

2 **SHB 2199** - S COMM AMD  
3 By Committee on Ways & Means

4 ADOPTED AS AMENDED 3/1/96

5 Strike everything after the enacting clause and insert the  
6 following:

7 "NEW SECTION. **Sec. 1.** A new section is added to chapter 90.03 RCW  
8 to read as follows:

9 (1) This section shall apply only within a water resource inventory  
10 area, as such areas were defined in chapter 173-500 WAC as it existed  
11 on January 1, 1996, that meets all of the following:

12 (a) More than two hundred fifty applications for water use  
13 authorizations or modifications were filed with the department and  
14 pending on January 1, 1996, that requested authorization for water uses  
15 commenced before January 1, 1993; and

16 (b) There was no proceeding for general adjudication of water  
17 rights filed in superior court for the basin on or before January 1,  
18 1996.

19 (2) On or before June 30, 1997, the department shall issue a permit  
20 for the appropriation of water to the persons satisfying the  
21 requirements of subsection (4) of this section. The permit shall be  
22 conditioned for the protection of streamflows consistent with any  
23 adopted rule for the protection of instream resources. The department  
24 shall review streamflow requirements in existing rules and the  
25 requirements for additional stream segments for which rules have not  
26 been adopted. The department's review and required mitigating  
27 conditions under this subsection shall accord strong consideration to  
28 the review and recommendations of a watershed planning task force  
29 applicable to the area that includes a broad range of water resource  
30 interests in the basin, including existing and prospective water rights  
31 holders, tribal and local governments, and agricultural, business,  
32 environmental, fisheries, and recreational interests. In developing  
33 proposed permit conditions the department shall consider alternatives  
34 to mitigate the impacts of permit issuance upon streamflows and other  
35 existing water rights, including changes in source of supply from  
36 surface water to ground water sources and the provision of substitute

1 sources of supply to mitigate impacts upon existing rights and  
2 streamflows. The department shall allow a change in source of supply  
3 from surface water to a ground water source that is not in immediate  
4 hydraulic continuity with surface water as mitigation for potential  
5 impacts to streamflows and existing rights, unless the department makes  
6 specific findings supported by the permit application record that the  
7 proposed change will have a significant detriment to existing rights or  
8 to minimum streamflows necessary for the protection of instream  
9 resources.

10 (3) Upon a showing satisfactory to the department that the  
11 conditions of the permit have been implemented and that the  
12 appropriation has been perfected in accordance with the other  
13 provisions of this chapter, the department shall issue a certificate of  
14 water right in accordance with RCW 90.03.330.

15 (4) To qualify for a permit issued pursuant to subsection (2) of  
16 this section a person must meet the following limitations:

17 (a) The person must have placed surface or ground water to  
18 beneficial use for agricultural irrigation or stock watering purposes  
19 before January 1, 1993, for which a permit or certificate was not  
20 issued by the department or its predecessors;

21 (b) The person filed with the department before January 1, 1996, an  
22 application for the water beneficially used;

23 (c) The person or the person's successor files with the department  
24 a statement requesting to qualify under this section during the period  
25 beginning September 1, 1996, and ending midnight March 31, 1997; and

26 (d) The person or the person's successor files with the statement  
27 evidence that the water described in the statement was used  
28 beneficially before January 1, 1993, in the form of any two or more of  
29 the following:

30 (i) A statement signed by two persons who are not related by family  
31 to the person filing the statement required by (c) of this subsection  
32 verifying that the water was beneficially used by the claimant before  
33 January 1, 1993, as described in the statement required by (c) of this  
34 subsection;

35 (ii) A copy of a dated photograph clearly demonstrating the  
36 presence of a high value crop requiring irrigation in the amounts  
37 asserted in the statement or of livestock requiring water in such  
38 amounts; or records of receipts of the sale of crops by the person or  
39 the person's successor indicating that irrigation in the amount claimed

1 was required to produce the crops; or records of receipts of the sale  
2 of milk by the person or the person's successor indicating that  
3 stockwatering in the amount requested was required to produce the milk  
4 marketed;

5 (iii) Receipts or records of irrigation or stockwatering equipment  
6 purchases or repairs associated with the water use specified in the  
7 statement;

8 (iv) Water well construction records identifying the date the well  
9 specified in the statement as the point of withdrawal was constructed;

10 (v) Records of electricity bills directly associated with the  
11 withdrawal of water as specified in the statement; or

12 (vi) Personal records such as photographs, journals, or  
13 correspondence indicating the use of water as asserted in the  
14 statement.

15 (5) The priority date of a permit issued under this section shall  
16 be the date and time of filing with the department the statement  
17 required under subsection (4)(c) of this section.

18 (6) The department's decision upon the conditions to be included  
19 within a permit issued under this section, but not the permit issuance,  
20 is appealable to the pollution control hearings board under RCW  
21 43.21B.110.

22 (7) Effective July 1, 1997, in any water resource inventory area  
23 for which permits have been issued under this section, the department  
24 is authorized to regulate as among water rights claimants, for the  
25 protection of adopted streamflow levels, or to enforce the conditions  
26 of any permit issued under this section or otherwise issued for water  
27 withdrawals from water sources within the area. In issuing regulatory  
28 orders pursuant to this subsection, the department shall first  
29 determine whether any use of water is based on a valid existing water  
30 right. In making such determination, the department shall investigate  
31 and make a tentative determination as to the priority, quantity, place  
32 of use, and point of diversion of the water right. Unless exigent  
33 circumstances exist, the department shall notify the person whose use  
34 of water will be regulated before issuing an order of regulation. The  
35 notice shall state that the order of regulation shall be issued in  
36 three days after receipt of the notice, unless the person can show  
37 cause in writing to the department why the department's decision is in  
38 error. The order of regulation shall be effective immediately upon  
39 issuance, unless otherwise stated in the order. The department's

1 determination of the validity of a water right is not binding in any  
2 subsequent general adjudication, but is prima facie evidence of the  
3 existence and conditions of the right.

4 (8) A permit granted under this section shall not affect or impair  
5 in any respect whatsoever a water right or an application for a water  
6 right existing before January 1, 1996.

7 NEW SECTION. **Sec. 2.** If specific funding for the purposes of this  
8 act, referencing this act by bill or chapter number, is not provided by  
9 June 30, 1996, in the omnibus appropriations act, this act is null and  
10 void."

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14 On page 1, line 1 of the title, after "rights;" strike the  
15 remainder of the title and insert "adding a new section to chapter  
16 90.03 RCW; and creating a new section."

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