

2 **2SHB 2200** - S AMD

3 By Committee on Ecology & Parks

4

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

7 "NEW SECTION. **Sec. 1.** FINDINGS AND INTENT. (1) The legislature  
8 finds that in order for the state to make appropriate decisions  
9 regarding the management, protection, use, and conservation of our  
10 state's water and fishery resources, it must possess an authoritative  
11 and accurate understanding of the water quality, water quantity, water  
12 availability, and fishery habitat conditions that exist within the  
13 water basins of the state. To gain such an understanding, the  
14 legislature further finds that the state should properly fund, support,  
15 and facilitate the preparation of basin assessments for the water  
16 basins of the state.

17 It is the intent of the legislature that the information, data, and  
18 analysis resulting from the preparation of basin assessments be used by  
19 the department of ecology to render timely and appropriate water right  
20 decisions; to clear the backlog of pending water right applications;  
21 and to make sound and balanced resource management decisions affecting  
22 the ground and surface waters of the state's basins. It is further the  
23 intent of the legislature that the basin assessments be used by local  
24 governments for water resources planning, growth management planning,  
25 and local regulatory decisions. These assessments should also be used  
26 to support the efforts of state, tribal, and local governments, and  
27 other interested parties engaged in the initiation, development, and  
28 implementation of cooperative water basin plans. The preparation and  
29 use of basin assessments should not, however, be subject to the  
30 initiation or funding of basin planning processes.

31 It is further the intent of the legislature that in preparing basin  
32 assessments, the state take all reasonable steps to ensure that these  
33 assessments are developed using data, analysis, and methodologies that  
34 are scientifically sound and are subject to effective quality control  
35 and peer review mechanisms.

1           (2) The legislature finds that it is in the best interests of the  
2 state to plan, develop, and provide for the use, protection, and  
3 management of our state's water and water-dependent natural resources  
4 and values through the development of basin plans developed in a  
5 cooperative manner by local, state, tribal, private, public, and  
6 federal interests. The purpose of such plans should be to gain a  
7 better understanding of the health of the basin's water and water-  
8 dependent natural resources and values, to resolve uncertainties and  
9 differences regarding the condition of these resources, and to  
10 cooperatively determine the most appropriate methods by which basin  
11 resources should be used, protected, managed, restored, and enhanced.

12           It is further the intent of the legislature that locally based  
13 basin planning groups should at a minimum, include representatives from  
14 state government, local governments, and federally recognized tribal  
15 governments whose reservation or ceded areas are within the basin.  
16 Basin planning groups should also include and promote the participation  
17 of other interested public and private parties with a clear stake in  
18 basin resource management, including representatives from business,  
19 agriculture, environment, fisheries, community development, and  
20 recreation. All reasonable efforts should be made to include the  
21 participation of interested parties in the development of basin plans,  
22 including those with localized interests and those with regional and  
23 state-wide interests. However, should interested parties to basin  
24 planning prove unable or unwilling to engage in cooperative basin  
25 planning, the state should not discourage the development of basin  
26 plans involving other interested parties and state and local government  
27 and tribal participants.

28           (3) It is the intent of the legislature that the interests and  
29 rights of all persons in possession of existing water right permits,  
30 certificates, valid claim declarations, and adjudicated water rights be  
31 protected within the basin planning process.

32           (4) It is the intent of the legislature that existing resource  
33 management plans, agreements, and facility permits and licenses,  
34 relating to the management of water or water-dependent natural  
35 resources executed or issued before the effective date of this section  
36 shall not be made subject to reconsideration by locally based basin  
37 planning groups formed as a result of this chapter except by mutual  
38 consent of the parties to such plans, agreements, permits, and  
39 licenses.

1 (5) The legislature finds that it is a high priority for the state  
2 to support, provide technical assistance, and fund to the maximum  
3 extent possible, the preparation and implementation of basin plans.  
4 These plans should be prepared in cooperation with local governments,  
5 private citizens and landowners, tribal governments, federal and state  
6 agencies, and other parties residing within or having a clear interest  
7 in the status of the basin's water and fishery resources.

8 NEW SECTION. **Sec. 2.** DEFINITIONS. Unless the context clearly  
9 requires otherwise, the following definitions apply throughout this  
10 chapter:

11 (1) "Basin" refers to any one of the sixty-two areas in the state  
12 containing a major watershed or river basin as established in chapter  
13 173-500 WAC.

14 (2) "Basin assessment" means a review and analysis of the overall  
15 environmental health, quality, water usage, and water availability of  
16 part or all of a WRIA's ground and surface waters and fishery  
17 resources.

18 (3) "Basin plan" means a locally developed plan that provides a  
19 comprehensive approach to the future management, use, conservation,  
20 protection, and allocation of water resources within a WRIA, river  
21 basin, or subbasin, and the means by which associated water quality and  
22 fisheries will be protected, conserved, restored, used, and managed.

23 (4) "Initial basin planning unit" means the governmental entities  
24 formed by the planning process initiating entities under section 204 of  
25 this act.

26 (5) "Planning unit," "basin planning unit," and "expanded planning  
27 unit" mean the basin planning unit formed through the procedures of  
28 section 205 of this act.

29 (6) "Department" means the department of ecology.

30 (7) "Person" means a firm, association, corporation, general  
31 purpose local government, special district, or other municipal  
32 corporation, governmental agency, as well as an individual.

33 (8) "Qualified governmental entity" means a general purpose local  
34 government, county, state agency, federally recognized tribe, special  
35 district, or consortium of local government and special districts that  
36 presently serves, is intended to serve, or has the authority to serve  
37 water or engage in water resource planning and management on a regional  
38 basis.

1 (9) "Tribe" or "tribes" means Indian tribes within Washington state  
2 that are formally recognized by the federal government.

3 (10) "WRIA" or "water resource inventory area" is one of sixty-two  
4 areas in the state containing a major watershed or river basin as  
5 established in chapter 173-500 WAC.

6 **PART I**  
7 **BASIN ASSESSMENTS**

8 NEW SECTION. **Sec. 101.** BASIN ASSESSMENTS--PURPOSES. It is the  
9 intent of the legislature that basin assessments be employed by the  
10 department to achieve the following purposes:

11 (1) To render timely and appropriate decisions on pending and  
12 future water right applications using information and data that are  
13 based on sound hydraulic and hydrogeologic methodology and analysis;

14 (2) To determine the appropriate conditions to be added to permits  
15 that are issued to ensure that water-dependent natural resources and  
16 associated habitat protected;

17 (3) To support and coordinate the data-related study and  
18 information collection efforts of the state, local governments, special  
19 districts, tribes, and other interested parties that have initiated  
20 cooperative basin planning for the purpose of developing a basin plan  
21 or would like to commence cooperative basin planning within their  
22 basin;

23 (4) To enable the state, local government, tribes, and other  
24 persons to make sound and well-informed decisions relative to future  
25 land use plans and policies, capital facility plans and projects, and  
26 water resource plans and management, and fish and wildlife habitat  
27 conservation plans within a basin; and

28 (5) To assist property owners and the public to understand the  
29 characteristics of the water and natural resource of their local areas.

30 NEW SECTION. **Sec. 102.** PREPARATION OF ASSESSMENTS. (1) Basin  
31 assessments may be prepared for an entire WRIA, multiple WRIAs, or less  
32 than an entire WRIA, by the department, or by the department with the  
33 assistance of a qualified governmental entity that is acting as a lead  
34 entity in the development of cooperative basin plans or authorized  
35 under statute or interlocal agreement, to undertake regional studies  
36 and water supply activities. In the event a qualified governmental

1 entity is willing to assist in undertaking a basin assessment, the  
2 department may enter an intergovernmental agreement for the cooperative  
3 preparation, that addresses duties and funding responsibilities.

4 (2) The department shall develop a standardized draft  
5 intergovernmental agreement that may serve as the basis for negotiating  
6 and executing a final agreement with qualified governmental entities  
7 willing to assist in undertaking basin assessments. The agreement  
8 shall describe the terms under which these entities may perform basin  
9 assessment duties, including the appropriate data collection,  
10 scientific methodology, analytical tools, quality control approach to  
11 be employed, and public and property owner review and comment.

