Municipal Water Law
Policy and Interpretive Statement

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Contact: Water Resources Program Policy Support Section

References: RCW 90.03.005, RCW 90.03.015, RCW 90.03.240, RCW 90.03.260, RCW 90.03.290, RCW 90.03.320, RCW 90.03.330, RCW 90.03.380, RCW 90.03.386, RCW 90.03.550, RCW 90.03.560, RCW 90.03.570, RCW 90.14.140, RCW 90.42.100, RCW 90.44.100.

Purpose: To describe and provide interpretation of parts of the Municipal Water Law (SECOND ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1338; Chapter 5, Laws of 2003; 58th Legislature; 2003 1st Special Session; MUNICIPAL WATER SUPPLY--EFFICIENCY REQUIREMENTS) and describe Department of Ecology (Ecology) procedures for identifying and managing municipal water rights.

Application: This interpretive and policy statement relates to the state Water Code (Chapter 90.03 RCW) as amended or added to by the 2003 Municipal Water Law and subsequent case law. The document describes how Ecology intends to apply the various sections of the law to municipal water rights and management.

This policy supersedes any previous policy statement with which it conflicts.

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Section 1: Definitions and Background

1.1 Definitions

The following definitions are intended for informational purposes only to promote a common understanding of terms used throughout this policy and are not meant as legal definitions.

Inchoate – The portion of a water right that has not yet been perfected through actual beneficial use of water.

Mitigation – Measures that eliminate impairment to existing rights from a proposed diversion or withdrawal.

Original intent – Original intent is the objective of the project as described in the original water right application and accompanying water right documents and maps. This is considered along with the updated service area when evaluating change applications for municipal water rights.

Perfected – The portion of a water right that has previously been put to actual beneficial use.

Pumps and pipes certificates – Water right certificates issued prior to September 9, 2003 based on system capacity (e.g., the ability of pumps and pipes to convey a volume of water at a certain rate), rather than on actual beneficial use of water. These water right certificates may include inchoate quantities of water that have not yet been exercised.

Reasonable diligence – Demonstrating adequate progress toward completion of the original project or purpose for which the water right was issued, as set forth in RCW 90.03.320 and guidance in Ecology's POL-1050.

Trust water right – Any water right transferred to the state's trust water rights program (TWRP) under chapter 90.42 RCW or 90.38 RCW.

Trust Water Rights Program (TWRP) – A statewide program created under chapter 90.42 RCW authorizing Ecology to hold and manage trust water rights. This also includes chapter 90.38 RCW for the Yakima River Basin.

Water System Consolidation – When two or more water systems physically connect and merge to become one entity and combine their management, planning, finances, and operations.

1.2 Background

The 2003 Municipal Water Law (MWL) enacted provisions of law that define municipal water rights.[1] This Interpretive and Policy Statement (policy) describes Ecology's approach in interpreting and implementing the MWL and supersedes previous policy statements pertaining to the MWL. Wherever possible, Ecology will seek to review and decide municipal water supply issues in a consistent manner. This interpretive and policy statement is not a formal rule

[1] https://lawfilesext.leg.wa.gov/biennium/2003-04/Pdf/Bills/Session%20Laws/House/1338-S2.SL.pdf?q=20231121091327.

adopted through a rulemaking process. Thus, pursuant to RCW 34.05.230(1) it is advisory only. The following policy provides a framework for individual decisions to be made based on the specific facts of each water right decision.

This policy, among other things, applies to "pumps and pipes" certificates that were issued based on system capacity, rather than on actual beneficial use of water. As specified, portions of this policy also apply to permits and claims that may include inchoate quantities of water.

Section 2: Municipal Water Suppliers and Municipal Water Supply Purposes

2.1 Municipal Water Supplier

Under RCW 90.03.015(3), a municipal water supplier is an entity that supplies water for municipal water supply purposes. Some examples of a municipal water supplier include a city, homeowners association, public utility district, water district, mobile home park, and other entities that hold one or more water rights that qualify as being for municipal water supply purposes by meeting the statutory criteria under RCW 90.03.015(4).

