not require potable water.
2. A project permit relying on either a permit-exempt groundwater withdrawal per RCW 90.44.050 or a surface water withdrawal for potable water for (a) a remodel of an existing building or (b) replacement of a demolished or removed building, but not proposing a change of use, either of which would increase the floor area by no more than 50 percent over that of the existing building; however, such permits shall require documentation of current water quality and quantity, as approved by the director. A residential remodeling does not add additional bedrooms or result in an increase of floor space of more than 50 percent.
3. A project permit relying on surface water withdrawal for potable water (a) a remodel of an existing building or (b) replacement of a demolished or removed building, either of which would increase the floor area by no more than 50 percent over that of the existing building; however, such permits shall require documentation of water quality and quantity, as approved by the director. PDS determines that the building will replace a demolished or removed building and the building will not have more bedrooms or more than 50 percent greater floor space than the previous building.
24.11.070 Determining adequacy of water supply for building permit applications proposing to use an existing public water system.

A. Prior to director approval of evidence of an adequate water supply where the applicant proposes to obtain water from an existing public water system the applicant must:

1. Submit to the director, an Availability Notification for Public Water form (as amended) signed by an authorized representative of the water system proposing to serve water to the building. The authorized representative:

a. Must indicate on the form that the water system will provide water to the proposed building.

b. Must sign a statement that they have reviewed the system records and ensures that the water system complies with Chapters 246-290 and 246-291 WAC and department requirements.

B. The director will review the completed Availability Notification for Public Water (form) for approval. The director will approve the completed form if:

1. The applicant and the authorized representative met all the criteria listed on the form.

2. The purveyor of the water system has the approval from Department of Health or the department to provide water to the building.

3. The applicant has provided evidence of legal availability of water for the proposed project per WCC 24.11.060.

24.11.080 Determining adequacy of water supply for building permit applications proposing to create a new public water system.

Prior to director approval of evidence of an adequate water supply, an applicant proposing to create a new public water system must comply with:

A. Provisions of the Whatcom County Coordinated Water System Plan.

B. Chapters 246-290 and 246-291 WAC, and all other applicable local and state regulations for public water supplies.

C. The applicable sections of this chapter pertaining to public water supplies and water availability.

24.11.090 Determining adequacy of water supply for building permit applications proposing to use a well to serve one single-family dwelling or one single-family living unit.

A. Prior to director approval of evidence of an adequate water supply where the applicant proposes to use a private well, the applicant must:

1. Notify the director of the intent to use a well.

2. Request that the director conduct a site inspection and approve the proposed well site.

B. Upon request from the applicant, the director will conduct a site inspection for the purpose of approving the location. If the director cannot approve a well location the director will deny the application and give the reasons for denial.
C. If the director approves the well location the applicant shall submit a completed Water Availability Notification Private – 1 Home Well form (as amended) and all required documents to the director for approval.

A. Prior to director approval of evidence of an adequate water supply where the applicant proposes to use a private well, the applicant must submit a completed Water Availability Notification Private – 1 Home Well form (as amended) and all required documents to the director for approval.

B. The director will review the completed form and required documents submitted by the applicant for approval. The director will approve the form if:

1. The applicant met all the criteria listed on the form.
2. The applicant submitted all of the required documents.
3. The applicant has provided evidence of legal availability of water for the proposed project per WCC 24.11.060. The well-site proposed by the applicant does not fall within the boundaries of an area where DOE has determined by rule that water for development does not exist.

24.11.100 Determining adequacy of water supply for building permit applications proposing to use a well to serve two single-family dwellings or two single-family living units.

A. Prior to director approval of evidence of an adequate water supply where the applicant proposes to use a well to serve two single-family dwellings or two single-family living units, the applicant must:

1. Notify the director of the intent to use a well or wells.
2. Request that the director conduct a site inspection and approve the proposed well sites.

B. Upon request from the applicant, the director will conduct a site inspection for the purpose of approving the location. If the director cannot approve a well location the director will deny the application and give the reasons for denial.

C. If the director approves the well locations the applicant shall submit a completed Water Availability Notification Non-Group B – 2 Home Well form (as amended) and all required documents for each well to the director for approval.

D. The director will review the completed form and required documents submitted by the applicant for approval. The director will approve the form if:

1. The applicant met all the criteria listed on the form.
2. The applicant submitted all of the required documents.
3. The applicant has provided evidence of legal availability of water for the proposed project per WCC 24.11.060. The well-site proposed by the applicant does not fall within the boundaries of an area where DOE has determined by rule that water for development does not exist.
24.11.110 Determining adequacy of water supply for building permit applications proposing to use a spring to serve one single-family dwelling unit or one single-family living unit.
A. Prior to director approval of evidence of an adequate water supply where the applicant proposes to use a spring source, the applicant must:
   1. Notify the director of the intent to use a spring.
   2. Provide information to the director showing that they cannot drill an adequate well on their property.
   3. Request that the director conduct a site inspection and approve the proposed location of the spring.
B. Upon request from the applicant, the director will conduct a site inspection for the purpose of approving the location. If the director does not approve the location the director will deny the application and give the reason for denial.
C. If the director approves the location of the spring the applicant must submit a completed Water Availability Notification Private – 1 Home Spring form (as amended) and all required documents for approval by the director.
D. The director will review the completed form and required documents for approval. The director will approve the application if:
   1. The applicant met all the criteria listed on the form.
   2. The applicant submitted all of the required documents.
   3. The applicant has provided evidence of legal availability of water for the proposed project per WCC 24.11.060. The spring site proposed by the applicant does not fall within the boundaries of an area where DOE has determined by rule that water for development does not exist.

24.11.120 Determining adequacy of water supply for building permit applications proposing to use a spring to serve two single-family dwelling units or two single-family living units.
A. Prior to director approval of evidence of an adequate water supply where the applicant proposes to use a spring source, the applicant must:
   1. Notify the director of the intent to use a spring.
   2. Provide information to the director showing that an adequate well cannot be drilled on their property.
   3. Request that the director conduct a site inspection and approve the proposed location of the spring.
B. Upon request from the applicant, the director will conduct a site inspection for the purpose of approving the location. If the director does not approve the location, the director will deny the application and give the reasons for denial.

C. If the director approves the location of the spring the applicant must submit a completed Water Availability Notification – 2 Home Spring form (as amended) and all required documents for approval by the director.

D. The director will review the completed form and required documents for approval. The director will approve the application if:
   1. The applicant met all the criteria listed on the form.
   2. The applicant submitted all of the required documents.
   3. The applicant has provided evidence of legal availability of water for the proposed project per WCC 24.11.060. The spring or spring sites proposed by the applicant does not fall within the boundaries of an area where DOE has determined by rule that water for development does not exist.

24.11.130 Determining adequacy of water supply for building permit applications proposing to use surface water, sea water, or rainwater for one or two single-family dwelling units or two single-family living units.

A. The director shall not approve use of surface water, sea water, or rainwater as evidence of an adequate water source unless the applicant:
   1. Cannot obtain water from an existing public water supply.
   2. Cannot use an approved source of groundwater from a well.
   3. Could only use contaminated groundwater.