12 NEW SECTION. **Sec. 103.** PROCESS FOR PREPARATION. (1) The  
13 preparation of basin assessments may occur in two stages, a first stage  
14 which shall be described as a level I assessment, and a second stage  
15 which shall be described as a level II assessment. A level I  
16 assessment shall at a minimum, include the following:

17 (a) A comprehensive collection of available data relating to a  
18 basin's ground water and surface water quantities, water availability,  
19 present and projected water uses, water quality, the health of  
20 associated water-dependent natural resources and habitat, climatic  
21 variables, including precipitation, and land use characteristics;

22 (b) A determination of whether the data available is sufficient for  
23 the department to declare water is available for further appropriation  
24 or insufficient to render such decisions absent additional data  
25 collection and study efforts;

26 (c) An identification or determination of environmental trends  
27 affecting water and water-dependent natural resources, to the extent  
28 existing data is sufficient to perform this task;

29 (d) An identification of data-related gaps that require further  
30 study and information before decisions can or should be made with  
31 regard to water right and resource management matters;

32 (e) A determination of those areas where the data collected is  
33 sufficient for the agency to make informed and authoritative water  
34 right decisions;

35 (f) A preliminary recommendation regarding priority areas, issues,  
36 data, analysis, and resource issues that warrant further study in a  
37 level II assessment;

1 (g) A minimum of two public hearings in the basin area where the  
2 data and preliminary recommendations are subject to review and comment;

3 (h) Circulation of data and preliminary recommendations to all  
4 state agencies, local and tribal governments in the basin, and any  
5 federal water management agencies with major water-related  
6 responsibilities in the basin or relating to return flows from the  
7 basin; and

8 (i) After circulation to public agencies specified in (h) of this  
9 subsection and public hearing required in (g) of this subsection, make  
10 findings and final recommendations.

11 (2) In the event the department determines that a level I  
12 assessment does not contain data, analysis, and other findings  
13 sufficient to make authoritative decisions with regard to water  
14 availability, water use, water quality, the status of water-dependent  
15 natural resources, and the environmental impacts of further ground or  
16 surface water appropriations, the department may undertake a level II  
17 assessment to provide the additional data, analysis, and findings  
18 necessary for the department to make timely water right and resource  
19 management decisions. The scope of work and overall study effort of a  
20 level II assessment should be guided by the data, analytical findings,  
21 public comment, and recommendations developed within a level I  
22 assessment.

23 (3) The department shall develop a process and procedures whereby  
24 the data, analysis, findings, and recommendations contained within  
25 level I and level II assessments are subject to effective and objective  
26 quality control standards, including but not limited to the creation of  
27 an independent peer review panel comprised of qualified persons with  
28 expertise in hydrology, hydrogeology, engineering, water quality,  
29 fishery biology, and related environmental sciences. The procedures  
30 shall afford opportunity for public review and comment.

31 NEW SECTION. Sec. 104. FORMAT AND ACCESS TO DATA. The department  
32 shall develop as uniform as possible a system of procedures for the  
33 entry and distribution of all data and information relating to basin  
34 assessments in all regions of the state. The procedures shall be  
35 designed to ensure that data collected by the state and other qualified  
36 governmental entities is prepared and stored on a common software  
37 system that is easily accessible to state agencies, local governments,  
38 tribal governments, and other interested parties. It shall attempt to

1 help make water-related data of the United States geological survey  
2 available. It shall also be designed to ensure that basin assessments  
3 operate as open file documents that may be enhanced by new or  
4 additional data that has been provided to the department and reviewed  
5 and approved by the peer review mechanism cited in section 103(3) of  
6 this act. Upon the completion of a basin assessment, the department  
7 shall make electronic and hard copies of the basin assessment reports  
8 and supporting data and make such copies available for public review at  
9 the department's regional offices and department headquarters.

10 NEW SECTION. **Sec. 105.** TIMELINE FOR PREPARATION. The timeline  
11 for the preparation and completion of a level I or level II basin  
12 assessment using any state funds or grants shall be established at the  
13 onset of the process.

14 **PART II**  
15 **BASIN PLANNING**

16 NEW SECTION. **Sec. 201.** BASIN PLANNING. The legislature finds  
17 that locally based basin planning is an essential major component of  
18 the process of determining the policy, regulatory, and management  
19 approaches necessary for the protection, conservation, restoration,  
20 use, and allocation of our state's water resources. In advancing  
21 cooperative basin planning, the legislature further finds that the  
22 development and implementation of basin plans can best be achieved by  
23 dividing the planning process into two phases, phase I and phase II.  
24 Under phase I, which may also be described as prescoping, state, local,  
25 and tribal governments shall identify and undertake basic data  
26 collection and coordination, needs assessments, public education, and  
27 public involvement tasks necessary to prepare and proceed to a second  
28 phase. The second phase shall involve the development of a  
29 comprehensive basin plan, including to the extent possible, the  
30 participation of those parties with a clear stake in the management,  
31 protection, and conservation of a basin's water and water-dependent  
32 natural resources.

33 NEW SECTION. **Sec. 202.** NOTICE OF INTENT TO PLAN. Phase I, or the  
34 prescoping phase of a basin planning process, shall be initiated by  
35 filing with the department a notice of intent to plan. The notice of

1 intent shall be initiated and signed by at least two local governments  
2 responsible for substantial water resource planning, management or  
3 delivery, or one such local government and a tribe residing or  
4 asserting treaty-based interests within the basin.

5 NEW SECTION. **Sec. 203.** CONTENTS OF NOTICE. The initiating  
6 entities shall prepare the notice of intent filed under section 202 of  
7 this act and include the following in the notice:

8 (1) A basic description of the portion of the water resource  
9 inventory area, which may be a subWRIA, WRIA, or multiple WRIsAs,  
10 proposed to be included within the regional planning area, and where  
11 appropriate, an explanation for the inclusion of more than one water  
12 resource inventory area; and

13 (2) Identification of public and private groups and tribal entities  
14 with a known interest in the proposed WRIA planning area and the  
15 methods by which they will be contacted and invited to participate.

16 NEW SECTION. **Sec. 204.** FORMATION OF BASIN PLANNING UNIT--  
17 PRESCOPING. (1) Within sixty days of submittal of the notice of intent  
18 to the department, the initiating entities shall call an invitational  
19 meeting of all general purpose local governments, all special districts  
20 providing water and waste water service, including those districts  
21 engaged in hydropower, industrial, or irrigation supply, state agencies  
22 with natural resource or water resource planning or management  
23 responsibilities, affected tribes, and federal agencies that have  
24 substantial water management responsibilities in the basin.

25 (2) Representatives from the state, local, and tribal governmental  
26 units shall be selected to form an initial basin planning unit. Once  
27 constituted, members of the basic planning unit shall designate one or  
28 more of the governmental agencies to act as lead or colead agencies.  
29 Once designated, the lead agency or agencies may administer all tasks  
30 associated with the prescoping phase and the subsequent full planning  
31 phase in sections 201 and 205 of this act, enter into contracts agreed  
32 to by the basin planning unit, coordinate intergovernmental agreements  
33 among the participating entities, and undertake basic data collection  
34 tasks, including agreements with the department to assist in preparing  
35 level I and II basin assessments, for the purpose of assisting the  
36 basin planning unit to define its overall planning objectives and  
37 recommended scope of work. The lead agency shall draw upon those staff



1 resources made available from the state, in addition to local and  
2 tribal governments participating in the planning unit, to support its  
3 role and the work of the initial basin planning unit and expanded  
4 planning unit.

5 (3) The initial basin planning unit is responsible for evaluating  
6 the preliminary administrative, organizational, data collection, and  
7 coordination tasks necessary to proceed with basin planning and has one  
8 year to complete its tasks. These tasks shall include, but not be  
9 limited to the following:

10 (a) Identifying persons and organizations with a clear interest or  
11 stake in a comprehensive basin planning effort, including agriculture,  
12 business, environment, fisheries, and recreational interests;

13 (b) Identifying the potential range of policy, technical, and  
14 treaty-based issues, interests, and concerns held by the basin planning  
15 unit and other potential members of a basin planning process;

16 (c) Identifying, collecting, and cataloging available data relating  
17 to water quality, water quantity, current and projected water usage,  
18 and fishery resources. This task may include initiating a level I  
19 basin assessment with the department or developing preliminary findings  
20 with regard to the status of water availability, the health and status  
21 of water-dependent natural resources and habitat, and the status of  
22 water quality within the planning area;

23 (d) Identifying water quality, quantity, water use, and water-  
24 dependent resource data gaps requiring further data collection,  
25 analysis, and study in a level II assessment effort and developing  
26 preliminary scopes of work for level II assessment tasks that may be  
27 reviewed, evaluated, and implemented during phase II of the basin  
28 planning process;

29 (e) Developing an interim scope of work that identifies data  
30 collection and administrative tasks that can be funded and implemented  
31 before the commencement of full basin planning;

32 (f) Developing a recommended scope of work for the expanded  
33 planning unit to consider including planning objectives, schedule for  
34 performance, data, studies, modeling, analytical work products, funding  
35 requirements and potential sources, and other planning elements  
36 necessary to comply with this chapter; and

37 (g) A public involvement process for all phases of the effort.

