

2 **SHB 2199** - S COMM AMD
3 By Committee on Ecology & Parks

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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 April 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 stream segments for which rules have not been adopted
26 for the purpose of conditioning permits issued under this section in
27 order to ensure the viability of fish and wildlife resources, including
28 but not limited to the continued production of fish in numbers that
29 will sustain the commercial, sport, and tribal fisheries in the water
30 resource inventory area, and that will ensure the protection of other
31 instream resources. The department's review and required mitigating
32 conditions under this subsection shall accord strong consideration to
33 the review and recommendations of a watershed planning task force
34 applicable to the area that includes a broad range of water resource
35 interests in the basin, including existing and prospective water rights
36 holders, tribal and local governments, and agricultural, business,

1 environmental, fisheries, and recreational interests. In developing
2 proposed permit conditions the department shall consider alternatives
3 to mitigate the impacts of permit issuance upon streamflows and other
4 existing water rights, including changes in source of supply from
5 surface water to ground water sources and the provision of substitute
6 sources of supply to mitigate impacts upon existing rights and
7 streamflows. The department shall allow a change in source of supply
8 from surface water to a ground water source that is not in immediate
9 hydraulic continuity with surface water as mitigation for potential
10 impacts to streamflows and existing rights, unless the department makes
11 specific findings supported by the permit application record that the
12 proposed change will have a significant detriment to existing rights or
13 to minimum streamflows necessary for the protection of instream
14 resources.

15 (3) Upon a showing satisfactory to the department that the
16 conditions of the permit have been implemented and that the
17 appropriation has been perfected in accordance with the other
18 provisions of this chapter, the department shall issue a certificate of
19 water right in accordance with RCW 90.03.330.

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

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

26 (b) The person filed with the department before April 1, 1996, an
27 application for the water beneficially used;

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

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

35 (i) A statement signed by two persons who are not related by family
36 to the person filing the statement required by (c) of this subsection
37 verifying that the water was beneficially used by the claimant before
38 January 1, 1993, as described in the statement required by (c) of this
39 subsection;

1 (ii) A copy of a dated photograph clearly demonstrating the
2 presence of a high value crop requiring irrigation in the amounts
3 asserted in the statement or of livestock requiring water in such
4 amounts; or records of receipts of the sale of crops by the person or
5 the person's successor indicating that irrigation in the amount claimed
6 was required to produce the crops; or records of receipts of the sale
7 of milk by the person or the person's successor indicating that
8 stockwatering in the amount requested was required to produce the milk
9 marketed;

10 (iii) Receipts or records of irrigation or stockwatering equipment
11 purchases or repairs associated with the water use specified in the
12 statement;

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

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

17 (vi) Personal records such as photographs, journals, or
18 correspondence indicating the use of water as asserted in the
19 statement.

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

23 (6) The department's decision upon the conditions to be included
24 within a permit issued under this section, but not the permit issuance,
25 is appealable to the pollution control hearings board under RCW
26 43.21B.110.

27 (7) Effective July 1, 1997, in any water resource inventory area
28 for which permits have been issued under this section, the department
29 is authorized to regulate as among water rights claimants, for the
30 protection of adopted streamflow levels, or to enforce the conditions
31 of any permit issued under this section or otherwise issued for water
32 withdrawals from water sources within the area. In issuing regulatory
33 orders pursuant to this subsection, the department shall first
34 determine whether any use of water is based on a valid existing water
35 right. In making such determination, the department shall investigate
36 and make a tentative determination as to the priority, quantity, place
37 of use, and point of diversion of the water right. Unless exigent
38 circumstances exist, the department shall notify the person whose use
39 of water will be regulated before issuing an order of regulation. The

1 notice shall state that the order of regulation shall be issued in
2 three days after receipt of the notice, unless the person can show
3 cause in writing to the department why the department's decision is in
4 error. The order of regulation shall be effective immediately upon
5 issuance, unless otherwise stated in the order. The department's
6 determination of the validity of a water right is not binding in any
7 subsequent general adjudication, but is prima facie evidence of the
8 existence and conditions of the right.

9 (8) A permit granted under this section shall not affect or impair
10 in any respect whatsoever a water right or an application for a water
11 right existing before April 1, 1996."

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15 On page 1, line 1 of the title, after "rights;" strike the
16 remainder of the title and insert "and adding a new section to chapter
17 90.03 RCW."

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