B. Prior to director approval of evidence of adequate water supply the applicant must:
   1. Meet all applicable requirements for surface water, sea water or rainwater treatment design, maintenance and operation contained in Whatcom County health and human services Water Availability for a Private Surface Water Source (as amended) Notification as determined by the director.
   2. Provide evidence of legal availability of water for the proposed project per WCC 24.11.060. The surface water site proposed by the applicant does not fall within the boundaries of an area where DOE has determined by rule that water for development does not exist.
   3. Meet all other state and local regulations.
   4. Sign and have recorded with the Whatcom County auditor’s office the following documents:
      a. A document stating which contaminate the untreated source water exceeded.
b. A document stating that the applicant has had a water treatment system designed that meets Whatcom County health and human services Water Availability Approval for a Surface Water Source (as amended), and secures a potable water supply for the building.

c. A document stating that the applicant has installed a treatment system according to the design reviewed by the director and treated water sample results that verify system performance.

d. A document stating that the applicant agrees to adhere to the operation, maintenance, and monitoring plan for the designed treatment system.

e. A document stating that the applicant understands that the obligation to comply with treatment system design, installation, operation and monitoring lies with the applicant and not Whatcom County.

f. When the public system is available, any person obtaining water from contaminated source must provide current test results showing water treatment is adequately maintaining water quality below maximum contaminant levels (MCL). If the quality does not meet the MCL, the applicant is required to hook up to a public system.

24.11.140 Determining adequacy of water supply for short subdivisions, long subdivisions or binding site plans proposing to use an existing public water system.

A. Prior to director approval of availability of an adequate water supply where the applicant proposes to obtain water from an existing public water supply to service lots of a short subdivision, long subdivision, or a binding site plan the applicant must:

1. Provide to the director an Availability Notification for Public Water (as amended) form or a letter signed by an authorized representative of the water system proposing to serve water to each lot. The authorized representative of the public water system:

   a. Must indicate that the water system will provide water to each proposed lot.

   b. Must sign a statement that they have reviewed the system records and ensures that the water system is in compliance with Chapters 246-290 and 246-291 WAC and department requirements.

B. The director will review the completed form or letter to determine the availability of adequate water. The director will make a determination of adequate water when:

1. The applicant and the authorized representative meet all the criteria listed on the form.

2. The purveyor of the water system has the approval from Department of Health or the department to provide water to the short subdivision, long subdivision, or binding site plan, except for Group A water systems the following conditions also apply:

   a. DOH has issued a green operating permit to the purveyor; or

   b. DOH has determined that the purveyor significantly complies with Chapter 246-290 WAC
3. The applicant has provided evidence of legal availability of water for the proposed project per WCC 24.11.060.

24.11.150 Determining adequacy of water supply for short subdivisions, long subdivisions or binding site plans proposing to use a new public water system.
Prior to director approval of availability of an adequate water supply where the applicant proposes to create a new public water supply to service lots of a short subdivision, long subdivision, or a binding site plan the applicant must comply with:

A. Provisions of the Whatcom County Coordinated Water System Plan.
B. Chapters 246-290 and 246-291 WAC, and all other applicable local and state regulations for public water supplies.
C. The applicable sections of this chapter pertaining to public water supplies and water availability.

24.11.160 Determining adequacy of water supply for short subdivisions or long subdivisions proposing to use a private well or private wells to serve one single-family dwelling or one single-family living unit.

A. Prior to director approval of availability of an adequate water supply where the applicant proposes to use a private well or private wells to service lots of a short subdivision or long subdivision the applicant must:
   1. Notify the director of the intent to use a private well or wells.
   2. Request that the director conduct a site inspection and approve the proposed well sites.
B. Upon request from the applicant, the director will conduct a site inspection for the purpose of approving the location. If the director cannot approve a well location the director will deny the application and give the reasons for denial.
C. If the director approves the well locations the applicant shall submit a completed Subdivision Water Availability form (as amended) and all required documents for each well to the director for approval.
D. The director will review each completed form and required documents for approval. The director will approve the availability of adequate water when:
   1. The applicant met all the criteria listed on the form.
   2. The applicant submitted all of the required documents.

3. The applicant has provided evidence of legal availability of water for the proposed project per WCC 24.11.060. The well site or well sites proposed by the applicant does not fall within the boundaries of an area where DOE has determined by rule that water for development does not exist.
24.11.170 Determining adequacy of water supply for short subdivisions or long subdivisions proposing to use a well to serve two single-family dwellings or two single-family living units.

A. The applicant shall create a Group B Public water supply as defined in Chapter 246-291 WAC when WCC Title 21 requires the applicant to provide public water service to each lot. This includes a water system where one well services two lots.

B. Prior to director approval of availability of an adequate water supply where the applicant proposes to use one well to service two lots of a short subdivision or long subdivision when public water is not required the applicant must:

1. Notify the director of the intent to use a well or wells.

2. Request that the director conduct a site inspection and approve the proposed well sites.

C. Upon request from the applicant, the director will conduct a site inspection for the purpose of approving the location. If the director cannot approve a well location the director will deny the application and give the reasons for denial.

D. If the director approves the well locations the applicant shall submit a completed Subdivision Water Availability form (as amended) and all required documents for each well to the director for approval.

E. The director will review each completed form and required documents for approval. The director will approve the availability of adequate water when:

1. The applicant met all the criteria listed on each of the forms.

2. The applicant submitted all of the required documents.

3. The applicant has provided evidence of legal availability of water for the proposed project per WCC 24.11.060. The well site or well sites proposed by the applicant does not fall within the boundaries of an area where DOE has determined by rule that water for development does not exist.
BE IT FURTHER ORDAINED that if a section, subsection, paragraph, sentence, clause, or phrase of this ordinance is declared unconstitutional or invalid for any reason by any court of competent jurisdiction; such decision shall not affect the validity of the remaining portions of this ordinance, and if the provisions of this ordinance are found to be inconsistent with other provisions of the Whatcom County Code, this ordinance shall control.

BE IT FURTHER ORDAINED by the Whatcom County Council that the Whatcom County Comprehensive Plan and the Whatcom County Code are hereby amended, on an interim basis, as shown in Exhibit A.

ADOPTED this ______ day of ________________, 2018.

ATTEST:

______________________________
Dana Brown-Davis, Council Clerk

______________________________
Rud Browne, Chairperson

APPROVED as to form:

______________________________
Civil Deputy Prosecutor

______________________________
Jack Louws, Executive

( ) Approved    ( ) Denied

Date: _________________________
Strike everything after the enacting clause and insert the following:

"PART 1

Sec. 101. RCW 19.27.097 and 2015 c 225 s 17 are each amended to read as follows:

(1)(a) Each applicant for a building permit of a building necessitating potable water shall provide evidence of an adequate water supply for the intended use of the building. Evidence may be in the form of a water right permit from the department of ecology, a letter from an approved water purveyor stating the ability to provide water, or another form sufficient to verify the existence of an adequate water supply. (In addition to other authorities, the county or city may impose conditions on building permits requiring connection to an existing public water system where the existing system is willing and able to provide safe and reliable potable water to the applicant with reasonable economy and efficiency.) An application for a water right shall not be sufficient proof of an adequate water supply.

