CERTIFICATION OF ENROLLMENT

ENGROSSED SUBSTITUTE HOUSE BILL 2514

Chapter 247, Laws of 1998

(partial veto)

55th Legislature
1998 Regular Session

WATERSHED MANAGEMENT

EFFECTIVE DATE: 6/11/98

Passed by the House March 10, 1998
Yeas 88 Nays 10

Clyde Ballard
Speaker of the House of Representatives

Passed by the Senate March 6, 1998
Yeas 43 Nays 4

Brad Owen
President of the Senate

I, Timothy A. Martin, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is ENGROSSED SUBSTITUTE HOUSE BILL 2514 as passed by the House of Representatives and the Senate on the dates hereon set forth.

Timothy A. Martin
Chief Clerk

Approved April 1, 1998, with the exception of sections 10 through 14, which are vetoed.

Gary Locke
Governor of the State of Washington

FILED
April 1, 1998 - 2:46 p.m.

Secretary of State
State of Washington
AN ACT Relating to watershed management; amending RCW 90.82.040, 43.27A.090, and 90.54.040; adding new sections to chapter 90.82 RCW; adding a new section to chapter 43.27A RCW; adding a new section to chapter 90.54 RCW; and creating new sections.

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

Sec. 1. RCW 90.82.040 and 1997 c 442 s 105 are each amended to read as follows:

(1) Once a WRIA planning unit has been ((organized)) initiated under section 2 of this act and ((designated)) a lead agency has been designated, it shall notify the department and may apply to the department for funding assistance for conducting the planning. Funds shall be provided from and to the extent of appropriations made by the legislature to the department expressly for this purpose.

(2) Each planning unit that has complied with subsection (1) of this section is eligible to receive ((fifty thousand dollars for each WRIA to initiate the planning process. The department shall allocate additional funds to WRIA planning units based on need demonstrated by a detailed proposed budget submitted by the planning unit for carrying out the duties of the planning unit. Each WRIA planning unit shall...))
unit may receive up to two hundred fifty thousand dollars for each WRIA during the first two-year period of planning, with a maximum allocation of five hundred thousand dollars for each WRIA. Funding provided under this section shall be considered a contractual obligation against the moneys appropriated for this purpose)) watershed planning grants in the following amounts for three phases of watershed planning:

(a) Initiating governments may apply for an initial organizing grant of up to fifty thousand dollars for a single WRIA or up to seventy-five thousand dollars for a multi-WRIA management area in accordance with section 2(4) of this act;

(b) A planning unit may apply for up to two hundred thousand dollars for each WRIA in the management area for conducting watershed assessments in accordance with section 3 of this act; and

(c) A planning unit may apply for up to two hundred fifty thousand dollars for each WRIA in the management area for developing a watershed plan and making recommendations for actions by local, state, and federal agencies, tribes, private property owners, private organizations, and individual citizens, including a recommended list of strategies and projects that would further the purpose of the plan in accordance with sections 2, 3, 4, 5, and 6 of this act.

(3) ((Preference shall be given to planning units requesting funding for conducting multi-WRIA planning under section 108 of this act)) (a) The department shall use the eligibility criteria in this subsection (3) instead of rules, policies, or guidelines when evaluating grant applications at each stage of the grants program.

(b) In reviewing grant applications under this subsection (3), the department shall evaluate whether:

(i) The planning unit meets all of the requirements of this chapter;

(ii) The application demonstrates a need for state planning funds to accomplish the objectives of the planning process; and

(iii) The application and supporting information evidences a readiness to proceed.

(c) In ranking grant applications submitted at each stage of the grants program, the department shall give preference to applications in the following order of priority:
Applications from existing planning groups that have been in existence for at least one year;

(ii) Applications that address protection and enhancement of fish habitat in watersheds that have aquatic fish species listed or proposed to be listed as endangered or threatened under the federal endangered species act, 16 U.S.C. Sec. 1531 et seq. and for which there is evidence of an inability to supply adequate water for population and economic growth from:

(A) First, multi-WRIA planning; and
(B) Second, single WRIA planning;

(iii) Applications that address protection and enhancement of fish habitat in watersheds or for which there is evidence of an inability to supply adequate water for population and economic growth from:

(A) First, multi-WRIA planning; and
(B) Second, single WRIA planning.

