



PUBLIC REVIEW DRAFT: POL-2030 Update

DEPARTMENT OF ECOLOGY WATER RESOURCES PROGRAM INTERPRETIVE AND POLICY STATEMENT

MUNICIPAL WATER LAW INTERPRETATIVE AND POLICY STATEMENT

- Effective Date: 02/05/2007
Revised Date: TBD
Contact: Program Development and Operational 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 90.03.395, RCW 90.03.397, 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.

Section 1: Definitions and Background

Definitions

Pumps and pipes certificates – Water right certificates issued based on system capacity (e.g., the size of the pumps and pipes), rather than on actual beneficial use of water. These water right certificates may include inchoate quantities of water that have not yet been exercised.

Inchoate right – A water right or a portion of a water right that has not yet been perfected through actual beneficial use of water, in part or in whole.

Commented [AD1]: Do you want to define the water right, or the portion of a water right that is unused? Throughout the policy there seem to be contradiction that needs to be clarified.

Original intent – The nature of the project as described in the original water right application, which are captured in the original water right documents. This generally means the quantities of water necessary to supply the place of use of the water right at full buildout of the geographic area identified in the original water right authorization.

Reasonable diligence – Whether the water right holder has exercised sufficient effort to complete the project identified in the water right permit, including growing into any inchoate quantities associated with a pumps and pipes municipal water right certificate. See RCW 90.03.320 and Ecology’s POL-1050 for additional guidance on reasonable diligence.

Mitigation – Measures that prevent impairment to existing water rights from a proposed water use.

Trust water right – Any water right acquired by the state under chapter 90.42 RCW for management in the state’s trust water rights program. A trust water right acquired by the state and held or authorized for beneficial use by the department is considered to be exercised as long as it is in the TWRP (90.42.040(4)(c)).

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.

Background

The 2003 Municipal Water Law enacted provisions of law that clarify municipal water rights. This Interpretive and Policy Statement (policy) describes Ecology’s approach in interpreting and implementing the 2003 Municipal Water Law. This policy supersedes earlier statements relating to the Municipal Water Law.

Wherever possible, Ecology’s goal is to be consistent in review of, and decisions on, municipal water supply issues. This interpretive and policy statement interprets the 2003 Municipal Water Law but is not a formal rule adopted through a rulemaking process. Thus, pursuant to RCW 34.05.230(1) this interpretive and policy statement is advisory only. While the following statements address many situations, exceptions based on case-by-case review may arise that do not conform to these statements.

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. These water rights may include inchoate quantities that have not yet been exercised.

Commented [AD2]: This statement suggests that this policy does not apply to permits and water right claims? This needs to be clarified.

Commented [AD3]: See comment in definition section.

Section 2: Municipal Water Suppliers and Municipal Water Supply Purposes

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).

Many, but not all, Group A public water systems as defined by the Washington State Department of Health in WAC 246-290-020 are considered to be municipal water suppliers. There are no Group B public water systems that are municipal water suppliers.

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.

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 when making this determination.

RCW 90.03.015(4) defines beneficial uses of a water right that are for municipal water supply purposes in multiple ways:

- Based on the number of residential connections served.
- Based on the nonresidential population served with water for residential uses.
- For governmental and governmental proprietary purposes.
- Indirectly through the delivery of water to a public water system for any municipal water supply purpose (e.g., wholesaling water to another entity).
- If water use under a water right ~~is for~~ meets the municipal water supply purposes definition, then any other beneficial use of water under that right that is generally associated with use of water within a municipality is also for municipal water supply purposes.
- If a governmental entity holds a water right for municipal water supply purposes, the use or delivery of water for any other beneficial use generally associated with the use of water within a municipality is also for municipal water supply purposes.

Based on residential connections served: RCW 90.03.015(4)(a) states that the beneficial use of water to serve 15 or more residential service connections is deemed to be for municipal water supply purposes. For example, 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 on a case-by-case basis.

Commented [AD4]: This paragraph is confusing municipal water suppliers with water rights for municipal water supply purposes. In RCW 90.03.015, a municipal water supplier is defined as an entity that supplies water for municipal water supply purposes. Recommend moving to next section in discussion of municipal water supply purposes.

Commented [AD5]: Is this suggesting that DOH must make this determination?