38 (4) The initial basin planning unit shall establish its own  
39 decision-making process.

1 NEW SECTION. **Sec. 205.** COMMENCEMENT OF FULL BASIN PLANNING--

2 FORMATION OF EXPANDED PLANNING UNIT. (1) Upon completion of the  
3 prescoping phase tasks and activities described in section 202 of this  
4 act, the initial basin planning unit shall call an invitational meeting  
5 of all local governments and special districts not participating in the  
6 basin planning unit, in addition to all other governmental agencies,  
7 interest groups and stakeholders identified in the prescoping phase  
8 including agriculture, business, environment, sport and commercial  
9 fisheries, recreation, and the general public.

10 (2) Within sixty days after the invitational meeting, an expanded  
11 basin planning unit shall be formed consisting of three representatives  
12 each from state agencies, local governments, including special  
13 districts, and tribes participating in the basin planning unit, one  
14 representative from each of the interest groups identified in this  
15 section, and several representatives of the general public. Each  
16 interest group shall select its representatives to the expanded basin  
17 planning unit. General public representatives shall be selected by the  
18 participating general purpose local governments. Governmental  
19 representatives shall constitute a majority of the total number of  
20 representatives participating in the expanded planning unit. An  
21 interest group not granted voting status may petition the planning unit  
22 members to secure voting status. The petition may be received up to  
23 ninety days after the invitational meeting described in this section.  
24 Decisions to add additional interest groups with voting status shall be  
25 made by a two-thirds vote of the original planning unit members.  
26 Groups not requesting voting status may participate in an ex-officio  
27 capacity at the invitation of the expanded basin planning unit.

28 (3) If a designated group chooses not to participate in the basin  
29 planning unit, the planning process shall continue and the  
30 nonparticipating group's position within the planning unit shall remain  
31 vacant for the duration of the planning period. If no groups, other  
32 than the governmental entities that constitute the initial basin  
33 planning unit, are either willing or able to proceed at the time of the  
34 invitational meeting, the full planning process may proceed in their  
35 absence and the initial basin planning unit should attempt to limit its  
36 scope of work to those issues, interests, resources, priorities, and  
37 water rights that are directly held by or associated with participating  
38 basin planning unit members.

1 (4) The period allowed for the expanded basin planning process  
2 shall be established at the onset of the process.

3 (5) Participants in the expanded planning unit shall seek to reach  
4 decisions by consensus.

5 NEW SECTION. **Sec. 206.** INSTREAM FLOWS. A basin planning unit, as  
6 part of the planning process, may review and recommend changes to  
7 existing instream flow levels established by regulation within the  
8 WRIA. A planning unit shall submit to the department for rule  
9 adoption, recommended instream flow levels for those rivers and streams  
10 within the WRIA where minimum flows have not been established. These  
11 recommendations shall be included in a basin plan.

12 NEW SECTION. **Sec. 207.** SCOPE OF WORK. Within one hundred twenty  
13 days after the expanded basin planning unit has been formed, it shall  
14 review the scope of work recommended by the initial basin planning unit  
15 for the purpose of making changes, additions, or deletions to the scope  
16 of work and associated work plans.

17 NEW SECTION. **Sec. 208.** PUBLIC INVOLVEMENT--SCOPE OF WORK. (1)  
18 The basin planning unit shall establish a public involvement advisory  
19 committee that is responsible for assuring public involvement. The  
20 committee's work shall include providing information and receiving  
21 comments and suggestions from the public regarding the scope of work,  
22 the projects, plans, and action of the basin planning unit, and the  
23 goals, findings, progress, and recommendations regarding the basin  
24 planning process.

25 (2) The basin planning unit shall conduct at least two public  
26 hearings within the WRIA planning area on the planning objectives, work  
27 plans, and scope of work before their adoption and commencement of  
28 related work.

29 NEW SECTION. **Sec. 209.** PLAN CONTENTS. (1) Before the adoption of  
30 a draft basin plan, the basin planning unit shall conduct at least two  
31 public hearings.

32 (2) The plan may include, but is not limited to the following:

33 (a) A quantitative determination of projected future uses and how  
34 much surface and ground water exists within the WRIA or basin;

1 (b) A quantitative determination of projected future uses and how  
2 much surface and ground water is available to meet instream and out-of-  
3 stream demands, including agricultural, fisheries, industrial,  
4 municipal, recreational, and residential uses, and the conditions and  
5 procedures under which future allocations may be made for those uses;  
6 (c) An analysis of surface and ground water quality conditions  
7 within the WRIA or basin;  
8 (d) A determination of approximately when and how much water is  
9 claimed, used, permitted, and certificated, including instream flows;  
10 (e) Measures and plans to improve the water quality of the ground  
11 and surface water sources;  
12 (f) Water supply planning requirements for future needs in  
13 accordance with adopted local government land use plans;  
14 (g) Fisheries restoration and enhancement objectives and plans;  
15 (h) Instream flow recommendations;  
16 (i) Options and opportunities for the potential storage, recharge,  
17 and reuse of water;  
18 (j) Land use management controls and incentives for habitat  
19 preservation and restoration;  
20 (k) Conservation and water use efficiency measures applicable to  
21 the basin;  
22 (l) Identification of potential interbasin issues of importance and  
23 recommended methods for resolution; and  
24 (m) A plan for implementation, including responsible parties,  
25 funding, and schedule.  
26 (3) The basin planning unit may prepare an environmental impact  
27 statement, if required by the county or other local legislative  
28 authority, to address the provisions of the plan.  
29 (4) The basin planning unit shall submit the draft basin plan to  
30 all local governments with land use authority within the WRIA or basin  
31 planning area for their review. Within ninety days of receipt of the  
32 draft plan, the local governments shall determine whether or not the  
33 plan as submitted is consistent with the jurisdiction's adopted land  
34 use plans and shoreline development policies. If found inconsistent,  
35 reviewing local governments shall remand the basin plan to the planning  
36 unit and identify those provisions requiring change or conformance to  
37 local government plans and policies. Lack of available water may  
38 require local governments to modify land use or water supply plans.

1 (5) The planning unit shall submit the draft basin plan to the  
2 department, which shall coordinate plan distribution and receipt of  
3 comments from other state agencies. The department shall review the  
4 plan to determine consistency with existing state statutes and rules,  
5 and incorporate into any remand comments the determinations of other  
6 state agencies regarding statutes and rules under their jurisdiction.  
7 In its review capacity, the department may not reject or modify the  
8 plan, but may remand it back to the basin planning unit with comments  
9 if sections are found to be inconsistent with state or federal law.  
10 Sections that are determined by the department to be consistent with  
11 state and federal law may be implemented immediately. Should the  
12 department determine the plan is not consistent with existing state  
13 statutes or rules, it shall notify in writing the basin planning unit  
14 of the following within ninety days of receipt:

15 (a) Plan inconsistencies with either or both rules and statutes;  
16 and

17 (b) Recommendations regarding changes, to either or both the  
18 statutes and rules, required for plan implementation.

19 (6) Upon completion of review by the department, members of the  
20 basin planning unit shall formally adopt and implement those  
21 provisions, policies, and obligations of the plan consistent with  
22 existing laws or rules within one hundred twenty days through legally  
23 binding procedures. The adoption process by state agencies, local  
24 governments, and tribes shall occur through the adoption of  
25 resolutions, ordinances, or other methods that legally bind the parties  
26 to the terms of the plan and its provisions. State laws or ordinances  
27 found in conflict with plan provisions shall be submitted to the  
28 legislature or local government for review to determine if amendment or  
29 repeal of such laws or ordinances is in the public interest.

30 (7) Following adoption of the plan by the basin planning unit, the  
31 department shall expeditiously prepare a rule for incorporation into  
32 the Washington administrative code that:

33 (a) Reflects state approval of the plan; and

34 (b) Makes, where possible, all appropriate changes to existing  
35 rules that would otherwise preclude plan implementation. Where  
36 multiple requests for rule making under this subsection are pending,  
37 the department may schedule initiation of rule-making procedures to  
38 conform to available budgetary resources.

1 (8) The department and other state agencies shall take all  
2 appropriate action and make program and policy changes to implement the  
3 plan.