(d) The department may not impose any local matching fund requirement as a condition for grant eligibility or as a preference for receiving a grant.

(4) The department may retain up to one percent of funds allocated under this section to defray administrative costs.

(5) Planning under this chapter should be completed as expeditiously as possible, with the focus being on local stakeholders cooperating to meet local needs.

(6) Funding provided under this section shall be considered a contractual obligation against the moneys appropriated for this purpose.

NEW SECTION. Sec. 2. INITIATION OF WATERSHED PLANNING. (1) Planning conducted under this chapter must provide for a process to allow the local citizens within a WRIA or multi-WRIA area to join together in an effort to: (a) Assess the status of the water resources of their WRIA or multi-WRIA area; and (b) determine how best to manage the water resources of the WRIA or multi-WRIA area to balance the competing resource demands for that area within the parameters under section 8 of this act.
(2) Watershed planning under this chapter may be initiated for a WRIA only with the concurrence of: (a) All counties within the WRIA; (b) the largest city or town within the WRIA unless the WRIA does not contain a city or town; and (c) the water supply utility obtaining the largest quantity of water from the WRIA. To apply for a grant for organizing the planning unit as provided for under RCW 90.82.040(2)(a), these entities shall designate the entity that will serve as the lead agency for the planning effort and indicate how the planning unit will be staffed.

(3) Watershed planning under this chapter may be initiated for a multi-WRIA area only with the concurrence of: (a) All counties within the multi-WRIA area; (b) the largest city or town in each WRIA unless the WRIA does not contain a city or town; and (c) the water supply utility obtaining the largest quantity of water in each WRIA.

(4) If entities in subsection (2) or (3) of this section decide jointly and unanimously to proceed, they shall invite all tribes with reservation lands within the management area.

(5) The entities in subsection (2) or (3) of this section, including the tribes if they affirmatively accept the invitation, constitute the initiating governments for the purposes of this section.

(6) The organizing grant shall be used to organize the planning unit and to determine the scope of the planning to be conducted. In determining the scope of the planning activities, consideration shall be given to all existing plans and related planning activities. The scope of planning must include water quantity elements as provided in section 3 of this act, and may include water quality elements as contained in section 5 of this act, habitat elements as contained in section 6 of this act, and instream flow elements as contained in section 4 of this act. The initiating governments shall work with state government, other local governments within the management area, and affected tribal governments, in developing a planning process. The initiating governments may hold public meetings as deemed necessary to develop a proposed scope of work and a proposed composition of the planning unit. In developing a proposed composition of the planning unit, the initiating governments shall
provide for representation of a wide range of water resource interests.

(7) Each state agency with regulatory or other interests in the WRIA or multi-WRIA area to be planned shall assist the local citizens in the planning effort to the greatest extent practicable, recognizing any fiscal limitations. In providing such technical assistance and to facilitate representation on the planning unit, state agencies may organize and agree upon their representation on the planning unit. Such technical assistance must only be at the request of and to the extent desired by the planning unit conducting such planning. The number of state agency representatives on the planning unit shall be determined by the initiating governments in consultation with the governor’s office.

(8) As used in this section, "lead agency" means the entity that coordinates staff support of its own or of other local governments and receives grants for developing a watershed plan.

NEW SECTION. Sec. 3. WATER QUANTITY. Watershed planning under this chapter shall address water quantity in the management area by undertaking an assessment of water supply and use in the management area and developing strategies for future use.

(1) The assessment shall include:

(a) An estimate of the surface and ground water present in the management area;

(b) An estimate of the surface and ground water available in the management area, taking into account seasonal and other variations;

(c) An estimate of the water in the management area represented by claims in the water rights claims registry, water use permits, certificated rights, existing minimum instream flow rules, federally reserved rights, and any other rights to water;

(d) An estimate of the surface and ground water actually being used in the management area;

(e) An estimate of the water needed in the future for use in the management area;

(f) An identification of the location of areas where aquifers are known to recharge surface bodies of water and areas known to provide for the recharge of aquifers from the surface; and
(g) An estimate of the surface and ground water available for further appropriation, taking into account the minimum instream flows adopted by rule or to be adopted by rule under this chapter for streams in the management area including the data necessary to evaluate necessary flows for fish.