Based on nonresidential population served: RCW 90.03.015(4)(a) also states that the beneficial use of water to serve water for residential use to a nonresidential population that is, on average, at least 25 people for at least 60 days a year is deemed to be for municipal water supply purposes. Ecology interprets this to mean a water right supplying the full range of residential water uses (e.g., drinking, cooking, cleaning, and sanitation). Further, such service supplies water for temporary domiciles occupied by the same 25 people for at least 60 days a year. This could include, for example, systems serving vacation homes and temporary farm worker housing. This typically excludes, for example, systems serving daycares, churches, campgrounds, hotels, fairgrounds, restaurants, commercial businesses, and factories. Determination of whether such systems hold water rights for municipal water supply purposes by supplying water for a nonresidential population occurs on a case-by-case basis.

Commented [AD6]: Is this determination made by Ecology or DOH?

For governmental and governmental proprietary purposes: RCW 90.03.015(4)(b) states that the beneficial use of water supplied for governmental or governmental proprietary purposes by certain types of government entities is considered to be for municipal water supply purposes. Governmental and governmental proprietary purposes include, but are not limited to providing water for commercial, industrial, irrigation of parks and open spaces, institutional, landscaping, fire flow, water system maintenance and repair, and related uses. 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 districts, 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) but may hold water rights that qualify as being for municipal water supply purposes under another subsection of RCW 90.03.015.

When considering whether a water right qualifies for a governmental purpose, Ecology considers how the water right has historically been used, the entity that was originally issued the water right, as well as the current holder of the right. For example, if a water right was issued for a governmental purpose (e.g., irrigation of parks) to a governmental entity that can qualify to hold a right under RCW 90.03.015(4)(b) then the right may qualify as being for municipal water supply purposes. However, if the same right was issued to a non-governmental entity (e.g., a private developer) and later acquired by a governmental entity then the right might not qualify as being for municipal water supply purposes.

Commented [AD7]: Does it or does it not? Using the term “may” adds no clarification to water right holders or Ecology staff and will ultimately lead to Ecology staff making different decisions based on the same set of facts.

Commented [AD8]: But it can? When and why?

Other municipal beneficial uses associated with a water right for municipal water supply purposes: If one purpose of use of a water right is for municipal water supply purposes, then other purposes of use generally associated with a municipality that are listed on the same water right are also considered to be for municipal water supply purposes. Beneficial purposes of use generally associated with a municipality include, but are not limited to residential, governmental or governmental proprietary, commercial, industrial, irrigation of parks and open spaces, institutional, landscaping, fire flow, water system maintenance and repair, and the uses described in RCW 90.03.550. Agricultural irrigation is generally not considered a municipal

Commented [AD9]: Why is this underlined?

Commented [AD10]: Provide an explanation of when it is considered a municipal water supply purpose. Such as Skagit PUD. Providing more specificity to Ecology staff and water right holders will benefit everyone.

water supply purpose (see below [in Conforming Water Rights section](#) regarding governmental entities and agricultural irrigation).

Other municipal beneficial uses associated with a water right held by a governmental entity for municipal water supply purposes: If a governmental entity specified under RCW 90.03.015(4)(b) holds a water right for municipal water supply purposes, the use or delivery of water for any other beneficial use generally associated with the use of water within its service area can be considered to be for municipal water supply purposes under the water right.

Domestic use water rights issued to or acquired by a governmental entity that do not qualify as being for municipal water supply purposes under the more specific requirements of RCW 90.03.015(4)(a) (because they do not meet the residential service connection or nonresidential population served requirements) cannot 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). See Section 3 for discussion on consolidating permit-exempt groundwater uses with an existing groundwater permit or certificate for municipal water supply purposes under RCW 90.44.105.

Section 3: Issuing, Conforming, and Population/Connection Limits of Municipal Water Rights

Issuing Certificates

Under RCW 90.03.330(4), any water right certificate issued after September 9, 2003 shall document the perfected instantaneous rate (Qi) and annual quantity (Qa) of water that is authorized for use based on demonstration of the actual beneficial use of water.

- Ecology will issue certificates, upon completion of a proof of appropriation examination, based only on the actual beneficial use of water, rather than system capacity. Such certificates will not include inchoate water.
- Ecology may consider a permit holder's request to split a partially developed permit by issuing a certificate for the portion of water put to beneficial use and issuing a superseding permit for the remaining portion of inchoate water with a development schedule. The permit holder must demonstrate reasonable diligence in working toward full development of the remaining inchoate portion of the permit.
- In a report of examination authorizing change of a water right for municipal water supply purposes, Ecology may include a development schedule. The development schedule may include an estimated date of final development to begin construction, complete construction, and put the water to full beneficial use. Extensions may be granted as described in POL-1050. Upon completion of development to the changed use, Ecology will issue a superseding water right certificate.

