

# ANALYSIS OF HB 2054

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House Agriculture & Ecology Committee  
1997

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## **BACKGROUND:**

**Water Resource Management - General.** With the adoption of the surface water code in 1917 and the groundwater code in 1945, new rights to the use of water are established under a permit system. (RCW 90.03.250 and 90.44.050.) However, certain uses of groundwater not exceeding 5,000 gallons per day are exempted from this permit requirement. (RCW 90.44.050.) The permit system is based on the prior appropriation doctrine that "first in time is first in right." Other laws authorize the state to establish minimum flows and levels for streams and lakes. (Chapters 90.22 and 90.54 RCW.) The permit system and the state's laws for managing water resources are administered by the Department of Ecology (DOE).

**Water Resources Inventory Area (WRIA) Planning.** The Water Resources Act directs the DOE to develop a comprehensive state water resources program for making decisions on future water resource allocation and use. (RCW 90.54.040.) The act permits the department to develop the program in segments. Under the act, the DOE has divided the state into 62 WRIsAs. (Chapter 173-500 WAC.)

**Groundwater Planning.** The groundwater code permits the DOE to designate and manage groundwater areas, sub-areas, or depth zones to prevent the overdraft of groundwaters. (RCW 90.44.130.) In 1985, legislation was enacted that permits groundwater management studies to be initiated locally and allows local governments to assume the lead agency role in developing local groundwater management programs. (RCW 90.44.400 through 90.44.440.)

**Interties.** Public water system interties were expressly acknowledged by statute in 1991, and new interties were authorized under certain circumstances. By definition, interties do not include the development of new sources of supply to meet future demand. (RCW 90.03.383.)

## **SUMMARY:**

**WRIA Planning.** The county with the largest population residing within a WRIA may choose to initiate local water resource planning for the WRIA. If planning is conducted for the WRIA, one planning unit for the WRIA is to be appointed as follows: one member representing each county in the WRIA, appointed by the county; one member for each county in the WRIA (but not less than two) representing collectively all cities in the WRIA, appointed

*by the cities jointly; two members representing collectively all public water utilities in the WRIA, appointed by the utilities jointly; one member representing collectively all conservation districts in the WRIA, appointed by the districts jointly; four members representing the general citizenry, appointed by the counties jointly; and six members representing various interest groups, appointed by the counties jointly. In addition, the largest water purveyor in a WRIA is to be represented on a planning unit for a WRIA in King, Pierce, or Snohomish counties, whether the main offices of the purveyor are or are not located in the WRIA. Except for multi-WRIA planning, the lead agency for WRIA planning is: in western Washington, the largest water utility in the WRIA; in eastern Washington, the county with the largest population residing in the WRIA. (Section 105.) The lead agency provides staff support for the planning process. (Section 107.)*

*Procedures for conducting multi-WRIA planning and for appointing the members of one planning unit for the multi-WRIA area are established. The counties in a multi-WRIA area choose a governmental entity to act as the lead agency for WRIA planning. The entity selected serves as the lead agency if it agrees to do so in writing. (Section 106.) No planning unit appointed for WRIA planning may possess the power of eminent domain. (Section 107.)*

*A county must have more than 15 percent of the area of a WRIA within its boundaries to be considered to be a county with territory in the WRIA for the development of plans. Certain qualifications for the members of the planning unit are listed. Two of the members representing the general citizenry must be water right holders. (Section 105.) If a member of a WRIA planning unit has a certain number of unexcused absences, the member's position on the planning unit is considered to be vacant. (Section 107.)*

*WRIA plans may not interfere in any manner with a general adjudication of water rights. (Section 107.) Such a plan may not impair or interfere with a water right that exists prior to the adoption of the plan. (Sections 107 and 108.) The plan cannot establish standards for water quality or regulate directly or indirectly water quality. A plan may not be developed such that its provisions are in conflict with state or federal law. (Section 108.)*

*All meetings of a WRIA planning unit are to be conducted as open public meetings. Some time must be set aside at the end of each meeting of a planning unit for public comments. (Section 107.)*

*Contents of the Plan. Each plan must include: an assessment of water supply and use in the WRIA; an identification of the water needed collectively for future uses; instream flow requirements; a quantitative description of the ground water and surface water available for further appropriation; strategies for increasing water supplies in the WRIA; an identification of areas that provide for the recharge of aquifers from the surface and areas where aquifers recharge surface bodies of water; and an identification of areas where voluntary habitat improvement projects or voluntary transactions providing for the purchase of habitat or habitat easements would provide the greatest benefit to water-related habitat in the WRIA, and a prioritization of the areas based on their potential for providing such benefits. (Section 108.)*