(2) Strategies for increasing water supplies in the management area, which may include, but are not limited to, increasing water supplies through water conservation, water reuse, the use of reclaimed water, voluntary water transfers, aquifer recharge and recovery, additional water allocations, or additional water storage and water storage enhancements. The objective of these strategies is to supply water in sufficient quantities to satisfy the minimum instream flows for fish and to provide water for future out-of-stream uses for water identified in subsection (1)(e) and (g) of this section and to ensure that adequate water supplies are available for agriculture, energy production, and population and economic growth under the requirements of the state’s growth management act, chapter 36.70A RCW. These strategies, in and of themselves, shall not be construed to confer new water rights. The watershed plan must address the strategies required under this subsection.

NEW SECTION. Sec. 4. INSTREAM FLOWS. (1)(a) If the initiating governments choose, by majority vote, to include an instream flow component, it shall be accomplished in the following manner:

(i) If minimum instream flows have already been adopted by rule for a stream within the management area, unless the members of the local governments and tribes on the planning unit by a recorded unanimous vote request the department to modify those flows, the minimum instream flows shall not be modified under this chapter. If the members of local governments and tribes request the planning unit to modify instream flows and unanimous approval of the decision to modify such flow is not achieved, then the instream flows shall not be modified under this section;

(ii) If minimum stream flows have not been adopted by rule for a stream within the management area, setting the minimum instream flows shall be a collaborative effort between the department and members of the planning unit. The department must attempt to achieve consensus
and approval among the members of the planning unit regarding the minimum flows to be adopted by the department. Approval is achieved if all government members and tribes that have been invited and accepted on the planning unit present for a recorded vote unanimously vote to support the proposed minimum instream flows, and all nongovernmental members of the planning unit present for the recorded vote, by a majority, vote to support the proposed minimum instream flows.

(b) The department shall undertake rule making to adopt flows under (a) of this subsection. The department may adopt the rules either by the regular rules adoption process provided in chapter 34.05 RCW, the expedited rules adoption process as set forth in RCW 34.05.230, or through a rules adoption process that uses public hearings and notice provided by the county legislative authority to the greatest extent possible. Such rules do not constitute significant legislative rules as defined in RCW 34.05.328, and do not require the preparation of small business economic impact statements.

(c) If approval is not achieved within four years of the date the planning unit first receives funds from the department for conducting watershed assessments under RCW 90.82.040, the department may promptly initiate rule making under chapter 34.05 RCW to establish flows for those streams and shall have two additional years to establish the instream flows for those streams for which approval is not achieved.

(2)(a) Notwithstanding RCW 90.03.345, minimum instream flows set under this section for rivers or streams that do not have existing minimum instream flow levels set by rule of the department shall have a priority date of two years after funding is first received from the department under RCW 90.82.040, unless determined otherwise by a unanimous vote of the members of the planning unit but in no instance may it be later than the effective date of the rule adopting such flow.

(b) Any increase to an existing minimum instream flow set by rule of the department shall have a priority date of two years after funding is first received for planning in the WRIA or multi-WRIA area from the department under RCW 90.82.040 and the priority date of the
portion of the minimum instream flow previously established by rule shall retain its priority date as established under RCW 90.03.345.

(c) Any existing minimum instream flow set by rule of the department that is reduced shall retain its original date of priority as established by RCW 90.03.345 for the revised amount of the minimum instream flow level.

(3) Before setting minimum instream flows under this section, the department shall engage in government-to-government consultation with affected tribes in the management area regarding the setting of such flows.

(4) Nothing in this chapter either: (a) Affects the department’s authority to establish flow requirements or other conditions under RCW 90.48.260 or the federal clean water act (33 U.S.C. Sec. 1251 et seq.) for the licensing or relicensing of a hydroelectric power project under the federal power act (16 U.S.C. Sec. 791 et seq.); or (b) affects or impairs existing instream flow requirements and other conditions in a current license for a hydroelectric power project licensed under the federal power act.

(5) If the planning unit is unable to obtain unanimity under subsection (1) of this section, the department may adopt rules setting such flows.