Commented [AD11]: The term “may” should be avoided, or else the reason to include or not include the development schedule should be documented to avoid unequal application across the state.

Commented [AD12]: Unless the water right was originally documented under a claim, then it would be a certificate of change.

Conforming Water Rights

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 amending the water right document and records to ensure that water rights are correctly identified as being for municipal water supply purposes.

For a qualifying right, conformance can occur during the process of applying to change some other attribute of the water right under RCW 90.03.380 or 90.44.100. This can also occur when a municipal water supplier requests a correction of the listed purpose of use by submitting the Request for a Conforming Document (Form ECY 070-151).

Purposes of use that can be conformed to a municipal water supply purpose generally include those identified in RCW 90.03.015 and RCW 90.03.550. However, only consumptive uses are included in the types of water uses authorized under rights for municipal purposes.¹

Additionally, rights held by a municipal water supplier for non-municipal purposes cannot be conformed to a municipal water supply purpose of use under RCW 90.03.560. These rights must undergo a purpose of use change under RCW 90.03.380 or RCW 90.44.100 to become municipal purpose rights.

- If a right for a governmental purpose (e.g., irrigation of parks) was issued to a non-governmental entity (e.g., a private developer) and later acquired by a governmental entity then the right does not qualify as being for municipal water supply purposes. In this situation, its purpose of use can be changed to municipal water supply purposes through the change application process under RCW 90.03.380, which includes a tentative determination of the extent and validity of the water right.
- 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 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 that time.

Commented [AD13]: Unclear what is meant here. Most water rights have consumptive and non-consumptive uses associated with them. I know Ecology has issued municipal water rights for non-consumptive uses, such as a groundwater right for shaft seal cooling for a hydropower project operated by a PUD.

Commented [AD14]: There are numerous water associations in Whatcom County that serve dairy farms as customers of their water system. The associations are not governmental entities, but they serve enough homes to have the water rights qualify as being for municipal water supply purposes. Make sure this language does not split their water rights into municipal and non-municipal portions.

¹ See Ecology POL-1020 for more information on consumptive and non-consumptive uses: <https://apps.wa.gov/ecology/docs/WaterRights/wrwebpdf/pol1020.pdf>.

- Permit-exempt groundwater rights may be consolidated with a valid groundwater permit or certificate through an amendment under RCW 90.44.105, provided that the statutory requirements are met. RCW 90.44.105 identifies the following requirements, among others: discontinued use and decommissioning of the permit-exempt well, development of agreements to not serve that same area with a new permit-exempt well, and the use would not impair existing water rights (including minimum streamflows (instream flows) adopted by rule).

Commented [AD15]: Why is this included? Does not seem relevant to the policy. Recommend deletion.

Population and Connection Limits

Under RCW 90.03.260(4) and (5), a maximum population or number of connections specified on an application or any subsequent water right documents (except for water right claims) no longer limit a water right for municipal water supply purposes if the municipal water supplier has either an approved water system plan by the Washington State Department of Health (Health) or a small water system management program submitted to Health that authorize service to a specified number of connections.

Commented [AD16]: So, if a population or connection number is identified in a water right claim, does Ecology consider that to be binding regardless of what DOH authorizes. Does this policy deal with claims or not?

- A water right for community or multiple domestic supply may be conformed as a municipal water right if issued and beneficially used for a purpose that meets the residential connection or non-residential service requirements of RCW 90.03.015(4)(a) as described in Section 2. In these cases, if the number of connections has been approved by Health then the population or connection limits described in water rights documents are not limiting. Instead, only the maximum Qa and Qi are limiting attributes of such a water right.

Commented [AD17]: DOH often utilizes the term "Unspecified" for the approved number of connections on larger water systems. This paragraph could cause the water rights to be limited to numbers in the water right file under this scenario.

- A water right issued and beneficially used for a purpose that can eventually meet the residential connections or non-residential service requirements of RCW 90.03.015(4)(a), may be conformed as a right for municipal water supply purposes under RCW 90.03.560 only after the right is used to actually serve the minimum requirements described in RCW 90.03.015(4)(a).