Municipal water suppliers may hold water rights that are for municipal water supply purposes and water rights that are not for municipal water supply purposes. Holding one water right for municipal water supply purposes does not automatically qualify other rights held by that same entity as municipal water supply purpose water rights.

2.2 Municipal Water Supply Purposes

Ecology evaluates whether a water right is for municipal water supply purposes on an individual basis and considers relationships between water rights, such as non-additive rights and replacement wells, when making this determination. RCW 90.03.015(4) defines beneficial uses of a water right that are for municipal water supply purposes as described below. A water right holder may also apply to change the purpose of use of a water right to municipal water supply purposes under RCW 90.03.380 or RCW 90.44.100.

RCW 90.03.015(4)(a): Residential purposes for 15 or more residential service connections or for providing water for residential use to a nonresidential population that is, on average, at least 25 people for at least 60 days a year.

- For example, under RCW 90.03.015(4)(a) a water right serving 15 homes would be for municipal water supply purposes, but a water right serving 14 homes and one commercial retail business would not. The number of residential service connections is determined for each water system plan approval, water system plan update, or small water system management program. Residential service connection is not defined in

statute but is interpreted to refer to year-round residents, consistent with WAC 246-290-020.[2]

- Ecology interprets "providing residential use of water for a nonresidential population" to mean a water right supplying the full range of residential water uses (e.g., drinking, cooking, cleaning, and sanitation). Temporary domiciles qualify when occupied by the same 25 people for at least 60 days a year. For example, this could include systems serving vacation homes and temporary farm worker housing, but might exclude water systems serving daycares, churches, campgrounds, hotels, fairgrounds, restaurants, commercial businesses, and factories. Ecology determines if systems that supply water for a nonresidential population hold water rights for municipal water supply purposes on a case-by-case basis.
- Not all Group A public water systems, as defined in WAC 246-290-020, are considered municipal water suppliers. Water rights serving Group B water systems (see WAC 246-290-020 and WAC 246-291-005) do not qualify as water rights for municipal water supply purposes under RCW 90.03.015(4)(a).

RCW 90.03.015(4)(b): Governmental or governmental proprietary purposes by a city, town, public utility district, county, sewer district, or water district.

- RCW 90.03.015(4)(b) applies exclusively to cities, towns, public utility districts, counties, sewer districts, or water districts. Other types of entities not listed in the statute (e.g., port or irrigation districts) do not qualify as governmental entities that can supply water for governmental and governmental proprietary purposes under RCW 90.03.015(4)(b).
- When considering whether a water right qualifies for a governmental purpose, Ecology evaluates the historical use of the water right, including the original and subsequent owners. For example, a water right issued for a governmental purpose (e.g., irrigation of parks) to a government entity that can qualify to hold a right under RCW 90.03.015(4)(b) would qualify as a municipal water supply purpose right. However, a water right issued to a non-governmental entity (e.g., a private developer) and later acquired by a governmental entity would not qualify as a municipal water supply purpose right under this subsection.
- Residential use water rights that do not meet the definition of municipal water supply purposes in RCW 90.03.015(4)(a) do not qualify as being for municipal water supply purposes under the more general requirements for governmental or governmental proprietary purposes in RCW 90.03.015(4)(b).
- Agricultural irrigation is only considered a municipal water supply purpose in limited circumstances (see Section 3.3, Conforming Water Rights).

[2] This is a subset of Department of Health's general definition of a service connection in WAC 246-290-010 that states "service connections used by year-round residents for one hundred eighty or more days within a calendar year."

RCW 90.03.015(4)(c): Indirectly for the purposes in RCW 90.03.015(4)(a) or (b) through the delivery of treated or raw water to a public water system for such use.

Other Uses of Water Generally Associated with a Municipality: A water right used according to RCW 90.03.015(4) can also serve water for other beneficial uses generally associated with a municipality and those uses will be considered as municipal water supply purposes.

Additionally, if a governmental entity listed in RCW 90.03.015(4)(b) holds a water right used according to RCW 90.03.015(4) then its use or delivery of water for other beneficial uses generally associated with a municipality is considered as municipal water supply purposes.