NEW SECTION.  Sec. 5. WATER QUALITY. If the initiating governments choose to include a water quality component, the watershed plan shall include the following elements:

(1) An examination based on existing studies conducted by federal, state, and local agencies of the degree to which legally established water quality standards are being met in the management area;

(2) An examination based on existing studies conducted by federal, state, and local agencies of the causes of water quality violations in the management area, including an examination of information regarding pollutants, point and nonpoint sources of pollution, and pollution-carrying capacities of water bodies in the management area. The analysis shall take into account seasonal stream flow or level variations, natural events, and pollution from natural sources that occurs independent of human activities;
(3) An examination of the legally established characteristic uses of each of the nonmarine bodies of water in the management area;

(4) An examination of any total maximum daily load established for nonmarine bodies of water in the management area, unless a total maximum daily load process has begun in the management area as of the date the watershed planning process is initiated under section 2 of this act.

(5) An examination of existing data related to the impact of fresh water on marine water quality;

(6) A recommended approach for implementing the total maximum daily load established for achieving compliance with water quality standards for the nonmarine bodies of water in the management area, unless a total maximum daily load process has begun in the management area as of the date the watershed planning process is initiated under section 2 of this act; and

(7) Recommended means of monitoring by appropriate government agencies whether actions taken to implement the approach to bring about improvements in water quality are sufficient to achieve compliance with water quality standards.

This chapter does not obligate the state to undertake analysis or to develop strategies required under the federal clean water act (33 U.S.C. Sec. 1251 et seq.). This chapter does not authorize any planning unit, lead agency, or local government to adopt water quality standards or total maximum daily loads under the federal clean water act.

NEW SECTION. Sec. 6. HABITAT. If the initiating governments choose to include a habitat component, the watershed plan shall be coordinated or developed to protect or enhance fish habitat in the management area. Such planning must rely on existing laws, rules, or ordinances created for the purpose of protecting, restoring, or enhancing fish habitat, including the shoreline management act, chapter 90.58 RCW, the growth management act, chapter 36.70A RCW, and the forest practices act, chapter 76.09 RCW. Planning established under this section shall be integrated with strategies developed under other processes to respond to potential and actual listings of salmon and other fish species as being threatened or endangered under
the federal endangered species act, 16 U.S.C. Sec. 1531 et seq.
Where habitat restoration activities are being developed under chapter . . ., Laws of 1998 (Engrossed Substitute House Bill No. 2496), such activities shall be relied on as the primary nonregulatory habitat component for fish habitat under this chapter.

NEW SECTION. Sec. 7. IDENTIFICATION OF PROJECTS AND ACTIVITIES.
The planning unit shall review historical data such as fish runs, weather patterns, land use patterns, seasonal flows, and geographic characteristics of the management area, and also review the planning, projects, and activities that have already been completed regarding natural resource management or enhancement in the management area and the products or status of those that have been initiated but not completed for such management in the management area, and incorporate their products as appropriate so as not to duplicate the work already performed or underway.
The planning group is encouraged to identify projects and activities that are likely to serve both short-term and long-term management goals and that warrant immediate financial assistance from the state, federal, or local government. If there are multiple projects, the planning group shall give consideration to ranking projects that have the greatest benefit and schedule those projects that should be implemented first.

NEW SECTION. Sec. 8. PLAN PARAMETERS. (1) Watershed planning developed and approved under this chapter shall not contain provisions that: (a) Are in conflict with existing state statutes, federal laws, or tribal treaty rights; (b) impair or diminish in any manner an existing water right evidenced by a claim filed in the water rights claims registry established under chapter 90.14 RCW or a water right certificate or permit; (c) require a modification in the basic operations of a federal reclamation project with a water right the priority date of which is before the effective date of this section or alter in any manner whatsoever the quantity of water available under the water right for the reclamation project, whether the project has or has not been completed before the effective date of this section; (d) affect or interfere with an ongoing general
adjudication of water rights; (e) modify or require the modification of any waste discharge permit issued under chapter 90.48 RCW; (f) modify or require the modification of activities or actions taken or intended to be taken under a habitat restoration work schedule developed under chapter . . ., Laws of 1998 (Engrossed Substitute House Bill No. 2496); or (g) modify or require the modification of activities or actions taken to protect or enhance fish habitat if the activities or actions are: (i) Part of an approved habitat conservation plan and an incidental take permit, an incidental take statement, a management or recovery plan, or other cooperative or conservation agreement entered into with a federal or state fish and wildlife protection agency under its statutory authority for fish and wildlife protection that addresses the affected habitat; or (ii) part of a water quality program adopted by an irrigation district under chapter 87.03 RCW or a board of joint control under chapter 87.80 RCW. This subsection (1)(g) applies as long as the activities or actions continue to be taken in accordance with the plan, agreement, permit, or statement. Any assessment conducted under section 3, 5, or 6 of this act shall take into consideration such activities and actions and those taken under the forest practices rules, including watershed analysis adopted under the forest practices act, chapter 76.09 RCW.