Commented [AD18]: DOH often utilizes the term "Unspecified" for the total approved number of connections on larger water systems. For example see Seattle Public Utilities PWS ID 77050.

- A water right issued and beneficially used for the purpose of serving fewer residential connections or non-residential services than is described in RCW 90.03.015(4)(a) may not be conformed as a municipal water right. The population or number of connections specified on the application or any subsequent water rights documents is limiting. To become water rights for municipal water supply purposes these water rights require a purpose of use change under RCW 90.03.380.

Commented [AD19]: Duplicative to statement in bullet above. Recommend deleting this bullet.

- If a municipal water supplier under RCW 90.03.015(3) acquires a community or multiple domestic supply water right that has fewer than 15 residential service connections and is physically consolidating with and taking ownership of the other water system, then the number of connections specified on the water right is not limiting, so long as the municipal water supplier receives a water system plan or other approval from Health to serve a sufficient number of connections as defined under RCW 90.03.015(4)(a). This provision does

Commented [AD20]: Can the purpose of use be changed to municipal through a water right change application process even if the actual use will not meet the definition in RCW 90.03.015(4) post-change?

not include permit-exempt groundwater rights consolidated into an existing groundwater permit or certificate for municipal water supply purposes under RCW 90.44.105, which is discussed in the “Conforming Water Rights” subsection above.

Section 4: Relinquishment Protection for Municipal Water Right Certificates

Water rights that qualify as being for municipal water supply purposes and that are valid and in good standing are protected from being revoked, diminished, or adjusted under RCW 90.03.330(2). Ecology may not revoke, diminish, or adjust a water right for municipal water supply purposes documented by a certificate except:

- When issuing certificates following changes under RCW 90.03.380.
- When issuing 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.
- When Ecology determines a certificate was issued with ministerial errors or obtained through misrepresentation only to the extent necessary to correct the ministerial errors or misrepresentation.

Commented [AD21]: So, a municipal water right must be reperfected after a change or else the water right can get reduced?

A municipal water right certificate for municipal water supply purposes is considered to be in good standing as a municipal water right and is protected from relinquishment through the following ways:

Commented [AD22]: What about a claim? Changed to just water right to keep more general.

Commented [AD23]: Does this apply to inchoate portions as well?

- a. The water right is put to beneficial use once every five years in a manner consistent with the definition of “municipal water supply purposes” under RCW 90.03.015(4) or RCW 90.03.550.
- b. The water right is properly identified in a Health-approved water system plan, a required small water system management program, or other approved planning or engineering documents², as specified under RCW 90.03.386, for meeting current water demands, future growth, standby/reserve, backup or emergency, or other reasonable future water supply needs.
- c. The water right is authorized for one or more of the beneficial uses included in the definition of municipal water supply purposes in RCW 90.03.015(4) and has been integrated or consolidated through Ecology action(s) or statutory procedure(s).³

Commented [AD24]: Does all or just a portion of the water right need to be put to beneficial use?

Commented [AD25]: Do all or just one of these ways need to be met to qualify?

² 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), or 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.

³ 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 of rights for permit-exempt wells under RCW

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 the water right would be valid only to the extent it had been beneficially used.

A water right that has previously been relinquished does not qualify as a municipal supply purpose water right in good standing. Listing a water right 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.

Commented [AD26]: Officially through issuance of a relinquishment order under RCW 90.14.130, or automatically based on the definition under RCW 90.14.160?

Section 5: Changing Municipal Water Right Certificates

RCW 90.03.380 and 90.44.100 authorize change of surface and groundwater rights when the criteria of those statutes are met. For instance, a water right change application must be filed with and approved by Ecology in order to change the point of diversion or withdrawal specified under a water right, or to add a point of diversion or withdrawal. RCW 90.03.380 allows the change of perfected surface water right certificates, but inchoate surface water right certificates may be changed if they meet the additional requirements of RCW 90.03.570, or RCW 90.03.395 or RCW 90.03.397. Perfected and inchoate groundwater rights may be changed under RCW 90.44.100.

Commented [AD27]: Is this the entire water right, or just the inchoate portion that is being described? Need clarification in definition section and consistency throughout document.