4 NEW SECTION. **Sec. 210.** GRANTS, FUNDS, AND TECHNICAL ASSISTANCE.

5 (1) Initial basin planning units and expanded basin planning units  
6 engaged in basin planning efforts may accept state, federal, and local  
7 government grants, funds, and other financing, as well as enter into  
8 cooperative agreements with private and public entities for the purpose  
9 of developing basin plans, conducting level I and level II basin  
10 assessments, water quality and fishery data collection and analysis,  
11 facilitation, and plan implementation.

12 (2) The department shall support, though the provision of all  
13 possible technical and funding assistance, the efforts of basin  
14 planning units and qualified governmental entities to assist in  
15 preparing level I or level II basin assessment in WRIAs where no such  
16 assessments have been prepared.

17 NEW SECTION. **Sec. 211.** ADMINISTRATIVE RULE. The department  
18 shall, within one hundred twenty days of the effective date of this  
19 section, propose for public review guidelines for implementing the  
20 basin planning processes authorized in this chapter.

21 **PART III**

22 **WATER RIGHTS ADJUDICATION**

23 NEW SECTION. **Sec. 301.** A new section is added to chapter 90.03  
24 RCW to read as follows:

25 The water rights adjudication account is established in the state  
26 treasury. Funds in the water rights adjudication account may be  
27 expended, subject to appropriation in the 1995-97 and subsequent fiscal  
28 biennia for the costs of basin-wide water rights adjudications,  
29 including the costs of referees in such adjudications.

30 **Sec. 302.** RCW 43.84.092 and 1995 c 394 s 1 and 1995 c 122 s 12 are  
31 each reenacted and amended to read as follows:

32 (1) All earnings of investments of surplus balances in the state  
33 treasury shall be deposited to the treasury income account, which  
34 account is hereby established in the state treasury.

1 (2) The treasury income account shall be utilized to pay or receive  
2 funds associated with federal programs as required by the federal cash  
3 management improvement act of 1990. The treasury income account is  
4 subject in all respects to chapter 43.88 RCW, but no appropriation is  
5 required for refunds or allocations of interest earnings required by  
6 the cash management improvement act. Refunds of interest to the  
7 federal treasury required under the cash management improvement act  
8 fall under RCW 43.88.180 and shall not require appropriation. The  
9 office of financial management shall determine the amounts due to or  
10 from the federal government pursuant to the cash management improvement  
11 act. The office of financial management may direct transfers of funds  
12 between accounts as deemed necessary to implement the provisions of the  
13 cash management improvement act, and this subsection. Refunds or  
14 allocations shall occur prior to the distributions of earnings set  
15 forth in subsection (4) of this section.

16 (3) Except for the provisions of RCW 43.84.160, the treasury income  
17 account may be utilized for the payment of purchased banking services  
18 on behalf of treasury funds including, but not limited to, depository,  
19 safekeeping, and disbursement functions for the state treasury and  
20 affected state agencies. The treasury income account is subject in all  
21 respects to chapter 43.88 RCW, but no appropriation is required for  
22 payments to financial institutions. Payments shall occur prior to  
23 distribution of earnings set forth in subsection (4) of this section.

24 (4) Monthly, the state treasurer shall distribute the earnings  
25 credited to the treasury income account. The state treasurer shall  
26 credit the general fund with all the earnings credited to the treasury  
27 income account except:

28 (a) The following accounts and funds shall receive their  
29 proportionate share of earnings based upon each account's and fund's  
30 average daily balance for the period: The capitol building  
31 construction account, the Cedar River channel construction and  
32 operation account, the Central Washington University capital projects  
33 account, the charitable, educational, penal and reformatory  
34 institutions account, the common school construction fund, the county  
35 criminal justice assistance account, the county sales and use tax  
36 equalization account, the data processing building construction  
37 account, the deferred compensation administrative account, the deferred  
38 compensation principal account, the department of retirement systems  
39 expense account, the Eastern Washington University capital projects

1 account, the education construction fund, the emergency reserve fund,  
2 the federal forest revolving account, the health services account, the  
3 public health services account, the health system capacity account, the  
4 personal health services account, the industrial insurance premium  
5 refund account, the judges' retirement account, the judicial retirement  
6 administrative account, the judicial retirement principal account, the  
7 local leasehold excise tax account, the local real estate excise tax  
8 account, the local sales and use tax account, the medical aid account,  
9 the mobile home park relocation fund, the municipal criminal justice  
10 assistance account, the municipal sales and use tax equalization  
11 account, the natural resources deposit account, the perpetual  
12 surveillance and maintenance account, the public employees' retirement  
13 system plan I account, the public employees' retirement system plan II  
14 account, the Puyallup tribal settlement account, the resource  
15 management cost account, the site closure account, the special wildlife  
16 account, the state employees' insurance account, the state employees'  
17 insurance reserve account, the state investment board expense account,  
18 the state investment board commingled trust fund accounts, the  
19 supplemental pension account, the teachers' retirement system plan I  
20 account, the teachers' retirement system plan II account, the tuition  
21 recovery trust fund, the University of Washington bond retirement fund,  
22 the University of Washington building account, the volunteer fire  
23 fighters' relief and pension principal account, the volunteer fire  
24 fighters' relief and pension administrative account, the Washington  
25 judicial retirement system account, the Washington law enforcement  
26 officers' and fire fighters' system plan I retirement account, the  
27 Washington law enforcement officers' and fire fighters' system plan II  
28 retirement account, the Washington state patrol retirement account, the  
29 Washington State University building account, the Washington State  
30 University bond retirement fund, the water rights adjudication account,  
31 the water pollution control revolving fund, and the Western Washington  
32 University capital projects account. Earnings derived from investing  
33 balances of the agricultural permanent fund, the normal school  
34 permanent fund, the permanent common school fund, the scientific  
35 permanent fund, and the state university permanent fund shall be  
36 allocated to their respective beneficiary accounts. All earnings to be  
37 distributed under this subsection (4)(a) shall first be reduced by the  
38 allocation to the state treasurer's service fund pursuant to RCW  
39 43.08.190.



1 (b) The following accounts and funds shall receive eighty percent  
2 of their proportionate share of earnings based upon each account's or  
3 fund's average daily balance for the period: The aeronautics account,  
4 the aircraft search and rescue account, the central Puget Sound public  
5 transportation account, the city hardship assistance account, the  
6 county arterial preservation account, the department of licensing  
7 services account, the economic development account, the essential rail  
8 assistance account, the essential rail banking account, the ferry bond  
9 retirement fund, the gasohol exemption holding account, the grade  
10 crossing protective fund, the high capacity transportation account, the  
11 highway bond retirement fund, the highway construction stabilization  
12 account, the highway safety account, the marine operating fund, the  
13 motor vehicle fund, the motorcycle safety education account, the  
14 pilotage account, the public transportation systems account, the Puget  
15 Sound capital construction account, the Puget Sound ferry operations  
16 account, the recreational vehicle account, the rural arterial trust  
17 account, the safety and education account, the small city account, the  
18 special category C account, the state patrol highway account, the  
19 transfer relief account, the transportation capital facilities account,  
20 the transportation equipment fund, the transportation fund, the  
21 transportation improvement account, the transportation revolving loan  
22 account, and the urban arterial trust account.

23 (5) In conformance with Article II, section 37 of the state  
24 Constitution, no treasury accounts or funds shall be allocated earnings  
25 without the specific affirmative directive of this section.

26 **PART IV**  
27 **GENERAL PERMITS**

28 NEW SECTION. **Sec. 401.** The legislature finds that the present  
29 delay in the processing of water right applications is not beneficial  
30 to the citizens of the state nor is it in keeping with the goal of  
31 managing the resource to the highest possible standard and maximum net  
32 benefit.

33 The legislature further finds that water conservation efforts would  
34 be greatly enhanced by a permit system that encourages water right  
35 applicants to use only the amount of water actually necessary to meet  
36 their needs.