(2) Watershed planning developed and approved under this chapter shall not change existing local ordinances or existing state rules or permits, but may contain recommendations for changing such ordinances or rules.

(3) Notwithstanding any other provision of this chapter, watershed planning shall take into account forest practices rules under the forest practices act, chapter 76.09 RCW, and shall not create any obligations or restrictions on forest practices additional to or inconsistent with the forest practices act and its implementing rules, whether watershed planning is approved by the counties or the department.

NEW SECTION. Sec. 9. DECISIONS--HEARINGS--APPROVAL. (1)(a) Upon completing its proposed watershed plan, the planning unit may approve the proposal by consensus of all of the members of the
planning unit or by consensus among the members of the planning unit
appointed to represent units of government and a majority vote of the
nongovernmental members of the planning unit.

(b) If the proposal is approved by the planning unit, the unit
shall submit the proposal to the counties with territory within the
management area. If the planning unit has received funding beyond
the initial fifty thousand dollars under RCW 90.82.040, such a
proposal approved by the planning unit shall be submitted to the
counties within four years of the date the funding was first received
by the planning unit.

(c) If the watershed plan is not approved by the planning unit,
the planning unit may submit the components of the plan for which
agreement is achieved using the procedure under (a) of this
subsection, or the planning unit may terminate the planning process.

(2)(a) The legislative authority of each of the counties with
territory in the management area shall provide public notice of and
conduct at least one public hearing on the proposed watershed plan
submitted under this section. After the public hearings, the
legislative authorities of these counties shall convene in joint
session to consider the proposal. The counties may approve or reject
the proposed watershed plan for the management area, but may not
amend it. Approval of such a proposal shall be made by a majority
vote of the members of each of the counties with territory in the
management area.

(b) If a proposed watershed plan is not approved, it shall be
returned to the planning unit with recommendations for revisions.
Approval of such a revised proposal by the planning unit and the
counties shall be made in the same manner provided for the original
watershed plan. If approval of the revised plan is not achieved, the
process shall terminate.

(3) The planning unit shall not add an element to its watershed
plan that creates an obligation unless each of the governments to be
obligated has at least one representative on the planning unit and
the respective members appointed to represent those governments agree
to adding the element that creates the obligation. A member’s
agreeing to add an element shall be evidenced by a recorded vote of
all members of the planning unit in which the members record support
for adding the element. If the watershed plan is approved under subsections (1) and (2) of this section and the plan creates obligations: (a) For agencies of state government, the agencies shall adopt by rule the obligations of both state and county governments and rules implementing the state obligations, the obligations on state agencies are binding upon adoption of the obligations into rule, and the agencies shall take other actions to fulfill their obligations as soon as possible; or (b) for counties, the obligations are binding on the counties and the counties shall adopt any necessary implementing ordinances and take other actions to fulfill their obligations as soon as possible.

(4) As used in this section, "obligation" means any action required as a result of this chapter that imposes upon a tribal government, county government, or state government, either: A fiscal impact; a redeployment of resources; or a change of existing policy.

*NEW SECTION. Sec. 10. PERMIT PROCESSING. Nothing in this chapter may be interpreted as authorizing or directing the department to establish a moratorium on the investigation of and decisions on applications for permits for the withdrawal of surface water or ground water, or changes or transfers of water rights under existing permits.

*Sec. 10 was vetoed. See message at end of chapter.