*Plan Approval. Upon completing a proposed water resource plan for the WRIA, the planning unit must conduct at least one public hearing in the WRIA on the proposed plan. The planning unit then provides interim approval of its proposed plan by a simple majority vote and*

*submits the plan to the DOE. The DOE must conduct at least one public hearing on the plan. The department must provide advice as to any sections or subsections of the plan that are in conflict with state or federal law and may provide other recommendations. The WRIA planning unit must vote on each recommendation provided by the DOE and on its advice but is not required to adopt either. The WRIA planning unit must approve a water resource plan for the WRIA by a two-thirds majority vote of the members of the planning unit. An approved plan is then submitted to the counties with territory within the WRIA for approval. The legislative authority of each of the counties with territory within the WRIA must conduct at least two public hearings on the WRIA plan. The counties, in joint session, may approve or reject the plan, but may not amend the plan. (Section 110.)*

*If the plan is approved by the members of the legislative authorities, the plan is transmitted to the DOE. The department must adopt the approved WRIA water resource plan by rule. (Section 110.) Instream flows established by the plan replace those set by the DOE. (Section 108.) Any action taken by a state agency regarding or affecting water resources in a WRIA for which such a plan has been adopted must be taken in a manner that is consistent with the plan. (Section 109.)*

*Permit Processing Deadline. If an environmental impact statement (EIS) is not requested for an application, the deadline for processing water right permit applications for water in an area for which a WRIA plan has been adopted is 180 days from the date a properly completed application is filed with the DOE. The deadline for processing an application for water in an area for which a WRIA plan has not been adopted is one year. These deadlines do not include the time needed to supply information in response to one request by the DOE for additional information. If an EIS must be prepared regarding an application to appropriate water, the DOE must grant or deny the application within 90 days of the date the final EIS is available. (Section 112.)*

*Funding. A WRIA planning unit may apply to the DOE for funding assistance for developing a water resource plan for the WRIA. The department is to provide \$500,000 per WRIA for each planning unit applying in this manner from appropriations made expressly for this purpose. In general, the funding is to be provided on a first come, first served basis to the extent of the appropriations. However, preference is given to planning units conducting multi-WRIA planning. (Section 103.) If a planning unit receives this funding, it must approve a plan for submittal to the counties within four years or the DOE must develop and adopt a plan for the WRIA or multi-WRIA area. (Section 110.)*

*Liability. Local government is not liable for water planning except for a conflict with state or federal law about which it received notice from the state during the planning process. (Section 104.) If the DOE advised a planning unit that a section or subsection of its WRIA plan is in conflict with state or federal law and the unit did not remove the conflict from its plan, the state is not liable for any judgment that may be awarded regarding the conflict. (Section 110.)*

***Storage; General Adjudications.*** *The development of multi-purpose water storage facilities is to be a high priority, and state agencies, local governments, and WRIA planning units must evaluate the potential for and benefits of storage. (Section 201.) A WRIA planning unit may request that a general adjudication of water rights be conducted for its WRIA or a portion of its WRIA. (Section 301.)*

***Water Purveyors.*** *The authorized uses of an intertie include the exchange of acquired water between public water systems. Interties are no longer prohibited from including the development of new sources of water supply to meet future demand. The DOE may not deny or limit a change-of-place of use for an intertie on the grounds that the holder of a permit has not yet put all the water authorized in the permit to beneficial use. (Section 401.)*

*If a public water system, federal reclamation project, or irrigation district is providing water under a certificated water right for its municipal, project, or district purposes, the instantaneous and annual withdrawal rates specified in the certificate are deemed valid and perfected. (Section 402.) If any of the provisions of the bill regarding the development, adoption, or effect of WRIA plans, or regarding the permit processing deadlines is vetoed, these provisions regarding interties and water purveyors' rights are null and void. (Sections 401 and 402.)*

***Relinquishment.*** *A water right is not relinquished for nonuse if the right is claimed for a determined future development that takes place at any time within a 15-year period from the date of the most recent beneficial use of the right. (Section 501.)*

***General Permits.*** *The DOE is directed to develop a streamlined, general permit system for certain uses of water. The use must consume less than 5,000 gallons of water per day. It cannot impair senior water rights. Water diverted from a stream or drawn from an aquifer must, following use, be discharged back into or near the point of diversion or withdrawal and, when discharged, must meet state water quality standards. An application for such a permit must be processed within 120 days. (Sections 602 and 603.) If the DOE receives complaints regarding the impairment of a senior water right, the department must make reasonable efforts to resolve it through agreement of the parties. (Section 604.)*