(b) In a water resource inventory area with rules adopted by the department of ecology pursuant to section 202 or 203 of this act and the following water resource inventory areas with instream flow rules adopted by the department of ecology under chapters 90.22 and 90.54 RCW that explicitly regulate permit-exempt groundwater withdrawals, evidence of an adequate water supply must be consistent with the specific applicable rule requirements: 5 (Stillaguamish); 17 (Quilcene-Snow); 18 (Elwha-Dungeness); 27 (Lewis); 28 (Salmon-Washougal); 32 (Walla Walla); 45 (Wenatchee); 46 (Entiat); 48 (Methow); and 57 (Middle Spokane).

(c) In the following water resource inventory areas with instream flow rules adopted by the department of ecology under chapters 90.22 and 90.54 RCW that do not explicitly regulate permit-exempt
groundwater withdrawals, evidence of an adequate water supply must be consistent with section 202 of this act, unless the applicant provides other evidence of an adequate water supply that complies with chapters 90.03 and 90.44 RCW: 1 (Nooksack); 11 (Nisqually); 22 (Lower Chehalis); 23 (Upper Chehalis); 49 (Okanogan); 55 (Little Spokane); and 59 (Colville).

(d) In the following water resource inventory areas with instream flow rules adopted by the department of ecology under chapters 90.22 and 90.54 RCW that do not explicitly regulate permit-exempt groundwater withdrawals, evidence of an adequate water supply must be consistent with section 203 of this act, unless the applicant provides other evidence of an adequate water supply that complies with chapters 90.03 and 90.44 RCW: 7 (Snohomish); 8 (Cedar-Sammamish); 9 (Duwamish-Green); 10 (Puyallup-White); 12 (Chambers-Clover); 13 (Deschutes); 14 (Kennedy-Goldsborough); and 15 (Kitsap).

(e) In water resource inventory areas 37 (Lower Yakima), 38 (Naches), and 39 (Upper Yakima), the department of ecology may impose requirements to satisfy adjudicated water rights.

(f) Additional requirements apply in areas within water resource inventory area 3 (Lower Skagit-Samish) and 4 (Upper Skagit) regulated by chapter 173-503 WAC, as a result of Swinomish Indian Tribal Community v. Department of Ecology, 178 Wn.2d 571, 311 P.3d 6 (2013).

(g) In other areas of the state, physical and legal evidence of an adequate water supply may be demonstrated by the submission of a water well report consistent with the requirements of chapter 18.104 RCW.

(h) For the purposes of this subsection (1), "water resource inventory areas" means those areas described in chapter 173-500 WAC as of the effective date of this section.

(2) In addition to other authorities, the county or city may impose additional requirements, including conditions on building permits requiring connection to an existing public water system where the existing system is willing and able to provide safe and reliable potable water to the applicant with reasonable economy and efficiency.

(3) Within counties not required or not choosing to plan pursuant to RCW 36.70A.040, the county and the state may mutually determine those areas in the county in which the requirements of subsection (1) of this section shall not apply. The departments of health and ecology shall coordinate on the implementation of this section.
Should the county and the state fail to mutually determine those areas to be designated pursuant to this subsection, the county may petition the department of enterprise services to mediate or, if necessary, make the determination.

((43))) (4) Buildings that do not need potable water facilities are exempt from the provisions of this section. The department of ecology, after consultation with local governments, may adopt rules to implement this section, which may recognize differences between high-growth and low-growth counties.

(5) Any permit-exempt groundwater withdrawal authorized under RCW 90.44.050 associated with a water well constructed in accordance with the provisions of chapter 18.104 RCW before the effective date of this section is deemed to be evidence of adequate water supply under this section.

NEW SECTION. Sec. 102. A new section is added to chapter 36.70A RCW to read as follows:

For the purposes of complying with the requirements of this chapter relating to surface and groundwater resources, a county or city may rely on or refer to applicable minimum instream flow rules adopted by the department of ecology under chapters 90.22 and 90.54 RCW. Development regulations must ensure that proposed water uses are consistent with RCW 90.44.050 and with applicable rules adopted pursuant to chapters 90.22 and 90.54 RCW when making decisions under RCW 19.27.097 and 58.17.110.

NEW SECTION. Sec. 103. A new section is added to chapter 36.70 RCW to read as follows:

For the purposes of complying with the requirements of this chapter, county development regulations must ensure that proposed water uses are consistent with RCW 90.44.050 and with applicable rules adopted pursuant to chapters 90.22 and 90.54 RCW when making decisions under RCW 19.27.097 and 58.17.110.

Sec. 104. RCW 58.17.110 and 1995 c 32 s 3 are each amended to read as follows:

(1) The city, town, or county legislative body shall inquire into the public use and interest proposed to be served by the establishment of the subdivision and dedication. It shall determine:
(a) If appropriate provisions are made for, but not limited to, the
public health, safety, and general welfare, for open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and schoolgrounds, and shall consider all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school; and (b) whether the public interest will be served by the subdivision and dedication.

(2) A proposed subdivision and dedication shall not be approved unless the city, town, or county legislative body makes written findings that: (a) Appropriate provisions are made for the public health, safety, and general welfare and for such open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and schoolgrounds and all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school; and (b) the public use and interest will be served by the platting of such subdivision and dedication. If it finds that the proposed subdivision and dedication make such appropriate provisions and that the public use and interest will be served, then the legislative body shall approve the proposed subdivision and dedication. Dedication of land to any public body, provision of public improvements to serve the subdivision, and/or impact fees imposed under RCW 82.02.050 through 82.02.090 may be required as a condition of subdivision approval. Dedications shall be clearly shown on the final plat. No dedication, provision of public improvements, or impact fees imposed under RCW 82.02.050 through 82.02.090 shall be allowed that constitutes an unconstitutional taking of private property. The legislative body shall not as a condition to the approval of any subdivision require a release from damages to be procured from other property owners.

(3) If the preliminary plat includes a dedication of a public park with an area of less than two acres and the donor has designated that the park be named in honor of a deceased individual of good character, the city, town, or county legislative body must adopt the designated name.

(4) If water supply is to be provided by a groundwater withdrawal exempt from permitting under RCW 90.44.050, the applicant's compliance with RCW 90.44.050 and with applicable rules adopted
pursuant to chapters 90.22 and 90.54 RCW is sufficient in determining
appropriate provisions for water supply for a subdivision,
dedication, or short subdivision under this chapter.

PART 2

NEW SECTION. Sec. 201. The definitions in this section apply
throughout this chapter unless the context clearly requires
otherwise.
(1) "Department" means the department of ecology.
(2) "Lead agency" has the same meaning as defined in RCW
90.82.060.
(3) "Water resource inventory area" or "WRIA" means a water
resource inventory area established in chapter 173-500 WAC as it
existed on the effective date of this section.