*NEW SECTION. Sec. 11. A new section is added to chapter 43.27A RCW to read as follows:
If planning is being conducted under chapter 90.82 RCW or a plan has been adopted under section 9 of this act, the department shall not conduct planning under this chapter that conflicts with the planning being conducted under chapter 90.82 RCW or a plan that has been adopted under section 9 of this act.

*Sec. 11 was vetoed. See message at end of chapter.

*NEW SECTION. Sec. 12. A new section is added to chapter 90.54 RCW to read as follows:
If planning is being conducted under chapter 90.82 RCW or a plan has been adopted under section 9 of this act, the department shall not conduct planning under this chapter that conflicts with the
The department shall be empowered as follows:

(1) To represent the state at, and fully participate in, the activities of any basin or regional commission, interagency committee, or any other joint interstate or federal-state agency, committee or commission, or publicly financed entity engaged in the planning, development, administration, management, conservation or preservation of the water resources of the state.

(2) To prepare the views and recommendations of the state of Washington on any project, plan or program relating to the planning, development, administration, management, conservation and preservation of any waters located in or affecting the state of Washington, including any federal permit or license proposal, and appear on behalf of, and present views and recommendations of the state at any proceeding, negotiation or hearing conducted by the federal government, interstate agency, state or other agency.

(3) To cooperate with, assist, advise and coordinate plans with the federal government and its officers and agencies, and serve as a state liaison agency with the federal government in matters relating to the use, conservation, preservation, quality, disposal or control of water and activities related thereto.

(4) To cooperate with appropriate agencies of the federal government and/or agencies of other states, to enter into contracts, and to make appropriate contributions to federal or interstate projects and programs and governmental bodies to carry out the provisions of this chapter.

(5) To apply for, accept, administer and expend grants, gifts and loans from the federal government or any other entity to carry out the purposes of this chapter and make contracts and do such other acts as are necessary insofar as they are not inconsistent with other provisions hereof.
(6) To develop and maintain a coordinated and comprehensive state
water and water resources related development plan, and adopt, with
regard to such plan, such policies as are necessary to insure that
the waters of the state are used, conserved and preserved for the
best interest of the state. There shall be included in the state
plan a description of developmental objectives and a statement of the
recommended means of accomplishing these objectives. To the extent
the director deems desirable, the plan shall integrate into the state
plan, the plans, programs, reports, research and studies of other
state agencies. A plan adopted under chapter 90.82 RCW satisfies the
requirements of planning under this section.

(7) To assemble and correlate information relating to water
supply, power development, irrigation, watersheds, water use, future
possibilities of water use and prospective demands for all purposes
served through or affected by water resources development.

(8) To assemble and correlate state, local and federal laws,
regulations, plans, programs and policies affecting the beneficial
use, disposal, pollution, control or conservation of water, river
basin development, flood prevention, parks, reservations, forests,
wildlife refuges, drainage and sanitary systems, waste disposal,
water works, watershed protection and development, soil conservation,
power facilities and area and municipal water supply needs, and
recommend suitable legislation or other action to the legislature,
the congress of the United States, or any city, municipality, or to
responsible state, local or federal executive departments or
agencies.

(9) To cooperate with federal, state, regional, interstate and
local public and private agencies in the making of plans for
drainage, flood control, use, conservation, allocation and
distribution of existing water supplies and the development of new
water resource projects.

(10) To encourage, assist and advise regional, and city and
municipal agencies, officials or bodies responsible for planning in
relation to water aspects of their programs, and coordinate local
water resources activities, programs, and plans.

(11) To promulgate such rules and regulations as are necessary to
carry out the purposes of this chapter.
(12) To hold public hearings, and make such investigations, studies and surveys as are necessary to carry out the purposes of the chapter.

(13) To subpoena witnesses, compel their attendance, administer oaths, take the testimony of any person under oath and require the production of any books or papers when the department deems such measures necessary in the exercise of its rule-making power or in determining whether or not any license, certificate, or permit shall be granted or extended.

*Sec. 13 was vetoed. See message at end of chapter.