1        NEW SECTION.    **Sec. 402.**    A new section is added to chapter 90.03  
2 RCW to read as follows:

3        (1) The department shall develop a general permit system for  
4 appropriating water for nonconsumptive, nonbypass uses. This system  
5 must be designed and used to accurately identify and register any water  
6 right application that qualifies for the streamlined process of  
7 appropriation of water by meeting the requirements in this section and  
8 registering the use as authorized under the terms and conditions of the  
9 general permit. The general permit system must be applicable state-  
10 wide, and all waters of the state shall be eligible for coverage under  
11 the system. The evaluation and report required for an application  
12 under RCW 90.03.290 are not required for applications processed under  
13 the general permit system. For the purposes of this section:

14        (a) "Nonconsumptive, nonbypass use" means a use of water in which  
15 water is diverted from a stream or drawn from an aquifer and following  
16 its use is discharged back into or near the point of diversion or  
17 withdrawal without diminishment in quality, and the use is less than  
18 five thousand gallons of net consumption per day; and

19        (b) "Without diminishment of quality" means that, before being  
20 discharged back to its source, the water being discharged meets state  
21 water quality standards adopted under chapter 90.48 RCW.

22        (2) The department shall, by January 1, 1997, establish the general  
23 permit system by adopting rules in accordance with chapter 34.05 RCW.  
24 Before the adoption of rules for a system, the department shall consult  
25 with representatives of the following interest groups: Agriculture;  
26 aquaculture; home construction and development; county government; city  
27 government; surface mining; and the environmental community. At least  
28 four public hearings must be held at various locations around the  
29 state, not less than two of which shall be east of the crest of the  
30 Cascade mountains. The rules must identify criteria for proposed uses  
31 of water for which applications might be processed under the system and  
32 must establish procedures for filing and processing applications and  
33 issuing water rights certificates under the general permit system.

34        NEW SECTION.    **Sec. 403.**    A new section is added to chapter 90.03  
35 RCW to read as follows:

36        An application for registration as a nonconsumptive, nonbypass  
37 water user under the general permit system established under section  
38 402 of this act must be made on a form adopted and provided by the

1 department. Within sixty days of receipt of a properly completed  
2 application, the department shall determine whether the proposed use is  
3 eligible to be processed under the general permit system. If the  
4 department determines that the proposed use is eligible to be processed  
5 under the system, the application must be processed under the system  
6 within the next sixty days. The priority date of the water right  
7 established pursuant to this section shall be the date that the  
8 properly completed application is submitted. If the department  
9 determines that the proposed use is not eligible for the processing,  
10 the department shall explain to the applicant in writing the reasons  
11 for its determination. For a proposed use determined ineligible for  
12 the processing, if the department finds that the information contained  
13 on the application form substantially satisfies the information  
14 requirements for an application for a use that would normally be filed  
15 for processing the application outside of the general permit system,  
16 the department shall notify the applicant of its finding and shall  
17 process the application as if it were filed for processing outside of  
18 the system. If the department finds that the information does not  
19 substantially satisfy the requirements, the application must be  
20 considered to be incomplete for the processing and the applicant must  
21 be notified of this consideration.

22 NEW SECTION. **Sec. 404.** A new section is added to chapter 90.03  
23 RCW to read as follows:

24 Nothing in sections 402 and 403 of this act authorizes the  
25 impairment or operates to impair any existing water rights. A water  
26 right holder under sections 402 and 403 of this act shall not make  
27 withdrawals that impair a senior water right. A holder of a senior  
28 water right who believes his or her water right is impaired may file a  
29 complaint with the department of ecology. Where such complaints of  
30 impairment have been received, the department of ecology shall make all  
31 reasonable efforts to resolve them in a timely manner through agreement  
32 of the parties. Nothing in section 402 or 403 of this act may be  
33 construed as waiving any requirement established under chapter 90.48  
34 RCW or federal law that a permittee secure a discharge permit regarding  
35 water quality.

36  
37

**PART V**  
**REGULATORY AUTHORITY AFTER *SINKING CREEK***

1        NEW SECTION.    **Sec. 501.**    A new section is added to chapter 43.27A  
2 RCW to read as follows:

3        The purpose of this section is to set forth the powers of the  
4 department to regulate the withdrawal or diversion of public waters and  
5 water or water rights related thereto including regulation based on  
6 dates of priority or other pertinent factors. Regulatory actions taken  
7 under this section shall be based on examination and determination by  
8 the department or the court, as applicable, of the various water rights  
9 involved according to the department's records and other records and  
10 pertinent facts. The powers set forth in this section may be exercised  
11 whether or not a general adjudication relating to the water rights  
12 involved has been conducted.

13        (1) In a regulatory situation (a) where a water right or all water  
14 rights proposed for regulation by the department, as well as any right  
15 or rights of a senior priority that the proposed regulation is designed  
16 to protect, is or are embodied in a certificate or certificates issued  
17 under RCW 90.03.240, 90.03.330, 90.38.040, 90.42.040, or 90.44.060 or  
18 a permit or permits issued pursuant to RCW 90.03.290 or 90.44.060; or  
19 (b) where a flow or level has been established by rule pursuant to  
20 chapter 90.22 or 90.54 RCW; or (c) where it appears to the department  
21 that public waters are being withdrawn without any right or other  
22 appropriate authority whatsoever, the department in its discretion is  
23 authorized to regulate the right or rights under either RCW 43.27A.190  
24 or subsection (2) of this section.

25        (2) In a regulatory situation where one or more of the water rights  
26 proposed for regulation by the department, as well as any right or  
27 rights of a senior priority that the proposed regulation is designed to  
28 protect, is not or are not embodied in a permit or certificate as  
29 described in subsection (1) of this section, the department is only  
30 authorized to bring an appropriate action at law or in equity,  
31 including seeking injunctive relief, as it may deem necessary. Where  
32 actions are brought in a state court, the actions shall be initiated in  
33 the superior court of the county where the point or points of diversion  
34 of the water right or rights proposed for regulation are located. If  
35 the points of diversion are located in more than one county, the  
36 department may bring the action in a county where a point of diversion  
37 is located.

38        (3) Nothing in this section authorizes the department to accomplish  
39 a general adjudication of water rights proceeding or the substantial

1 equivalent of a general adjudication of water rights. The exclusive  
2 procedure for accomplishing a general adjudication of water rights is  
3 under RCW 90.03.110 through 90.03.245 or 90.44.220.

4 (4) Nothing in this section shall amend, revise, or repeal RCW  
5 90.14.130 or 90.14.200.

6 (5) This section does not in any way modify regulatory powers  
7 previously placed with the department except as provided in subsections  
8 (1) and (2) of this section.

9 **PART VI**

10 **WATER RIGHTS FOR INSTREAM PURPOSES**

11 NEW SECTION. **Sec. 601.** A new section is added to chapter 90.03  
12 RCW to read as follows:

13 Notwithstanding any provision in this chapter or chapter 90.54 RCW,  
14 a right to the beneficial use of water may be maintained and  
15 established without a physical diversion of water and such right may be  
16 held by any person as defined by RCW 90.03.015 or by a unit of state or  
17 local government.

18 Such a transfer for instream purposes may be permanent or  
19 temporary. A temporary transfer may remain in effect for any length of  
20 time as determined by the water right holder. The holder of the water  
21 right temporarily transferred to instream purposes may transfer all or  
22 part of the water right to the use for which the water right was  
23 initially granted at any time the holder chooses.

24 **Sec. 602.** RCW 90.03.380 and 1991 c 347 s 15 are each amended to  
25 read as follows:

26 The right to the use of water which has been applied to a  
27 beneficial use in the state shall be and remain appurtenant to the land  
28 or place upon which the same is used: PROVIDED, HOWEVER, That said  
29 right may be transferred to another or to others and become appurtenant  
30 to any other land or place of use, including an instream use without  
31 physical diversion of water, without loss of priority of right  
32 theretofore established if such change can be made without detriment or  
33 injury to existing rights. A person may transfer an instream water  
34 right to another person without obtaining the approval required under  
35 this section, but the person shall file a notice of the transfer with  
36 the department stating the name and address of the person or

1 governmental unit to whom the right has been transferred. The point of  
2 diversion of water for beneficial use or the purpose of use may be  
3 changed, if such change can be made without detriment or injury to  
4 existing rights. Before any transfer of such right to use water or  
5 change of the point of diversion of water or change of purpose of use  
6 can be made, any person having an interest in the transfer or change,  
7 shall file a written application therefor with the department, and said  
8 application shall not be granted until notice of said application shall  
9 be published as provided in RCW 90.03.280. If it shall appear that  
10 such transfer or such change may be made without injury or detriment to  
11 existing rights, the department shall issue to the applicant a  
12 certificate in duplicate granting the right for such transfer or for  
13 such change of point of diversion or of use. The certificate so issued  
14 shall be filed and be made a record with the department and the  
15 duplicate certificate issued to the applicant may be filed with the  
16 county auditor in like manner and with the same effect as provided in  
17 the original certificate or permit to divert water.