NEW SECTION. Sec. 202. (1) Unless requirements are otherwise
specified in the applicable rules adopted under this chapter or under
chapter 90.22 or 90.54 RCW, potential impacts on a closed water body
and potential impairment to an instream flow are authorized for new
domestic groundwater withdrawals exempt from permitting under RCW
90.44.050 through compliance with the requirements established in
this section.
(2) In the following water resource inventory areas with instream
flow rules adopted by the department under chapters 90.22 and 90.54
RCW that do not explicitly regulate permit-exempt groundwater
withdrawals and that have completed a watershed plan adopted under
chapter 90.82 RCW, the department shall work with the initiating
governments and the planning units described in chapter 90.82 RCW to
review existing watershed plans to identify the potential impacts of
exempt well use, identify evidence-based conservation measures, and
identify projects to improve watershed health: 1 (Nooksack); 11
(Nisqually); 22 (Lower Chehalis); 23 (Upper Chehalis); 49 (Okanogan);
55 (Little Spokane); and 59 (Colville).
(3) In the water resource inventory areas listed in subsection
(2) of this section, the lead agency shall invite a representative
from each federally recognized Indian tribe that has a usual and
accustomed harvest area within the water resource inventory area to
participate as part of the planning unit.
(4)(a) In collaboration with the planning unit, the initiating governments must update the watershed plan to include recommendations for projects and actions that will measure, protect, and enhance instream resources and improve watershed functions that support the recovery of threatened and endangered salmonids. Watershed plan recommendations may include, but are not limited to, acquiring senior water rights, water conservation, water reuse, stream gaging, groundwater monitoring, and developing natural and constructed infrastructure, which includes, but is not limited to, such projects as floodplain restoration, off-channel storage, and aquifer recharge. Qualifying projects must be specifically designed to enhance streamflows and not result in negative impacts to ecological functions or critical habitat.

(b) At a minimum, the watershed plan must include those actions that the planning units determine to be necessary to offset potential impacts to instream flows associated with permit-exempt domestic water use. The highest priority recommendations must include replacing the quantity of consumptive water use during the same time as the impact and in the same basin or tributary. Lower priority projects include projects not in the same basin or tributary and projects that replace consumptive water supply impacts only during critical flow periods. The watershed plan may include projects that protect or improve instream resources without replacing the consumptive quantity of water where such projects are in addition to those actions that the planning unit determines to be necessary to offset potential consumptive impacts to instream flows associated with permit-exempt domestic water use.

(c) Prior to adoption of the updated watershed plan, the department must determine that actions identified in the watershed plan, after accounting for new projected uses of water over the subsequent twenty years, will result in a net ecological benefit to instream resources within the water resource inventory area.

(d) The watershed plan may include:
   (i) Recommendations for modification to fees established under this subsection;
   (ii) Standards for water use quantities that are less than authorized under RCW 90.44.050 or more or less than authorized under subsection (5) of this section for withdrawals exempt from permitting;
(iii) Specific conservation requirements for new water users to be adopted by local or state permitting authorities; or
(iv) Other approaches to manage water resources for a water resource inventory area or a portion thereof.
(e) Any modification to fees collected under subsection (5) of this section or standards for water use quantities that are less than authorized under RCW 90.44.050 or more or less than authorized under subsection (5) of this section for withdrawals exempt from permitting may not be applied unless authorized by rules adopted under this chapter or under chapter 90.54 RCW.
(5) Until an updated watershed plan is approved and rules are adopted under this chapter or chapter 90.54 RCW, a city or county issuing a building permit under RCW 19.27.097(1)(c), or approving a subdivision under chapter 58.17 RCW in a watershed listed in subsection (2) of this section must:
(a) Record relevant restrictions or limitations associated with water supply with the property title;
(b) Collect applicable fees, as described under this section;
(c) Record the number of building permits issued under chapter 19.27 RCW or subdivision approvals issued under chapter 58.17 RCW subject to the provisions of this section;
(d) Annually transmit to the department three hundred fifty dollars of each fee collected under this subsection;
(e) Annually transmit an accounting of building permits and subdivision approvals subject to the provisions of this section to the department;
(f) Until rules have been adopted that specify otherwise, require the following measures for each new domestic use that relies on a withdrawal exempt from permitting under RCW 90.44.050:
(i) An applicant shall pay a fee of five hundred dollars to the permitting authority;
(ii) An applicant may obtain approval for a withdrawal exempt from permitting under RCW 90.44.050 for domestic use only, with a maximum annual average withdrawal of three thousand gallons per day per connection.
(6) Rules adopted under this chapter or under chapter 90.54 RCW may:
(a) Rely on watershed plan recommendations and procedures established in this section to authorize new withdrawals exempt from
permitting under RCW 90.44.050 that would potentially impact a closed
waterbody or a minimum flow or level;
(b) Rely on projects identified in the watershed plan to offset
consumptive water use; and
(c) Include updates to fees based on the planning unit's
determination of the costs for offsetting consumptive water use.
(7)(a) If a watershed plan that meets the requirements of this
section is not adopted in water resource inventory area 1 (Nooksack)
by February 1, 2019, the department must adopt rules for that water
resource inventory area that meet the requirements of this section by
August 1, 2020.
(b) If a watershed plan that meets the requirements of this
section is not adopted in water resource inventory area 11
(Nisqually) by February 1, 2019, the department must adopt rules for
that water resource inventory area that meet the requirements of this
section by August 1, 2020.
(c) The department must adopt rules that meet the requirements of
this section for any of the following water resource inventory areas
that do not adopt a watershed plan that meets the requirements of
this section by February 1, 2021: 22 (Lower Chehalis); 23 (Upper
Chehalis); 49 (Okanogan); 55 (Little Spokane); and 59 (Colville).
(8) This section only applies to new domestic groundwater
withdrawals exempt from permitting under RCW 90.44.050 in the
following water resource inventory areas with instream flow rules
adopted under chapters 90.22 and 90.54 RCW that do not explicitly
regulate permit-exempt groundwater withdrawals: 1 (Nooksack); 11
(Nisqually); 22 (Lower Chehalis); 23 (Upper Chehalis); 49 (Okanogan);
55 (Little Spokane); and 59 (Colville) and does not restrict the
withdrawal of groundwater for other uses that are exempt from
permitting under RCW 90.44.050.

**NEW SECTION.** Sec. 203. (1) Unless requirements are otherwise
specified in the applicable rules adopted under this chapter or
chapter 90.22 or 90.54 RCW, potential impacts on a closed water body
and potential impairment to an instream flow are authorized for new
domestic groundwater withdrawals exempt from permitting under RCW
90.44.050 through compliance with the requirements established in
this section.
(2)(a) In the following water resource inventory areas with
instream flow rules adopted by the department under chapters 90.22
and 90.54 RCW that do not explicitly regulate permit-exempt groundwater withdrawals and that have either not adopted a watershed plan, or adopted a partial watershed plan, under chapter 90.82 RCW, the department shall establish watershed restoration and enhancement committees in the following water resource inventory areas: 7 (Snohomish); 8 (Cedar-Sammamish); 9 (Duwamish-Green); 10 (Puyallup-White); 12 (Chambers-Clover); 13 (Deschutes); 14 (Kennedy-Goldsborough); and 15 (Kitsap).