Ecology performs a tentative determination of the extent and validity of the water right when evaluating an application for change for a municipal water right certificate. 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 parameters:

Commented [AD28]: RCW 90.03.395 and RCW 90.03.397 also provide ways that permits or unperfected surface water rights can be changed in whole.

- The original intent described in documents in the record for the original water right authorization, including the nature of the project described in the application.
- Whether the water right holder has exercised reasonable diligence to complete the original project as described in the water right documents (see RCW 90.03.320 and Ecology's POL-1050⁴ for additional guidance on reasonable diligence).
- For groundwater rights, whether or not approval of the change would be contrary to the public welfare.

Inchoate portions of water rights for municipal water supply purposes found to be in good standing through this assessment are eligible for change in addition to historically perfected quantities.

90.44.105) such that two or more water rights or water sources have alternate, well field, non-additive/supplemental, or other relationships.

⁴ <https://apps.wr.ecology.wa.gov/docs/WaterRights/wrwebpdf/pol1050r.pdf>

~~When adding or replacing a point of withdrawal on a water right 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).⁵~~

Commented [AD29]: Not applicable to this policy. Recommend deleting paragraph.

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

A municipal water supplier's service area, as defined in a small water system management program or Health-approved water system plan, 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 municipal water right certificate is the area where water can be used under that water right. Updating the place of use of a municipal water right can occur through the following processes:

Commented [AD30]: What about claims and permits?

- Updating the municipal water supplier's service area through the water system planning process; or
- Applying for a change in the place of use of the water right under RCW 90.03.380 or 90.44.100.

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 water supply purposes is automatically superseded by the new water system service area, provided that:

- The planning or engineering document describing the service area has been approved or required by 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 90.83 RCW or adopted under chapter 90.54 RCW.

Alternatively, a municipal water system can apply for a change in the place of use of its water right under RCW 90.03.380 or 90.44.100. See Section 5 (Changing Municipal Water Rights) for details involved with the change application process for municipal water rights.

⁵ 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/documents/ecy04074.pdf>.

Section 7: Consolidation of Connected Municipal Water Suppliers

A consolidation occurs when two municipal water suppliers merge to become one entity and combine their management, planning, finances, and operations into one consolidated entity. Specifically, this section refers to the water rights associated with a consolidation of two municipal water suppliers that are also connected through their infrastructure. Consolidations often occur to improve the cost effectiveness, safety, and reliability of drinking water supply. RCW 90.03.383, the statutory provision relating to interties, is not applicable when water suppliers interconnect and consolidate into one entity, rather than retain their individual water supplier status.

Some consolidations do not involve submitting a water right change application. For example, a municipal water supplier may consolidate another water system and update its service area through the water system planning process when there is no change to the point of withdrawal or diversion. Where no water right change application is involved, Ecology does not evaluate the extent and validity of the water right(s) but may make comments under its responsibilities through the water system planning process.

Filing a water right change application under RCW 90.03.380 or 90.44.100 is required if a changed or additional point of diversion and/or withdrawal is needed.

In this situation, Ecology conducts a tentative determination of the 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). For water right changes associated with consolidations, Ecology evaluates:

- The original intent of the water right certificate proposed to be changed.
- 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.

For consolidations described under this section, original intent is determined on a case-by-case basis, but generally means the quantity of water necessary to supply the place of use of the water right at full buildout of the geographic area identified in the original water right authorization record. Depending on reasonable diligence and the characteristics of the water right certificate, this could include perfected quantities, as well as inchoate quantities that remain in good standing and that are valid for change.

Commented [AD31]: What about permits and claims?

Commented [AD32]: Will the water right always be “stuck” to the original intent and not be allowed to be incorporated into the municipal water suppliers portfolio and allowed to provide water to the service area consistent with water system planning?

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

Transfers of water rights for municipal water supply purposes with inchoate quantities 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). When a municipal water supplier submits a change application to transfer a water right certificate for municipal water supply purposes with inchoate quantities, Ecology evaluates the right to determine if the inchoate quantities are in good standing and eligible for change/transfer.

Commented [AD33]: What about permits and claims?

For surface water certificates: Only the perfected quantities “which have been applied to beneficial use” per RCW 90.03.380(1) are valid for transfer to another entity. 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 and an impairment analysis. Inchoate quantities may be transferred if they can meet the additional requirements of RCW 90.03.570, [RCW 90.03.395](#), or [RCW 90.03.397](#).