- Other beneficial uses generally associated with a municipality include, but are not limited to, commercial, industrial, irrigation of parks and open spaces, institutional, landscaping, fire flow, water system maintenance and repair, or related purposes.

Section 3: Issuing Certificates, Conformance, and Population/Connection Limits

3.1 Issuing Certificates

Under RCW 90.03.330(4), any water right certificate issued after September 9, 2003 must document the perfected instantaneous rate (Qi) and annual quantity (Qa) of water that has been beneficially used and authorized.

- Upon completion of a proof of appropriation examination, Ecology will issue certificates based only on the actual beneficial use of water rather than system capacity. Such certificates will not include inchoate quantities of water.
- Upon request, Ecology may split a partially developed water right permit by issuing a certificate for the portion of water put to beneficial use and a superseding permit for the remaining quantities of inchoate water with an associated development schedule.
- In a Report of Examination authorizing a change of a water right certificate for municipal water supply purposes, Ecology may include a development schedule. The development schedule may include an estimated date of final development. Extensions may be granted as described in POL-1050. Upon completion of development to the changed use, Ecology will issue a superseding water right document.

3.2 Population and Connection Limits

Under RCW 90.03.260(4) and (5), a maximum population or number of connections specified on a permit application or any subsequent water right documents no longer limit a water right for municipal water supply purposes (only the Qi and Qa are limiting) if the municipal water supplier has:

1. Either a water system plan approved by Department of Health, or a small water system management program submitted to Department of Health that authorizes that the water right to serve a specified number of connections or population; and

2. The water right is beneficially used in a manner that meets the residential service connection or nonresidential population requirements of RCW 90.03.015(4)(a).

3.3 Conforming Water Rights

What is a Conforming Document: Under RCW 90.03.560, a "conformed water right" is a water right permit or certificate that has been amended by Ecology to indicate that it is for municipal water supply purposes. Conformance only includes Ecology correctly identifying the purpose of use on the water right document and records.

When Ecology Evaluates Rights for Conformance: While a change application is not required to conform a right that meets the requirements of municipal water supply purposes, Ecology may conform a right in the process of reviewing a request to change another attribute of the right. For example, a small water system with 15 or more residential service connections has a water right issued for "multiple domestic" purposes and applies for a change of a point of withdrawal. While reviewing the change application in this example, Ecology should also conform the right to municipal water supply purposes if requested by the applicant.

Conformance can also occur when a municipal water supplier requests a correction of the listed purpose of use by submitting a Request for a Conforming Document (Form ECY 070-151).

Purposes That Can Be Conformed: Beneficial uses that can be conformed to municipal water supply purposes under RCW 90.03.560 generally include those identified in RCW 90.03.015(4) (see Section 2, Municipal Water Suppliers and Municipal Water Supply Purposes).

Water rights for community, multiple, or group domestic supply may have population or connection limits listed on the original water right documents. If these limits meet the residential service connections or nonresidential population requirements of RCW 90.03.015(4)(a) they may be conformed to municipal water supply purposes only if they have been beneficially used in a manner that meets these requirements.

If the population or connection limits on these water rights do not meet the requirements of RCW 90.03.015(4)(a), then they may only be conformed to municipal water supply purposes if they meet the requirements in Section 3.2, Population and Connection Limits (i.e., Department of Health approval and actual beneficial use that meet RCW 90.03.015(4)(a)).

Purposes That Cannot Be Conformed: There are some purposes of use that cannot be conformed to municipal water supply purposes. To be designated for municipal water supply purposes these rights would have to undergo the change application process through RCW 90.03.380 or RCW 90.44.100, which includes a tentative determination of extent and validity and an impairment analysis. These uses include, but are not limited to:

- Non-consumptive[3] hydropower use, which has a separate relinquishment exemption.[4]
- Rights held or acquired by a municipal water supplier for non-municipal purposes.[5]
- A right for a governmental purpose (e.g., irrigation of parks) that was issued to a non-governmental entity (e.g., a private developer) and later acquired by a governmental entity.
- Generally, water rights authorizing certain purposes of use, including dairy use or agricultural irrigation, held or acquired by a municipal water supplier cannot be conformed as rights for municipal water supply purposes because these uses are not generally associated with the use of water within a municipality. However, municipal water rights held by governmental entities listed in RCW 90.03.015(4)(b) may include dairy use or agricultural irrigation as a governmental purpose under an existing water right for municipal water supply purposes, if:
    - Such an entity has specific authority (e.g., specified in their organizational charter) to provide service for those uses since the time the right was issued, and
    - The right has been exercised to provide water for dairy or agricultural irrigation use since its issuance.