(b) The department shall chair the watershed restoration and enhancement committee and invite the following entities to participate:

(i) A representative from each federally recognized Indian tribe that has reservation land within the water resource inventory area;

(ii) A representative from each federally recognized Indian tribe that has a usual and accustomed harvest area within the water resource inventory area;

(iii) A representative from the department of fish and wildlife, appointed by the director of the department of fish and wildlife;

(iv) A representative designated by each county within the water resource inventory area;

(v) A representative designated by each city within the water resource inventory area;

(vi) A representative designated by the largest irrigation district within the water resource inventory area;

(vii) A representative designated by the largest publicly owned water purveyor providing water within the water resource inventory area that is not a municipality;

(viii) A representative designated by a local organization representing the residential construction industry within the water resource inventory area;

(ix) A representative designated by a local organization representing environmental interests within the water resource inventory area; and

(x) A representative designated by a local organization representing agricultural interests within the water resource inventory area.

(3) By June 30, 2021, the department shall prepare and adopt a watershed restoration and enhancement plan for each watershed listed under subsection (2)(a) of this section, in collaboration with the watershed restoration and enhancement committee. Except as described
in (h) of this subsection, all members of a watershed restoration and enhancement committee must approve the plan prior to adoption.

(a) The watershed restoration and enhancement plan should include recommendations for projects and actions that will measure, protect, and enhance instream resources and improve watershed functions that support the recovery of threatened and endangered salmonids. Plan recommendations may include, but are not limited to, acquiring senior water rights, water conservation, water reuse, stream gaging, groundwater monitoring, and developing natural and constructed infrastructure, which includes but is not limited to such projects as floodplain restoration, off-channel storage, and aquifer recharge. Qualifying projects must be specifically designed to enhance stream flows and not result in negative impacts to ecological functions or critical habitat.

(b) At a minimum, the plan must include those actions that the committee determines to be necessary to offset potential impacts to instream flows associated with permit-exempt domestic water use. The highest priority recommendations must include replacing the quantity of consumptive water use during the same time as the impact and in the same basin or tributary. Lower priority projects include projects not in the same basin or tributary and projects that replace consumptive water supply impacts only during critical flow periods. The plan may include projects that protect or improve instream resources without replacing the consumptive quantity of water where such projects are in addition to those actions that the committee determines to be necessary to offset potential consumptive impacts to instream flows associated with permit-exempt domestic water use.

(c) Prior to adoption of the watershed restoration and enhancement plan, the department must determine that actions identified in the plan, after accounting for new projected uses of water over the subsequent twenty years, will result in a net ecological benefit to instream resources within the water resource inventory area.

(d) The watershed restoration and enhancement plan must include an evaluation or estimation of the cost of offsetting new domestic water uses over the subsequent twenty years, including withdrawals exempt from permitting under RCW 90.44.050.

(e) The watershed restoration and enhancement plan must include estimates of the cumulative consumptive water use impacts over the
subsequent twenty years, including withdrawals exempt from permitting under RCW 90.44.050.

(f) The watershed restoration and enhancement plan may include:

(i) Recommendations for modification to fees established under this subsection;

(ii) Standards for water use quantities that are less than authorized under RCW 90.44.050 or more or less than authorized under subsection (4) of this section for withdrawals exempt from permitting;

(iii) Specific conservation requirements for new water users to be adopted by local or state permitting authorities; or

(iv) Other approaches to manage water resources for a water resource inventory area or a portion thereof.

(g) After adoption of a watershed restoration and enhancement plan, the department shall evaluate the plan recommendations and initiate rule making, if necessary, to incorporate recommendations into rules adopted under this chapter or under chapter 90.22 or 90.54 RCW. Any modification to fees collected under subsection (4) of this section or standards for water use quantities that are less than authorized under RCW 90.44.050 or more or less than authorized under subsection (4) of this section for withdrawals exempt from permitting may not be applied unless authorized by rules adopted under this chapter or under chapter 90.54 RCW.

(h) If the watershed restoration and enhancement committee fails to approve a plan by June 30, 2021, the director of the department shall submit the final draft plan to the salmon recovery funding board established under RCW 77.85.110 and request that the salmon recovery funding board provide a technical review and provide recommendations to the director to amend the final draft plan, if necessary, so that actions identified in the plan, after accounting for new projected uses of water over the subsequent twenty years, will result in a net ecological benefit to instream resources within the water resource inventory area. The director of the department shall consider the recommendations and may amend the plan without committee approval prior to adoption. After plan adoption, the director of the department shall initiate rule making within six months to incorporate recommendations into rules adopted under this chapter or under chapter 90.22 or 90.54 RCW, and shall adopt amended rules within two years of initiation of rule making.
(4)(a) Until a watershed restoration and enhancement plan is approved and rules are adopted under subsection (3) of this section, a city or county issuing a building permit under RCW 19.27.097(1)(d), or approving a subdivision under chapter 58.17 RCW in a watershed listed in subsection (2)(a) of this section must:

(i) Record relevant restrictions or limitations associated with water supply with the property title;

(ii) Collect applicable fees, as described under this section;

(iii) Record the number of building permits issued under chapter 19.27 RCW or subdivision approvals issued under chapter 58.17 RCW subject to the provisions of this section;

(iv) Annually transmit to the department three hundred fifty dollars of each fee collected under this subsection;

(v) Annually transmit an accounting of building permits and subdivision approvals subject to the provisions of this section to the department;

(vi) Until rules have been adopted that specify otherwise, require the following measures for each new domestic use that relies on a withdrawal exempt from permitting under RCW 90.44.050:

(A) An applicant shall pay a fee of five hundred dollars to the permitting authority;

(B) Except as provided in (b) of this subsection, an applicant may obtain approval for a withdrawal exempt from permitting under RCW 90.44.050 for domestic use only, with a maximum annual average withdrawal of nine hundred fifty gallons per day per connection; and

(C) An applicant shall manage stormwater runoff on-site to the extent practicable by maximizing infiltration, including using low-impact development techniques, or pursuant to stormwater management requirements adopted by the local permitting authority, if locally adopted requirements are more stringent.

(b) Upon the issuance of a drought emergency order under RCW 43.83B.405, the department may curtail withdrawal of groundwater exempt from permitting under RCW 90.44.050 and approved under this subsection (4) to no more than three hundred fifty gallons per day per connection for indoor use only. Notwithstanding the limitation to no more than three hundred fifty gallons per day per connection for indoor use only, an applicant may use groundwater exempt from permitting to maintain a fire control buffer during a drought emergency order.

(5) Rules adopted under this chapter or chapter 90.54 RCW may:
(a) Rely on watershed restoration and enhancement plan recommendations and procedures established in this section to authorize new withdrawals exempt from permitting under RCW 90.44.050 that would potentially impact a closed waterbody or a minimum flow or level;

(b) Rely on projects identified in the watershed restoration and enhancement plan to offset consumptive water use; and

(c) Include updates to fees based on the watershed restoration and enhancement committee's determination of the costs for offsetting consumptive water use.