18 If an application for change proposes to transfer water rights from  
19 one irrigation district to another, the department shall, before  
20 publication of notice, receive concurrence from each of the irrigation  
21 districts that such transfer or change will not adversely affect the  
22 ability to deliver water to other landowners or impair the financial  
23 integrity of either of the districts.

24 A change in place of use by an individual water user or users of  
25 water provided by an irrigation district need only receive approval for  
26 the change from the board of directors of the district if the use of  
27 water continues within the irrigation district.

28 This section shall not apply to trust water rights acquired by the  
29 state through the funding of water conservation projects under chapter  
30 90.38 RCW or RCW 90.42.010 through 90.42.070.

31 **Sec. 603.** RCW 90.42.080 and 1993 c 98 s 4 are each amended to read  
32 as follows:

33 (1) The state may acquire all or portions of existing water rights,  
34 by purchase, gift, or other appropriate means other than by  
35 condemnation, from any person or entity or combination of persons or  
36 entities. Once acquired, such rights are trust water rights. A water  
37 right acquired by the state that is expressly conditioned upon the use

1 being limited to instream purposes shall be administered as a trust  
2 water right in compliance with such condition.

3 (2) The department may enter into leases, contracts, or such other  
4 arrangements with other persons or entities as appropriate, to ensure  
5 that trust water rights acquired in accordance with this chapter may be  
6 exercised to the fullest possible extent.

7 (3) Trust water rights may be acquired by the state on a temporary  
8 or permanent basis.

9 (4) The provisions of RCW 90.03.380 and 90.03.390 apply to  
10 transfers of water rights under this section.

11 (5) No funds may be expended for the purchase of water rights by  
12 the state pursuant to this section unless specifically appropriated for  
13 this purpose by the legislature.

## 14 PART VII

### 15 WATER RIGHTS ADMINISTRATION EFFICIENCIES

16 **Sec. 701.** RCW 90.03.340 and 1987 c 109 s 90 are each amended to  
17 read as follows:

18 After January 1, 1997, the priority date of the right acquired by  
19 appropriation ((shall relate back to)) is the date ((of filing of)) the  
20 ((original)) completed application form for the right is filed with the  
21 department. For the purposes of this section and RCW 90.03.270, a  
22 completed application form is one that contains all of the information  
23 requested on the form and is accompanied by the application fee.

24 **Sec. 702.** RCW 90.03.270 and 1987 c 109 s 85 are each amended to  
25 read as follows:

26 Upon receipt of ((an)) a completed water right application form it  
27 shall be the duty of the department to ((make an endorsement thereon of  
28 the)) date ((of its receipt)), stamp, and to keep a record of ((same))  
29 it. If ((upon examination, the application is found to be defective,))  
30 an application form is filed with the department but the information  
31 requested on the application form is not complete or the form is not  
32 accompanied by the proper application fee, the form and any application  
33 fee filed with it shall be returned to the applicant ((for correction  
34 or completion,)) and the date and the reasons for the return thereof  
35 shall be ((endorsed thereon and made a record in his office. No  
36 application shall lose its priority of filing on account of such

1 defects, provided acceptable maps, drawings and such data as is  
2 required by the department shall be filed with the department within  
3 such reasonable time as it shall require)) noted in the department's  
4 records and in a letter returning the form. The department may not  
5 require an applicant to provide information in support of an  
6 application for a water right permit that is not necessary for the  
7 department's investigations, determinations, or findings regarding that  
8 particular application.

9 **Sec. 703.** RCW 90.03.280 and 1994 c 264 s 83 are each amended to  
10 read as follows:

11 Upon receipt of a ((proper)) completed application, the department  
12 shall instruct the applicant to publish notice ((thereof)) in a form  
13 and within a time prescribed by the department in a newspaper of  
14 general circulation published in the county or counties in which the  
15 storage, diversion or withdrawal, and use is to be made, and in such  
16 other newspapers as the department may direct, once a week for two  
17 consecutive weeks. The notice shall include information pertinent to  
18 the proposed appropriation, including the location, the source, the  
19 purpose or purposes of use, and the quantity proposed to be diverted or  
20 withdrawn. The notice shall state that persons wishing to protest the  
21 proposed appropriation must do so in writing to the department within  
22 thirty days of the last date of publication of the notice. In order to  
23 be considered by the department, a protest must be received by the  
24 department within thirty days of the last date of publication of the  
25 notice. Upon receipt by the department of an application it shall send  
26 notice thereof containing pertinent information to the director of fish  
27 and wildlife.

28 NEW SECTION. **Sec. 704.** A new section is added to chapter 43.21B  
29 RCW to read as follows:

30 In a proceeding before the pollution control hearings board  
31 challenging a decision of the department related to the issuance,  
32 conditioning, transfer, amendment, or denial of a water right permit  
33 under Title 90 RCW, the burden of proof is on the person filing the  
34 appeal.

35 NEW SECTION. **Sec. 705.** A new section is added to chapter 90.03  
36 RCW to read as follows:



1 A water right applicant may appeal to the pollution control  
2 hearings board a determination by the department regarding the nature  
3 and extent of the information needed to make determinations regarding  
4 the application for or the processing of a water right permit.

5 NEW SECTION. **Sec. 706.** A new section is added to chapter 43.21B  
6 RCW to read as follows:

7 (1) In any appeals of water-related agency actions over which the  
8 hearings board has jurisdiction, the chairman of the hearings board may  
9 assign the case to a single member of the hearings board in lieu of the  
10 entire board. In such cases, the board member assigned to the case  
11 shall have all powers relating to the administration of oaths, issuance  
12 of subpoenas, and taking of depositions as are granted to agencies in  
13 chapter 34.05 RCW, the administrative procedure act, and shall be  
14 subject to all duties imposed upon, and shall have all powers granted  
15 to, an agency by those provisions of chapter 34.05 RCW relating to  
16 adjudicative proceedings.

17 (2) The environmental hearings office shall by rule determine a  
18 procedure for the random selection and rotation of board members for  
19 single-member cases, and shall implement this procedure in assigning an  
20 appeal of a water-related agency action to a single board member for  
21 review.

22 (3) In cases decided under subsection (1) of this section, a  
23 decision of the single member shall have the same force and effect as  
24 a decision of the full board. A party to an appeal decided by a single  
25 board member may, within ten days of a decision, request rehearing en  
26 banc. A request for rehearing en banc shall be granted only by  
27 agreement of two members of the board. Rehearing en banc is not  
28 favored and ordinarily will not be granted except (a) when  
29 consideration of the full hearings board is necessary to secure or  
30 maintain uniformity of its decisions, or (b) when the proceeding  
31 involves a question of exceptional importance. En banc review shall be  
32 limited to review of the record.

33 (4) A request for rehearing en banc under subsection (3) of this  
34 section is not a prerequisite for seeking judicial review. An order  
35 denying rehearing en banc is not subject to reconsideration under RCW  
36 34.05.470 or by any court.

37 (5) No request for rehearing en banc may stay the effectiveness of  
38 an order.

1 (6) Nothing in this section affects the rights of a party under RCW  
2 34.05.470.

3 (7) For purposes of this section, a "water-related agency action"  
4 includes (a) a decision to grant or deny a permit or certificate for a  
5 right to the beneficial use of water or to amend, change, or transfer  
6 such a right; (b) a decision to enforce the conditions of a permit for,  
7 or right to, the beneficial use of water or to require any person to  
8 discontinue the use of water; and (c) a decision regarding the nature  
9 and extent of the information needed to make determinations regarding  
10 the application for or processing of a water right permit.

11 **Sec. 707.** RCW 90.03.290 and 1994 c 264 s 84 are each amended to  
12 read as follows:

13 (1) When ~~((an))~~ a completed application complying with the  
14 provisions of this chapter and with the rules ~~((and regulations))~~ of  
15 the department has been filed, the ~~((same))~~ application shall be placed  
16 on record with the department, and it shall be ~~((its))~~ the department's  
17 duty to ~~((investigate the application, and))~~ determine what water, if  
18 any, is available for appropriation, and find and determine to what  
19 beneficial use or uses it can be applied.

20 The department shall investigate the application. The applicant  
21 shall provide a completed application form. In addition to providing  
22 the information requested on the form, however, the applicant shall  
23 also provide such information as may be required for the department's  
24 investigation, determinations, and findings regarding the application  
25 and may provide additional information. The information provided by  
26 the applicant shall satisfy the protocols, which are study plans and  
27 criteria, established by the department for obtaining and providing the  
28 information. If an applicant provides the information, and satisfies  
29 the protocols set by the department for obtaining and providing it, the  
30 department shall review the information and may take actions to verify  
31 that the information is accurate. The department may not, except to  
32 replace inaccurate information, take actions that would require the  
33 applicant to obtain major portions of the information anew.