For groundwater certificates: RCW 90.44.100 allows both 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-1260.⁶

Commented [AD34]: Does this policy only apply to certificates? This needs to be clarified at the start of the policy.

When holders of groundwater certificates for municipal water supply purposes apply for transfer to another entity Ecology conducts a tentative determination of extent and validity and an impairment analysis. 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, whether reasonable diligence to develop the water right has occurred, and if the transfer would be detrimental to the public welfare.

In the case of transfers of municipal water rights to another entity, original intent refers to the quantity of water necessary to supply the place of use of the water right at full buildout of the geographic area identified in the record of the original water right certificate. Original intent is determined on a case-by-case basis for each application.

Section 9: Using Municipal Water Rights for Mitigation

Municipal water rights may be used to provide mitigation to enable the approval of a new water right, or the change of an existing water right in the following ways:

- Using the municipal water right in a manner consistent with RCW 90.03.550.

⁶ <https://apps.wa.gov/ecology/docs/WaterRights/wrwebpdf/pol1260.pdf>.

- Applying for a change to the water right to add mitigation as a purpose of use under RCW 90.03.380.
- Using the Trust Water Rights Program (TWRP).

RCW 90.03.550: Beneficial uses of water under a municipal water supply purposes water right 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.
- 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.

A water right for municipal water supply purposes physically withdrawn or diverted for mitigation in a manner that is also consistent with the beneficial uses listed under RCW 90.03.550 does not require a change application to be submitted to Ecology. It may be possible to use perfected or inchoate portions of municipal water rights for mitigation under this RCW 90.03.550 pathway.

Determining uses that fall under RCW 90.03.550 is done on a case-by-case basis and identified through the water rights Report of Examination (ROE) associated with the mitigated water right (not the municipal water right being used as mitigation) and tracked through metering and other methods.

Adding Mitigation as a Purpose of Use: Another pathway for municipal water rights to be used for mitigation is to submit a change application to add instream flows for mitigation of new out-of-stream use as a purpose of use. This process requires Ecology to make a tentative determination of the extent and validity of the water right and would trigger 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 municipal water right certificate that have been historically beneficially used to be valid for change and able to be used for mitigation. See Section 5, Changing Municipal Water Rights, for other considerations that are part of evaluating change applications for municipal water rights.

Using the Trust Water Rights Program (TWRP): A third pathway for a municipal water right to be used for mitigation is to use the TWRP. A municipal water right holder may request to convey a right or portion of a right to the TWRP (“held in trust”) to be exercised as instream

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flows for mitigation of new out-of-stream uses for their own uses or other third party uses. Criteria and considerations for use of the TWRP are described in POL-1010⁷ and include evaluating if any existing water rights would be impaired. Inchoate water cannot be used for mitigation through the TWRP.

Using the TWRP to transfer water right certificates for municipal water supply purposes for instream flows for mitigation of new out-of-stream uses also requires consideration of the public interest. Municipal water rights are one type of water right that may be protected from relinquishment even after an extended period of nonuse where environmental, social, economic, and other conditions may have changed. Therefore, there may be municipal water rights with quantities that are valid for change that might not meet this public interest standard due to the factors considered as part of the public interest evaluation in POL-1010.

Commented [AD35]: While this may be true, it is too broad and undefined and does not provide Ecology staff or water right holders with any assurance and is subject to different application across the state.

Section 10: Coordination with Department of Health

Ecology will coordinate its review of water system plans and small water system management programs with Health to ensure compliance and consistency based on:

- The Memorandum of Understanding (MOU)⁸ that outlines each agency's roles and responsibilities.
- The Joint Review Procedures that detail the agencies' processes and procedures for reviewing water system plans and other engineering documents.⁹

Water Conservation

Health requires standards be met by municipal water suppliers relating to water use efficiency and conservation. Ecology will consider compliance with conservation standards when reviewing development schedules for water right permits for municipal water supply purposes. Ecology is generally consistent with Health's requirements, but more stringent requirements may be necessary on a case-by-case basis- by 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.

⁷ <https://apps.wa.gov/ecology/docs/WaterRights/wrwebpdf/pol1010.pdf>.

⁸ <https://apps.wa.gov/ecology/docs/WaterRights/wrwebpdf/SignedDOHMOU5107.pdf>.

⁹ https://doh.wa.gov/sites/default/files/legacy/Documents/4200//mou_proc.pdf.