(6) This section only applies to new domestic groundwater withdrawals exempt from permitting under RCW 90.44.050 in the following water resource inventory areas with instream flow rules adopted under chapters 90.22 and 90.54 RCW that do not explicitly regulate permit-exempt groundwater withdrawals: 7 (Snohomish); 8 (Cedar-Sammamish); 9 (Duwamish-Green); 10 (Puyallup-White); 12 (Chambers-Clover); 13 (Deschutes); 14 (Kennedy-Goldsborough); and 15 (Kitsap) and does not restrict the withdrawal of groundwater for other uses that are exempt from permitting under RCW 90.44.050.

NEW SECTION. Sec. 204. (1) The department shall initiate two pilot projects to measure water use from all new groundwater withdrawals for domestic purposes exempt from permitting under RCW 90.44.050 in the areas described in this section. The pilot projects must be conducted to determine the overall feasibility of measuring water use for all new groundwater withdrawals. The department must purchase and provide meters to be used in the pilot projects. The pilot projects must be conducted in the area under the Dungeness water rule, chapter 173-518 WAC, within water resource inventory area 18 and the area in which the Kittitas county water bank program operates within water resource inventory area 39.

(2) At a minimum, the pilot project must address the following:

(a) Initial and on-going costs, including costs to local government and the department;

(b) Technical, practical, and legal considerations that must be addressed;

(c) The costs and benefits of a water use measurement program relying on individual meters versus a water management program that estimates permit-exempt groundwater withdrawals; and
(d) Measures to protect the privacy of individual property owners and ensure accurate data collection.

(3) The department shall report on the pilot project results in the report to the legislature submitted under section 205 of this act. The department shall include recommendations to the legislature, including estimated program costs for expanding the pilot projects to other basins.

NEW SECTION. Sec. 205. The department shall submit a report to the legislature by December 31, 2020, and December 31, 2027, in compliance with RCW 43.01.036, that includes the following elements:

(1) Progress in completing and adopting watershed plans under section 202 of this act and watershed restoration and enhancement plans under section 203 of this act;

(2) A description of program projects and expenditures;

(3) An assessment of the streamflow restoration and enhancement benefits from program projects;

(4) A listing of other efforts or actions taken associated with streamflow restoration and enhancement, projects to benefit instream resources, and other directly related watershed improvements conducted in coordination with the restoration and enhancement planning process;

(5) The total number of new withdrawals exempt from permitting under RCW 90.44.050 authorized in each water resource inventory area under provisions of sections 202 and 203 of this act, and estimates of consumptive water use impacts associated with the new withdrawals; and

(6) A description of potential or planned projects, including projected costs and anticipated streamflow, water supply, and watershed health benefits.

NEW SECTION. Sec. 206. (1) The watershed restoration and enhancement account is created in the custody of the state treasurer. All receipts from fees paid pursuant to sections 202 and 203 of this act must be deposited into the account. The account may also receive those moneys as may be appropriated by the legislature for the purpose of funding restoration and enhancement projects as identified in sections 202 and 203 of this act. Expenditures from the account may be used only for the costs of administering this act, including implementing watershed planning projects under section 202 of this act.
act and watershed restoration and enhancement projects under section
203 of this act, and collecting data and completing studies necessary
to develop, implement, and evaluate watershed restoration and
enhancement projects under this act. Only the director or the
director's designee may authorize expenditures from the account. The
account is subject to allotment procedures under chapter 43.88 RCW,
but an appropriation is not required for expenditures.

(2) Fee revenues collected under sections 202 and 203 of this act
must be used exclusively within the water resource inventory area in
which the fee originated. The restriction in this subsection does not
apply to moneys in the watershed restoration and enhancement account
that do not originate from fees collected under sections 202 and 203
of this act.

NEW SECTION. Sec. 207. (1) The watershed restoration and
enhancement taxable bond account is created in the custody of the
state treasurer. All receipts from direct appropriations from the
legislature or moneys directed to the account from any other source
must be deposited in the account. The account is intended to fund
projects using taxable bonds. Expenditures from the account may be
used only as provided for in this section. Only the director or the
director's designee may authorize expenditures from the account. The
account is subject to allotment procedures under chapter 43.88 RCW,
but an appropriation is not required for expenditures.

(2) Expenditures from the watershed restoration and enhancement
taxable bond account may be used to assess, plan, and develop
projects that include acquiring senior water rights, water
conservation, water reuse, stream gaging, groundwater monitoring, and
developing natural and constructed infrastructure, which includes,
but is not limited to, projects such as floodplain restoration, off-
channel storage, and aquifer recharge, or other actions designed to
provide access to new water supplies with priority given to projects
in watersheds developing plans as directed by sections 202 and 203 of
this act and watersheds participating in the pilot project in section
204 of this act.

NEW SECTION. Sec. 208. (1) The watershed restoration and
enhancement bond account is created in the custody of the state
treasurer. All receipts from direct appropriations from the
legislature or moneys directed to the account from any other source
must be deposited in the account. The account is intended to fund projects using tax exempt bonds. Expenditures from the account may be used only as provided for in this section. Only the director or the director’s designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(2) Expenditures from the watershed restoration and enhancement bond account may be used to assess, plan, and develop projects that include acquiring senior water rights, water conservation, water reuse, stream gaging, groundwater monitoring, and developing natural and constructed infrastructure, which includes, but is not limited to, projects such as floodplain restoration, off-channel storage, and aquifer recharge, or other actions designed to provide access to new water supplies with priority given to projects in watersheds developing plans as directed by sections 202 and 203 of this act and watersheds participating in the pilot project in section 204 of this act.

PART 3

NEW SECTION. Sec. 301. (1) A joint legislative task force on water resource mitigation is established to review the treatment of surface water and groundwater appropriations as they relate to instream flows and fish habitat, to develop and recommend a mitigation sequencing process and scoring system to address such appropriations, and to review the Washington supreme court decision in Foster v. Department of Ecology, 184 Wn.2d 465, 362 P.3d 959 (2015).

(2) The task force must consist of the following members:
(a) Two members from each of the two largest caucuses of the senate, appointed by the president of the senate;
(b) Two members from each of the two largest caucuses of the house of representatives, appointed by the speaker of the house of representatives;
(c) A representative from the department, appointed by the director of the department;
(d) A representative from the department of fish and wildlife, appointed by the director of the department of fish and wildlife;
(e) A representative from the department of agriculture, appointed by the director of the department of agriculture;
(f) One representative from each of the following groups, appointed by the consensus of the cochairs of the task force:

(i) An organization representing the farming industry in Washington;

(ii) An organization representing Washington cities;

(iii) Two representatives from an environmental advocacy organization or organizations;

(iv) An organization representing municipal water purveyors;

(v) An organization representing business interests;

(vi) Representatives of two federally recognized Indian tribes, one invited by recommendation of the Northwest Indian fisheries commission, and one invited by recommendation of the Columbia river intertribal fish commission.

(3) One cochair of the task force must be a member of the majority caucus of one chamber of the legislature, and one cochair must be a member of the minority caucus of the other chamber of the legislature, as those caucuses existed as of the effective date of this section.