34 (2) With regard to an application:

35 (a) If it is proposed to appropriate water for irrigation purposes,  
36 the department shall investigate, determine and find what lands are  
37 capable of irrigation by means of water found available for  
38 appropriation.

1       **(b)** If it is proposed to appropriate water for the purpose of power  
2 development, the department shall investigate, determine and find  
3 whether the proposed development is likely to prove detrimental to the  
4 public interest, having in mind the highest feasible use of the waters  
5 belonging to the public.

6       **(3)** If the application does not contain, and the applicant does not  
7 promptly furnish sufficient information on which to base such findings,  
8 the department may issue a preliminary permit, for a period of not to  
9 exceed three years, requiring the applicant to make such surveys,  
10 investigations, studies, and progress reports, as in the opinion of the  
11 department may be necessary. If the applicant fails to comply with the  
12 conditions of the preliminary permit, it and the application or  
13 applications on which it is based shall be automatically canceled and  
14 the applicant so notified. If the holder of a preliminary permit  
15 shall, before its expiration, file with the department a verified  
16 report of expenditures made and work done under the preliminary permit,  
17 which, in the opinion of the department, establishes the good faith,  
18 intent and ability of the applicant to carry on the proposed  
19 development, the preliminary permit may, with the approval of the  
20 governor, be extended, but not to exceed a maximum period of five years  
21 from the date of the issuance of the preliminary permit.

22       **(4)** The department shall make and file as part of the record in the  
23 matter, written findings of fact concerning all things investigated.  
24 The department shall make a summary of the record of examination, and  
25 the proposed permit if the department proposes to issue the permit,  
26 available to the public by any means reasonable, including using the  
27 register established under section 714 of this act. The department  
28 shall provide a period of at least thirty days for the public to submit  
29 comments thereon. The department shall consider the comments received  
30 and the entire record, and if it shall find that there is water  
31 available for appropriation for a beneficial use, and the appropriation  
32 thereof as proposed in the application will not impair existing rights  
33 or be detrimental to the public welfare, it shall issue a permit  
34 stating the amount of water to which the applicant shall be entitled  
35 and the beneficial use or uses to which it may be applied: PROVIDED,  
36 That where the water applied for is to be used for irrigation purposes,  
37 it shall become appurtenant only to such land as may be reclaimed  
38 thereby to the full extent of the soil for agricultural purposes. But  
39 where there is no unappropriated water in the proposed source of

1 supply, or where the proposed use conflicts with existing rights, or  
2 threatens to prove detrimental to the public interest, having due  
3 regard to the highest feasible development of the use of the waters  
4 belonging to the public, it shall be duty of the department to reject  
5 such application and to refuse to issue the permit asked for. If the  
6 permit is refused because of conflict with existing rights and such  
7 applicant shall acquire same by purchase or condemnation under RCW  
8 90.03.040, the department may thereupon grant such permit. Any  
9 application may be approved for a less amount of water than that  
10 applied for, if there exists substantial reason therefor, and in any  
11 event shall not be approved for more water than can be applied to  
12 beneficial use for the purposes named in the application. In  
13 determining whether or not a permit shall issue upon any application,  
14 it shall be the duty of the department to investigate all facts  
15 relevant and material to the application. After the department  
16 approves said application in whole or in part and before any permit  
17 shall be issued thereon to the applicant, such applicant shall pay the  
18 fee provided in RCW 90.03.470: PROVIDED FURTHER, That in the event a  
19 permit is issued by the department upon any application, it shall be  
20 its duty to notify the director of fish and wildlife and affected  
21 federally recognized Indian tribes of such issuance.

22 **Sec. 708.** RCW 90.03.320 and 1987 c 109 s 67 are each amended to  
23 read as follows:

24 (1) Actual construction work shall be commenced on any project for  
25 which permit has been granted within such reasonable time as shall be  
26 prescribed by the department, and shall thereafter be prosecuted with  
27 diligence and completed within the time prescribed by the department.  
28 The department, in fixing the time for the commencement of the work, or  
29 for the completion thereof and the application of the water to the  
30 beneficial use prescribed in the permit, shall take into consideration  
31 the cost and magnitude of the project and the engineering and physical  
32 features to be encountered, and shall allow such time as shall be  
33 reasonable and just under the conditions then existing, having due  
34 regard for the public welfare and public interests affected: and, for  
35 good cause shown, it shall extend the time or times fixed as aforesaid,  
36 and shall grant such further period or periods as may be reasonably  
37 necessary, having due regard to the good faith of the applicant and the  
38 public interests affected.

1 (2) For the purposes of this section, "good cause" includes but is  
2 not limited to the following circumstances that prevent work completion  
3 within the prescribed period:

4 (a) Active service in the armed forces of the United States during  
5 a military crisis;

6 (b) Nonvoluntary service in the armed forces of the United States;

7 (c) A court order having the effect of stopping the construction  
8 work;

9 (d) Delays in securing other permits necessary to proceed with the  
10 development;

11 (e) A single transfer in ownership of the property;

12 (f) Implementation of water efficiency measures, including  
13 conservation and reclaimed water use;

14 (g) Encountering unanticipated physical impediments to  
15 construction; and

16 (h) Encountering generally depressed economic conditions.

17 (3) If the terms of the permit or extension thereof((~~7~~)) are not  
18 complied with, the department shall give notice by ((registered))  
19 certified mail that ((such)) the permit will be canceled unless the  
20 ((holders thereof shall)) permittee shows cause within sixty days why  
21 the ((same)) permit should not be ((so)) canceled. If cause ((be)) is  
22 not shown, ((said)) the permit shall be canceled.

23 **Sec. 709.** RCW 90.03.260 and 1987 c 109 s 84 are each amended to  
24 read as follows:

25 ~~((Each application for permit to appropriate water shall set forth~~  
26 ~~the name and post office address of the applicant, the source of water~~  
27 ~~supply, the nature and amount of the proposed use, the time during~~  
28 ~~which water will be required each year, the location and description of~~  
29 ~~the proposed ditch, canal, or other work, the time within which the~~  
30 ~~completion of the construction and the time for the complete~~  
31 ~~application of the water to the proposed use. If for agricultural~~  
32 ~~purposes, it shall give the legal subdivision of the land and the~~  
33 ~~acreage to be irrigated, as near as may be, and the amount of water~~  
34 ~~expressed in acre feet to be supplied per season. If for power~~  
35 ~~purposes, it shall give the nature of the works by means of which the~~  
36 ~~power is to be developed, the head and amount of water to be utilized,~~  
37 ~~and the uses to which the power is to be applied. If for construction~~  
38 ~~of a reservoir, it shall give the height of the dam, the capacity of~~

1 the reservoir, and the uses to be made of the impounded waters. If for  
2 municipal water supply, it shall give the present population to be  
3 served, and, as near as may be, the future requirement of the  
4 municipality. If for mining purposes, it shall give the nature of the  
5 mines to be served and the method of supplying and utilizing the water;  
6 also their location by legal subdivisions. All applications shall be  
7 accompanied by such maps and drawings, in duplicate, and such other  
8 data, as may be required by the department, and such accompanying data  
9 shall be considered as a part of the application.)) The department  
10 shall adopt rules in accordance with chapter 34.05 RCW by January 1,  
11 1997, that specify the contents of completed water right application  
12 forms. The rules shall include specific timelines for the department  
13 to follow in making a determination as to whether an application is  
14 complete and notifying the applicant of its determination. The rules  
15 shall also identify the kinds of inaccuracies that render an  
16 application incomplete.