*Sec. 14. RCW 90.54.040 and 1997 c 32 s 2 are each amended to read as follows:

(1) The department, through the adoption of appropriate rules, is directed, as a matter of high priority to insure that the waters of the state are utilized for the best interests of the people, to develop and implement in accordance with the policies of this chapter a comprehensive state water resources program which will provide a process for making decisions on future water resource allocation and use. The department may develop the program in segments so that immediate attention may be given to waters of a given physioeconomic region of the state or to specific critical problems of water allocation and use. A plan adopted under chapter 90.82 RCW satisfies the requirements of planning under this section.

(2) In relation to the management and regulatory programs relating to water resources vested in it, the department is further directed to modify existing regulations and adopt new regulations, when needed and possible, to insure that existing regulatory programs are in accord with the water resource policy of this chapter and the program established in subsection (1) of this section.

(3) The department is directed to review all statutes relating to water resources which it is responsible for implementing. When any of the same appear to the department to be ambiguous, unclear, unworkable, unnecessary, or otherwise deficient, it shall make recommendations to the legislature including appropriate proposals for statutory modifications or additions. Whenever it appears that the policies of any such statutes are in conflict with the policies
of this chapter, and the department is unable to fully perform as
provided in subsection (2) of this section, the department is
directed to submit statutory modifications to the legislature which,
if enacted, would allow the department to carry out such statutes in
harmony with this chapter.

*Sec. 14 was vetoed. See message at end of chapter.

NEW SECTION. Sec. 15. CAPTIONS. As used in this act, captions
constitute no part of the law.

NEW SECTION. Sec. 16. Sections 2 through 10 of this act are
each added to chapter 90.82 RCW.

NEW SECTION. Sec. 17. If specific funding for the purposes of
this act, referencing this act by bill or chapter number, is not
provided by June 30, 1998, in the omnibus appropriations act, this
act is null and void.

Passed the House March 10, 1998.
Passed the Senate March 6, 1998.
Approved by the Governor April 1, 1998, with the exception of
certain items that were vetoed.
Filed in Office of Secretary of State April 1, 1998.

Note: Governor’s explanation of partial veto is as follows:

"I am returning herewith, without my approval as to sections 10
through 14, Engrossed Substitute House Bill No. 2514 entitled:

"AN ACT Relating to watershed management;"

ESHB 2514 establishes a watershed management process to develop
in-stream flow levels, water quality and habitat plans. A primary
purpose of the watershed management planning under this bill is to
address listed and soon-to-be listed salmon stocks under the federal
Endangered Species Act, as well as finding ways to meet the needs of
those who rely upon out-of-stream uses of water.

This bill has the potential to resolve the long-standing
stalemate over setting in-stream flow levels in Washington and to
resolve other important issues dealing with water quality and fish
habitat. I commend the Legislature for its leadership in this
regard.

ESHB 2514 makes a strong choice to rely on watershed planning
processes to resolve these issues. Primary responsibility lies with
the planning units authorized by this bill to meet the requirements
of state and federal law. Given the status of our water and
fisheries resources, we cannot afford to approach these problems
without a sense of urgency and determination. If progress is not
being made in this area, I am prepared to utilize existing authority
to protect our water and fish habitat, and will be prepared to
propose further legislative changes next year.

ESHB 2514 has one problem in that tribal governments are
relegated to a secondary role throughout the planning process,
despite treaty rights and fishery co-management responsibilities. To
address that problem, I am directing the Department of Ecology to
consult with affected tribes, including those with usual and
accustomed territory or ceded lands, before committing to obligate
the state on any particular in-stream flow levels or other issues
that affect tribal treaty rights and co-management responsibilities.

Section 10 of this bill would prohibit the Department from
establishing a moratorium on water right processing while planning is
underway. In some select instances, the Department of Ecology may
need to impose a moratorium on water right processing in order to
preserve options for future water allocations by the watershed
planning unit.

Sections 11 through 14 would require that plans developed under
this bill preempt water-related planning processes established under
other statutes. This language would remove any flexibility of the
state to use other authorities to correct any deficiencies that
emerge from plans adopted under the process provided in this bill.
If such plans turn out to be inadequate due to new information and
situations, the state would be prohibited by these sections from
correcting the problems.

For these reasons, I have vetoed sections 10 through 14 of
Engrossed Substitute House Bill No. 2514.

With the exception of sections 10 through 14, Engrossed
Substitute House Bill No. 2514 is approved."