(4) The first meeting of the task force must occur by June 30, 2018.

(5) Staff support for the task force must be provided by the office of program research and senate committee services. The department and the department of fish and wildlife shall cooperate with the task force and provide information as the cochairs reasonably request.

(6) Within existing appropriations, the expenses of the operations of the task force, including the expenses associated with the task force's meetings, must be paid jointly and in equal amounts by the senate and the house of representatives. Task force expenditures are subject to approval by the house executive rules committee and the senate facility and operations committee. Legislative members of the task force are reimbursed for travel expenses in accordance with RCW 44.04.120. Nonlegislative members are not entitled to be reimbursed for travel expenses if they are elected officials or are participating on behalf of an employer, governmental entity, or other organization. Any reimbursement for other nonlegislative members is subject to chapter 43.03 RCW.

(7)(a) By November 15, 2019, the joint legislative task force must make recommendations to the legislature in compliance with RCW 43.01.036.
(b) Recommendations of the joint legislative task force must be made by a sixty percent majority of the members of the task force. The representatives of the departments of fish and wildlife, ecology, and agriculture are not eligible to vote on the recommendations. Minority recommendations that achieve the support of at least five of the named voting members of the task force may also be submitted to the legislature.

(8) The department shall issue permit decisions for up to five water resource mitigation pilot projects. It is the intent of the legislature to use the pilot projects to inform the legislative task force process while also enabling the processing of water right applications that address water supply needs. The department is authorized to issue permits in reliance upon water resource mitigation of impacts to instream flows and closed surface water bodies under the following mitigation sequence:

(a) Avoiding impacts by: (i) Complying with mitigation required by adopted rules that set forth minimum flows, levels, or closures; or (ii) making the water diversion or withdrawal subject to the applicable minimum flows or levels; or

(b) Where avoidance of impacts is not reasonably attainable, minimizing impacts by providing permanent new or existing trust water rights or through other types of replacement water supply resulting in no net annual increase in the quantity of water diverted or withdrawn from the stream or surface water body and no net detrimental impacts to fish and related aquatic resources; or

(c) Where avoidance and minimization are not reasonably attainable, compensating for impacts by providing net ecological benefits to fish and related aquatic resources in the water resource inventory area through in-kind or out-of-kind mitigation or a combination thereof, that improves the function and productivity of affected fish populations and related aquatic habitat. Out-of-kind mitigation may include instream or out-of-stream measures that improve or enhance existing water quality, riparian habitat, or other instream functions and values for which minimum instream flows or closures were established in that watershed.

(9) The department must monitor the implementation of the pilot projects, including all mitigation associated with each pilot project, approved under this section at least annually through December 31, 2028.
(10) The pilot projects eligible for processing under this section, based on criteria as of the effective date of this section, include:
(a) A city operating a group A water system in Kitsap county and water resource inventory area 15, with a population between 13,000 and 14,000;
(b) A city operating a group A water system in Pierce county and water resource inventory area 10, with a population between 9,500 and 10,500;
(c) A city operating a group A water system in Thurston county and water resource inventory area 11, with a population between 8,500 and 9,500;
(d) A nonprofit mutual water system operating a group A water system in Pierce county and water resource inventory area 12, with between 10,500 and 11,500 service connections; and
(e) An irrigation district located in Whatcom county and water resource inventory area 1, solely for the purpose of processing changes of water rights from surface water to groundwater, and implementing flow augmentation to benefit instream flows.
(11) Water right applicants eligible to be processed under this pilot project authority must elect to be included in the pilot project review by notifying the department by July 1, 2018. Once an applicant notifies the department of its intent to be processed under this pilot project authority, subsection (8) of this section applies to final decisions issued by the department, even if such a final decision is issued after the expiration of this section.
(12) By November 15, 2018, the department must furnish the task force with information on conceptual mitigation plans for each water resource mitigation pilot project application.
(13) To ensure that the processing of pilot project applications can inform the task force process in a timely manner, the department must expedite processing of applications for water resource mitigation pilot projects. The applicant for each pilot project must reimburse the department for the department's costs of processing the applicant's application.
(14) The water resource mitigation pilot project authority granted to the department does not affect or modify any other procedural requirements of chapter 90.03, 90.44, or 90.54 RCW that apply to the processing of such applications.
(16) This section expires January 1, 2029.

Sec. 302. RCW 90.03.247 and 2003 c 39 s 48 are each amended to read as follows:

(1) Whenever an application for a permit to make beneficial use of public waters is approved relating to a stream or other water body for which minimum flows or levels have been adopted and are in effect at the time of approval, the permit shall be conditioned to: (a) Protect the levels or flows; or (b) require water resource mitigation of impacts to instream flows and closed surface water bodies for water resource mitigation pilot projects authorized under section 301 of this act.

(2) No agency may establish minimum flows and levels or similar water flow or level restrictions for any stream or lake of the state other than the department of ecology whose authority to establish is exclusive, as provided in chapter 90.03 RCW and RCW 90.22.010 and 90.54.040. The provisions of other statutes, including but not limited to (RCW 77.55.100 and) chapter 43.21C RCW, may not be interpreted in a manner that is inconsistent with this section. In establishing such minimum flows, levels, or similar restrictions, the department shall, during all stages of development by the department of ecology of minimum flow proposals, consult with, and carefully consider the recommendations of, the department of fish and wildlife, commerce, the department of agriculture, and representatives of the affected Indian tribes. Nothing herein shall preclude the department of fish and wildlife, the department of commerce, or the department of agriculture from presenting its views on minimum flow needs at any public hearing or to any person or agency, and the department of fish and wildlife, commerce, and the department of agriculture are each empowered to participate in proceedings of the federal energy regulatory commission and other agencies to present its views on minimum flow needs.

Sec. 303. RCW 90.03.290 and 2001 c 239 s 1 are each amended to read as follows:

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

(2)(a) If the application does not contain, and the applicant
does not promptly furnish sufficient information on which to base
such findings, the department may issue a preliminary permit, for a
period of not to exceed three years, requiring the applicant to make
such surveys, investigations, studies, and progress reports, as in
the opinion of the department may be necessary. If the applicant
fails to comply with the conditions of the preliminary permit, it and
the application or applications on which it is based shall be
automatically canceled and the applicant so notified. If the holder
of a preliminary permit shall, before its expiration, file with the
department a verified report of expenditures made and work done under
the preliminary permit, which, in the opinion of the department,
establishes the good faith, intent, and ability of the applicant to
carry on the proposed development, the preliminary permit may, with
the approval of the governor, be extended, but not to exceed a
maximum period of five years from the date of the issuance of the
preliminary permit.

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

(3) The department shall make and file as part of the record in the matter, written findings of fact concerning all things investigated, and if it shall find that there is water available for appropriation for a beneficial use, and the appropriation thereof as proposed in the application will not impair existing rights or be detrimental to the public welfare, it shall issue a permit stating the amount of water to which the applicant shall be entitled and the beneficial use or uses to which it may be applied: PROVIDED, That where the water applied for is to be used for irrigation purposes, it shall become appurtenant only to such land as may be reclaimed thereby to the full extent of the soil for agricultural purposes. But where there is no unappropriated water in the proposed source of supply, or where the proposed use conflicts with existing rights, or threatens to prove detrimental to the public interest, having due regard to the highest feasible development of the use of the waters belonging to the public, it shall be duty of the department to reject such application and to refuse to issue the permit asked for.