Section 4: Relinquishment Protection for Municipal Water Rights

4.1 Situations When Inchoate Municipal Water Right Certificates May Be Diminished

The inchoate portions of municipal water supply purpose certificates that are valid and in good standing are protected from being revoked, diminished, or adjusted under RCW 90.03.330(2) except when Ecology:

- Issues certificates following changes under RCW 90.03.380 and 90.44.100.
- Issues certificates under RCW 90.03.240 through a general adjudication of water rights in superior court conducted pursuant to RCW 90.03.110 to RCW 90.03.245.
- Determines a certificate was issued with ministerial errors or obtained through misrepresentation only to the extent necessary to correct the ministerial errors or misrepresentation.

4.2 Maintaining Relinquishment Protection

To maintain a water right's status as being for municipal water supply purposes and its protection from relinquishment it must be either:

[3] See Ecology POL-1020 for more information on consumptive and non-consumptive uses: https://appswr.ecology.wa.gov/docs/WaterRights/wrwebpdf/pol1020.pdf.
[4] See RCW 90.14.140(2)(a).
[5] RCW 90.03.560 states that this section "does not authorize any other water right or other portion of a right held or acquired by a municipal water supplier to be so identified without the approval of a change or transfer of the right or portion of the right for such a purpose."

- At least partially put to beneficial use once every five years in a manner meeting the definition of "municipal water supply purposes" under RCW 90.03.015(4) or RCW 90.03.550; or
- Identified in a Department of Health approved water system plan, a small water system management program, or other approved planning or engineering document (as specified under RCW 90.03.386)[6] for meeting current water demands, future growth, standby/reserve, backup or emergency, or other reasonable future water supply needs; or
- Authorized for one or more of the beneficial uses in RCW 90.03.015(4) and has been integrated through Ecology action(s) or statutory procedure(s).[7]

If a water right has not met any of the above requirements or does not otherwise qualify for a relinquishment exception under RCW 90.14.140, then it would be valid only to the extent it had been beneficially used.

A water right certificate for municipal water supply purposes that has previously been relinquished does not qualify as being in good standing. Listing a water right certificate in a water system plan after a five-year period of nonuse does not protect against previous relinquishment, unless one or more relinquishment exceptions or exemptions under RCW 90.14.140 apply.[8]

Municipal water rights are not exempt from common law abandonment.[9]

Section 5: Changing Municipal Water Rights

RCW 90.03.380 and RCW 90.44.100 authorize changes to surface and groundwater rights, respectively, when the criteria of those statutes are met. RCW 90.03.380 allows for changes to surface water right certificates that have been put to beneficial use ("perfected"). The portions of surface water right certificates for municipal water supply purposes that have not been put to full beneficial use ("inchoate") may be changed if they meet the additional requirements of

[6] These include a water system plan (WAC 246-290-100), project report (WAC 246-290-110), construction document (WAC 246-290-120), source approval (WAC 246-290-130), existing system as-built approval (WAC 246-290-140), coordinated water system plan (WAC 246-293) as approved by the Department of Health, or a small water system management program (WAC 246-290-105) as required by the Department of Health.

[7] Such actions may include issuance of a new permit, change authorization, replacement or new additional well, showing of compliance under RCW 90.44.100(3), consolidation amendment of rights for permit-exempt wells under RCW 90.44.105 such that two or more water rights or water sources have alternate, well field, non-additive/supplemental, or other relationships.

[8] "The law determines relinquishment at the time of the expiration of the five years of nonuse. Events occurring after the five-year statutory period of a water right's nonuse matter none because relinquishment already occurred." *Crown W. Realty, LLC v. Pollution Control Hearings Bd.*, 7 Wn. App. 2d 710, 734, 435 P.3d 288 (2019) (citing RCW 90.14.180, .130; *Cornelius v. Department of Ecology*, 182 Wash.2d 574, 617, 344 P.3d 199 (2015)).

[9] See Okanogan Wilderness League, Inc. v. Town of Twisp, 133 Wn.2d 769, 947 P.2d 732 (1997): https://appswr.ecology.wa.gov/docs/WaterRights/wrwebpdf/twisp.pdf.

RCW 90.03.570. Perfected and inchoate groundwater rights may be changed under RCW 90.44.100 and RCW 90.03.380.

When evaluating a water right change application Ecology is required to determine whether, and to what extent, a water right is valid and eligible for change (see Section 5.1 Tentative Determination of Extent and Validity). Ecology must also assess if the change would impair existing water rights. Groundwater right changes must also comply with the additional requirements of RCW 90.44.100(2) and (3), including that the change must not be detrimental to the public welfare.

5.1 Tentative Determination of Extent and Validity

Ecology performs a tentative determination of the extent and validity of a water right certificate for municipal water supply purposes when evaluating an application for change. In doing so, Ecology determines the quantities historically used and whether any inchoate quantities specified in the certificate remain in good standing and valid for change by considering at least the following:

- Whether the water right holder has exercised reasonable diligence to complete the original project as described in the water right documents.
- The original intent described in the documents in the record for the original water right authorization (including the nature of the project described in the application), along with subsequent modifications to the service area in a Department of Health approved planning or engineering document (RCW 90.03.386(2)).[10] Specifically, this refers to the quantity of water necessary to supply this geographic area at full buildout to determine the amount of water eligible for change. This could include inchoate water but would not exceed the quantities listed on the certificate.

Inchoate portions of groundwater rights or inchoate portions of surface water certificates (if RCW 90.03.570 is met) for municipal water supply purposes found to be in good standing through this assessment are eligible for change.

When adding or replacing a point of withdrawal on a groundwater permit or certificate, a change application may not be required if the new/replacement well meets the criteria outlined in RCW 90.44.100(3) (a) – (g) and RCW 90.44.100(4).[11]

[10] RCW 90.03.386(2) states that the water supplier must be in compliance with the terms of the water system plan or small water system management program, including those regarding water conservation and being not inconsistent with any applicable comprehensive plans, land use plans, or development regulations or any watershed plan approved under chapter 90.82 RCW or RCW 90.54.040(1) after September 9, 2003.

[11] See Ecology Form ECY 040-74 (Rev 02/2023) - Showing of Compliance with RCW 90.44.100(3) for requirements: https://apps.ecology.wa.gov/publications/SummaryPages/ecy04074.html.

Municipal claims may also be changed but require additional analysis that includes determining if they were established rights prior to enactment of the surface water code (RCW 90.03 in 1917) or groundwater code (RCW 90.44 in 1945).

Section 6: Service Area Expansions and Water Rights' Place of Use

A municipal water supplier's service area is defined in a Department of Health approved water system plan or small water system management program. The approved service area can include the area where it makes direct service connections available, the service area of other water systems to which wholesale water is provided, and areas planned for future water service.

The place of use specified on a water right for municipal water supply purposes is the area where water can be used under that water right.

6.1 Service Area as the Water Right Place of Use

Under RCW 90.03.386(2), when a municipal water supplier's service area is updated through an approved planning or engineering document (including an approved water system plan or required small water system management program), the place of use specified for a water right for municipal supply purposes is automatically superseded by the new service area, provided that:

- The planning or engineering document describing the service area has been approved or required by the Department of Health;
- The municipal water supplier is in compliance with the terms of its water system plan or small water system management program, including water conservation requirements; and
- The addition of areas to the water right place of use is "not inconsistent" with any comprehensive plans or development regulations adopted under chapter 36.70A RCW, any other applicable conservation plan, land use plan, or development regulation adopted by a city, town, or county, or any watershed plan approved under chapter 90.82 RCW or adopted under chapter 90.54 RCW.

6.2 Updating or Changing the Place of Use

The place of use of a water right for municipal water supply purposes may be modified through the following processes:

- Obtaining a modified service area in a required small water system management program or in a water system plan approved by the Department of Health; or
- Obtaining an approval by Ecology for a change in the place of use of the water right under RCW 90.03.380 or RCW 90.44.100.