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

(5) The requirements of subsections (1) and (3) of this section do not apply to water resource mitigation pilot projects for which permits are issued in reliance upon water resource mitigation of
impacts to instream flows and closed surface water bodies under section 301 of this act.

NEW SECTION. Sec. 304. The legislature intends to appropriate three hundred million dollars for projects to achieve the goals of this act until June 30, 2033. The department of ecology is directed to implement a program to restore and enhance stream flows by fulfilling obligations under this act to develop and implement plans to restore stream flows to levels necessary to support robust, healthy, and sustainable salmon populations.

NEW SECTION. Sec. 305. Sections 201 through 208 and 301 of this act constitute a new chapter in Title 90 RCW.

NEW SECTION. Sec. 306. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 307. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately."

SSB 6091 - S AMD 347
By Senator Van De Wege

On page 1, beginning on line 2 of the title, after "development;"
strike the remainder of the title and insert "amending RCW 19.27.097, 58.17.110, 90.03.247, and 90.03.290; adding a new section to chapter 36.70A RCW; adding a new section to chapter 36.70 RCW; adding a new chapter to Title 90 RCW; creating a new section; providing an expiration date; and declaring an emergency."

--- END ---
• Amends the building permit — evidence of adequate water supply statute:
  o to include both the WRIAs that have instream flow rules that do not explicitly regulate permit-exempt groundwater withdrawals and have completed a watershed plan - 1 (Nooksack); 11 (Nisqually); 22 (Lower Chehalis); 23 (Upper Chehalis); 49 (Okanogan); 55 (Little Spokane); and 59 (Colville); and those WRIAs that have instream flow rules that do not explicitly regulate permit-exempt groundwater withdrawals and either do not have a watershed plan adopted or have a partial watershed plan - 7 (Snohomish); 8 (Cedar-Sammamish); 9 (Duwamish-Green); 10 (Puyallup-White); 12 (Chambers-Clover); 13 (Deschutes); 14 (Kennedy-Goldsborough); and 15 (Kitsap).
  o Provides that in WRIAs 37 (Lower Yakima), 38 (Naches), and 39 (Upper Yakima, Ecology may require) to satisfy adjudicated water rights.
  o Removes the provision allowing Ecology to impose requirements to satisfy the federal adjudication of Chamokani Creek.
  o Amends to provide that additional requirements apply in WRIAs 3 (Lower Skagit-Samish) and 4 (Upper Skagit) as a result of Swinomish.
  o Provides that any permit-exempt groundwater withdrawal associated with a water well constructed before the effective date of this bill is deemed to be evidence of adequate water supply under this section.
• Removes changes to the intent section in chapter 90.54 RCW.
• Adds a Part 2, which will become a new chapter in Title 90, that does the following:
  • In 1 (Nooksack); 11 (Nisqually); 22 (Lower Chehalis); 23 (Upper Chehalis); 49 (Okanogan); 55 (Little Spokane); and 59 (Colville) –
    o The lead agency must invite a representative from each federally recognized Indian tribe that has a usual and accustomed harvest area within the WRIA to participate as part of the planning unit.
    o Ecology must work with initiating governments and planning units to update the watershed plan to include recommendations for projects and actions that will measure, protect, and enhance instream resources and improve watershed functions that support the recovery of threatened and endangered salmonids. The updated watershed plan must include actions deemed necessary to offset potential impacts to instream flows associated with permit-exempt domestic water use. The term “surface water impoundment” is removed and makes the list of projects non-exhaustive.
    o Ecology must determine that actions identified in the watershed plan, after accounting for new projected uses of water over the subsequent twenty years, will result in a net ecological benefit to instream resources within the WRIA
    o The updated watershed plan may include modification to fees, standards for water quantities, and specific conservation requirements.
    o Building permit or subdivision applications — applicant may obtain approval for domestic permit-exempt groundwater withdrawal of 3000 per day per connection and pay a fee of $500 ($350 to Ecology)
    o If an updated watershed plan is not adopted in WRIA 1 (Nooksack) by February 1, 2019, Ecology must adopt rules for that water resource inventory area that meet the requirements of this section no later August 1, 2020.
    o If an update watershed plan WRIA 11 (Nisqually) by February 1, 2019, Ecology must adopt rules for that water resource inventory area that meet the requirements of this section no later August 1, 2020.
- Ecology must adopt rules that meet the requirements above for any WRIA - 22 (Lower Chehalis); 23 (Upper Chehalis); 49 (Okanogan); 55 (Little Spokane); and 59 (Colville) - that does not adopt an updated watershed plan by February 1, 2021.
  - In 7 (Snohomish); 8 (Cedar-Sammamish); 9 (Duwamish-Green); 10 (Puyallup-White); 12 (Chambers-Clover); 13 (Deschutes); 14 (Kennedy-Goldsborough); and 15 (Kitsap) –
    - Establishes WRE Committee and adopts WRE Plans.
    - Adds representatives from a local environmental organization and a local agricultural organization within the WRIA to the WRE Committee.
    - Clarifies that the plan may include projects that protect instream resources without replacing the consumptive quantity of water where projects are in addition to actions necessary to offset potential consumptive impacts to instream flows associated with permit-exempt domestic water use. The term “surface water impoundment” is removed and makes the list of projects non-exhaustive.
    - Provides that, notwithstanding the limitation to no more than three hundred fifty gallons per day per connection for indoor use only, an applicant may use groundwater exempt from permitting to maintain a fire control buffer during a drought emergency order.
- Ecology must initiate two pilot projects to measure water use from groundwater withdrawals for domestic purposes – the area of the Dungeness water rule (chapter 173-518 WAC) within WRIA 18 and the area in which the Kittitas County water bank program operates within WRIA 39.
- Moves the reporting requirement to a separate section.
- Removes the cause of action section.
- The Watershed Restoration and Enhancement Account, the Watershed Restoration and Enhancement Taxable Account, and the Watershed Restoration and Enhancement Bond Account are non-appropriated accounts.
- Provides that money in the Watershed Restoration and Enhancement Account may be used for implementing watershed planning projects from WRIAs 1, 11, 22, 23, 49, 55, and 59 and WRE projects in WRIAs 7, 8, 9, 10, 12, 13, 14, and 15.
- Provides that, under the WRE Taxable Account and the WRE Bond Account, priority is given to projects in WRIAs 1, 11, 22, 23, 49, 55, and 59 and in WRIAs 7, 8, 9, 10, 12, 13, 14, and 15 and the watersheds participating in the water measuring pilot project (WRIA 18 and WRIA 39).
- For Pilot Projects under the Task Force – Ecology must monitor the implementation of the pilot projects, including all mitigation associated with each pilot project, approved under this section at least annually through December 31, 2028. (puts this section in the new chapter in Title 90)