Section 7: Water System Consolidation of Connected Municipal Water Suppliers

7.1 Consolidation with a Change Application

This section describes the procedure when a water system consolidation occurs between two or more municipal water suppliers and a water right change application is filed with Ecology under RCW 90.03.380 or RCW 90.44.100 (e.g., to change the point of diversion or point of withdrawal).

In this situation Ecology conducts a tentative determination of extent and validity of the water right to determine the quantities that remain in good standing and that are valid for change (see Section 5, Changing Municipal Water Rights), including:

- The quantity of water that has been perfected through actual beneficial use, and any quantity that remains inchoate.
- Whether there has been reasonable diligence to grow into any inchoate quantities associated with the municipal water right certificate.
- The original intent of the water right permit or certificate proposed to be changed, as well as subsequent changes to the place of use through modification of the service area in a Department of Health approved planning or engineering document.

RCW 90.03.383, the statutory provision relating to interties, is not applicable when municipal water suppliers interconnect and consolidate into one entity, rather than retain their individual water supplier status.

7.2 Other Scenarios

When a consolidation does not involve submitting a water right change application, Ecology does not evaluate the extent and validity of the water right(s). However, when the service area is updated through the water system planning process Ecology will execute its role and responsibilities through the joint review process for planning and engineering documents with Department of Health (see Section 10, Coordination with Department of Health).

A municipal water supplier under RCW 90.03.015(3) may acquire a community or multiple domestic supply water right that has fewer than 15 residential service connections through a water system consolidation with another water system. In that case, the number of connections specified on the water right is not limiting (only the Qi and Qa of the water right is limiting), so long as the municipal water supplier receives an approved water system plan or other approval from Department of Health to serve a sufficient number of connections to meet the requirements of RCW 90.03.015(4)(a) (see Section 3.2, Population and Connection Limits).

Permit-exempt groundwater uses may undergo consolidation amendments with a valid groundwater permit or certificate under RCW 90.44.105. This situation is not considered a water system consolidation, but must follow the requirements in RCW 90.44.105, such as how to calculate the amount to be added and not impairing existing water rights, including minimum streamflows (instream flows) adopted by rule.

Section 8: Transfer/Sale of Inchoate Municipal Water Rights to Another Entity

Transfers of water rights for municipal water supply purposes to another entity must meet the requirements under RCW 90.03.380 for surface water rights and RCW 90.44.100 for groundwater rights (see Section 5, Changing Municipal Water Rights). For these transfers, Ecology evaluates the right to determine if the inchoate quantities are in good standing and eligible for change/transfer.

8.1 Surface Water Certificates

Generally, only the perfected quantities "which have been applied to beneficial use" per RCW 90.03.380(1) are valid for transfer to another entity. Inchoate quantities may be transferred if they can meet the additional requirements of RCW 90.03.570. When holders of surface water rights for municipal water supply purposes apply for transfer to another entity, Ecology conducts a tentative determination of extent and validity.

8.2 Groundwater Certificates

RCW 90.44.100 could allow the perfected and inchoate portions of groundwater permits or certificates for municipal water supply purposes to be transferred to another entity. This policy focuses on certificates, while changing or transferring groundwater permits is covered in Ecology POL-1260.[12]

When holders of groundwater certificates for municipal water supply purposes apply for a transfer to another entity, Ecology conducts a tentative determination of extent and validity. Ecology determines whether any inchoate quantities remain in good standing and valid for transfer based on the original intent described in the water right authorization as well as subsequent changes to the place of use through modification of the service area in a Department of Health approved planning or engineering document. Ecology also evaluates whether reasonable diligence to develop the water right has occurred and if the transfer would be detrimental to the public welfare.

Section 9: Using Municipal Water Rights for Mitigation

Water rights for municipal water supply purposes may be used to provide mitigation to enable the approval of a new water right, or the change of an existing water right through the following pathways:

9.1 Using the Water Right in a Manner Consistent with RCW 90.03.550

Beneficial uses of water under a municipal water supply purposes right listed in RCW 90.03.550 may include water withdrawn or diverted under such a right and used for:

- Uses that benefit fish and wildlife, water quality, or other instream resources or related habitat values.

[12] https://appswr.ecology.wa.gov/docs/WaterRights/wrwebpdf/pol1260.pdf.

- Uses that are needed to implement environmental obligations called for by:
    - A watershed plan under chapter 90.54 RCW or chapter 90.82 RCW.
    - A federal habitat conservation plan.
    - A hydropower license of the federal energy regulatory commission.
    - A comprehensive irrigation district management plan.

Water under an existing right for municipal water supply purposes that is physically withdrawn or diverted for mitigation in a manner consistent with the beneficial uses listed under RCW 90.03.550 does not require a change application.

Determining uses that fall under RCW 90.03.550 is based on the specific facts for each situation and identified through the Report of Examination associated with the mitigated water right (not the municipal water right being used as mitigation).

9.2 Using the Trust Water Rights Program (TWRP)

A municipal water right holder may request to convey a right or portion of a right to the TWRP to be exercised as instream flows for mitigation of new out-of-stream uses. This method can be used for mitigation for either their own uses or other entities' uses. More information regarding the criteria and procedures for accepting rights into the TWRP are described in the policy statement: Administration of the Trust Water Rights Program (POL-1010).[13]

Using the TWRP for mitigation of new out-of-stream uses also requires consideration of the public interest. During extended periods of nonuse of the perfected portions of a water right certificate for municipal water supply purposes (which are protected from relinquishment), environmental, social, economic, and other conditions may have changed. Therefore, not all water rights for municipal water supply purposes proposed for transfer into the TWRP will meet the public interest standard depending on these changed conditions (see POL-1010 for more details).

9.3 Changing the Purpose of Use

Water rights for municipal water supply purposes may also be used for mitigation by submitting a change application to add instream flows for mitigation as a purpose of use (while not using the TWRP). This process requires Ecology to make a tentative determination of extent and validity of the water right and would require calculating Annual Consumptive Quantity (ACQ) under RCW 90.03.380(1) to ensure that approval of the change would not cause any increase in consumptive water use. This would only allow the consumptive portions of the water right certificate that had been beneficially used to be valid for change and able to be used for mitigation.

[13] https://apps.ecology.wa.gov/publications/SummaryPages/2411101.html

Section 10: Coordination with Department of Health

Ecology coordinates review of planning and engineering documents with Department of Health under RCW 90.03.386 to ensure compliance and consistency based on:

- The Memorandum of Understanding (MOU)[14] that outlines each agency's roles and responsibilities.
- The Joint Review Procedures that detail the agencies' processes and procedures for coordinating review of these documents.[15]

10.1 Water Conservation

The Department of Health requires water use efficiency and conservation standards be met by municipal water suppliers. Ecology will consider compliance with conservation standards when reviewing development schedules for water right permits for municipal water supply purposes. Ecology intends to act in a manner that is generally consistent with the Department of Health's requirements. However, more stringent requirements may be necessary on a case-by-case basis based on Ecology's statutory mandates. These may include, but are not limited to:

- Evaluations of applications for water right permits under RCW 90.03.290.
- Waste of water determinations under RCW 90.03.005.
- Drought permitting under chapter 43.83B RCW.
- General adjudications of water rights.
- Legal settlements.

We no longr include signatures on policies posted on the web. If you wish to view the signed document, please call (360) 407-6872 to schedule an appointment.

_____/s/ Ria Berns_____
Ria Berns
Program Manager
Water Resources Program

Note: These policies and procedures are used to guide and ensure consistency among water resources program staff in the administration of laws and regulations. These policies and procedures are not formal administrative regulations that have been adopted through a rule-making process. In some cases, the policies may not reflect subsequent changes in statutory law or judicial findings, but they are indicative of the department's practices and interpretations of laws and regulations at the time they are adopted. If you have any questions regarding a policy or procedure, please contact the department.

[14] https://apps.ecology.wa.gov/publications/SummaryPages/2411026.html
[15] https://apps.ecology.wa.gov/publications/documents/2411026.pdf