17 **Sec. 710.** RCW 90.44.060 and 1987 c 109 s 109 are each amended to  
18 read as follows:

19 Applications for permits for appropriation of underground water  
20 shall be made in the same form and manner provided in RCW 90.03.250  
21 through 90.03.340, as amended, the provisions of which sections are  
22 hereby extended to govern and to apply to ground water, or ground water  
23 right certificates and to all permits that shall be issued pursuant to  
24 such applications, and the rights to the withdrawal of ground water  
25 acquired thereby shall be governed by RCW 90.03.250 through 90.03.340,  
26 inclusive(~~(: PROVIDED, That each application to withdraw public ground~~  
27 ~~water by means of a well or wells shall set forth the following~~  
28 ~~additional information: (1) the name and post office address of the~~  
29 ~~applicant; (2) the name and post office address of the owner of the~~  
30 ~~land on which such well or wells or works will be located; (3) the~~  
31 ~~location of the proposed well or wells or other works for the proposed~~  
32 ~~withdrawal; (4) the ground water area, sub-area, or zone from which~~  
33 ~~withdrawal is proposed, provided the department has designated such~~  
34 ~~area, sub-area, or zone in accord with RCW 90.44.130; (5) the amount of~~  
35 ~~water proposed to be withdrawn, in gallons a minute and in acre feet a~~  
36 ~~year, or millions of gallons a year; (6) the depth and type of~~  
37 ~~construction proposed for the well or wells or other works: AND~~  
38 ~~PROVIDED FURTHER, That)).~~ The department shall adopt rules in

1 accordance with chapter 34.05 RCW by January 1, 1997, that specify the  
2 contents of completed water right application forms. The rules shall  
3 include specific timelines for the department to follow in making a  
4 determination as to whether an application is complete and notifying  
5 the applicant of its determination. The rules shall also identify the  
6 kinds of inaccuracies that render an application incomplete. Any  
7 permit issued pursuant to an application for constructing a well or  
8 wells to withdraw public ground water may specify an approved type and  
9 manner of construction for the purposes of preventing waste of said  
10 public waters and of conserving their head.

11 **Sec. 711.** RCW 90.03.250 and 1987 c 109 s 83 are each amended to  
12 read as follows:

13 Any person, municipal corporation, firm, irrigation district,  
14 association, corporation or water users' association hereafter desiring  
15 to appropriate water for a beneficial use shall make an application to  
16 the department for a permit to make such appropriation, and shall not  
17 use or divert such waters until he has received a permit from the  
18 department as in this chapter provided. The construction of any ditch,  
19 canal or works, or performing any work in connection with said  
20 construction or appropriation, or the use of any waters, shall not be  
21 an appropriation of such water nor an act for the purpose of  
22 appropriating water unless a permit to make said appropriation has  
23 first been granted by the department: PROVIDED, That a temporary  
24 permit may be granted upon a proper showing made to the department to  
25 be valid only during the pendency of such application for a permit  
26 unless sooner revoked by the department: PROVIDED, FURTHER, That  
27 nothing in this chapter contained shall be deemed to affect RCW  
28 90.40.010 through 90.40.080 except that the notice and certificate  
29 therein provided for in RCW 90.40.030 shall be addressed to the  
30 department, and the department shall exercise the powers and perform  
31 the duties prescribed by RCW 90.40.030.

32 The department shall encourage the filing of a consolidated  
33 application for a complex project under a single ownership that  
34 proposes to divert or withdraw water from more than one source,  
35 including a combination of surface and ground water sources. The  
36 filing of a consolidated application for transfer or change of one or  
37 more water rights involving multiple sources shall also be encouraged  
38 if all of the affected diversions or withdrawals are intended to serve

1 a single project with a single ownership. The department shall adopt  
2 and provide forms for consolidated applications.

3 NEW SECTION. Sec. 712. A new section is added to chapter 90.03  
4 RCW to read as follows:

5 (1) The department shall establish streamlined procedures for its  
6 processing of applications for de minimis appropriations of surface  
7 water, but only if the department has reserved and set aside the water  
8 for future beneficial use under RCW 90.54.050.

9 (2) Applications for appropriating water under this section shall  
10 be made on a form provided by the department. Within sixty days of the  
11 publication of a notice in accordance with RCW 90.03.280, the  
12 department shall issue or deny a permit for the requested  
13 appropriation. If the department denies the application, it shall  
14 explain its determination in writing.

15 (3) The department shall waive the evaluation and report  
16 requirements of RCW 90.03.290 if during the establishment of the  
17 reservation it was conclusively determined that water is available and  
18 that no impairment of existing water rights or the public interest will  
19 occur.

20 (4) This section may not be used in areas that are within urban  
21 growth areas as designated under RCW 36.70A.110 or within the service  
22 areas of a public water system as defined in chapter 70.119A RCW that  
23 has an available water supply.

24 (5) Unless the context clearly requires otherwise, as used in this  
25 chapter, "de minimis appropriation" means diversion and use of surface  
26 water in an amount not exceeding four hundred fifty gallons per day and  
27 not exceeding an instantaneous diversion rate of two one-hundredths  
28 cubic feet per second.

29 (6) The department shall develop, in cooperation with the  
30 department of health, informational materials regarding the risks of  
31 drinking untreated surface water. This informational material may be  
32 provided to prospective applicants. The department shall attach the  
33 informational materials to any permit that is approved under this  
34 section.

35 NEW SECTION. Sec. 713. A new section is added to chapter 90.03  
36 RCW to read as follows:



1 (1) The department may authorize short-term uses of water without  
2 publication of the notice required under RCW 90.03.280 and without the  
3 report required under RCW 90.03.290. However, before approving a  
4 short-term use, the department shall determine to its satisfaction that  
5 the substantive criteria in RCW 90.03.290 are met and that a stream  
6 affected by a short-term use will be retained with sufficient flows to  
7 maintain instream uses and to protect existing water rights. The  
8 department shall adopt and provide application forms for persons  
9 applying for a short-term use and shall expedite its consideration of  
10 short-term use requests to the extent practicable.

11 (2) For the purposes of this chapter, "short-term use" means a use  
12 of water that will not exceed one year in duration. Short-term uses  
13 include but are not limited to use in construction, dust control,  
14 dewatering, and short-term planned fire suppression activities.

15 NEW SECTION. **Sec. 714.** A new section is added to chapter 90.03  
16 RCW to read as follows:

17 The department shall establish a register that identifies, by water  
18 resource inventory area, applications for new water rights and  
19 applications for water right transfers and changes. The register shall  
20 identify: The location of the proposed use, change, or transfer;  
21 whether the application is for surface or ground water; and for ground  
22 or surface water applications, the water source. The department shall  
23 produce the register once every two weeks and shall make the register  
24 available to interested parties for a fee that is based on the cost of  
25 making the register available. One year after the effective date of  
26 this section, the department may cease production of the register if  
27 the number of requests for the register are not adequate to cover the  
28 costs of producing it.

29 **PART VIII**

30 **STORAGE**

31 **Sec. 801.** RCW 90.54.020 and 1989 c 348 s 1 are each amended to  
32 read as follows:

33 Utilization and management of the waters of the state shall be  
34 guided by the following general declaration of fundamentals:

35 (1) Uses of water for domestic, stock watering, industrial,  
36 commercial, agricultural, irrigation, hydroelectric power production,

1 mining, fish and wildlife maintenance and enhancement, recreational,  
2 and thermal power production purposes, and preservation of  
3 environmental and aesthetic values, and all other uses compatible with  
4 the enjoyment of the public waters of the state, are declared to be  
5 beneficial.

6 (2) Allocation of waters among potential uses and users shall be  
7 based generally on the securing of the maximum net benefits for the  
8 people of the state. Maximum net benefits shall constitute total  
9 benefits less costs including opportunities lost.

10 (3) The quality of the natural environment shall be protected and,  
11 where possible, enhanced as follows:

12 (a) Perennial rivers and streams of the state shall be retained  
13 with base flows necessary to provide for preservation of wildlife,  
14 fish, scenic, aesthetic and other environmental values, and  
15 navigational values. Lakes and ponds shall be retained substantially  
16 in their natural condition. Withdrawals of water which would conflict  
17 therewith shall be authorized only in those situations where it is  
18 clear that overriding considerations of the public interest will be  
19 served.

20 (b) Waters of the state shall be of high quality. Regardless of  
21 the quality of the waters of the state, all wastes and other materials  
22 and substances proposed for entry into said waters shall be provided  
23 with all known, available, and reasonable methods of treatment prior to  
24 entry. Notwithstanding that standards of quality established for the  
25 waters of the state would not be violated, wastes and other materials  
26 and substances shall not be allowed to enter such waters which will  
27 reduce the existing quality thereof, except in those situations where  
28 it is clear that overriding considerations of the public interest will  
29 be served. Technology-based effluent limitations or standards for  
30 discharges for municipal water treatment plants located on the  
31 Chehalis, Columbia, Cowlitz, Lewis, or Skagit river shall be adjusted  
32 to reflect credit for substances removed from the plant intake water  
33 if:

34 (i) The municipality demonstrates that the intake water is drawn  
35 from the same body of water into which the discharge is made; and

36 (ii) The municipality demonstrates that no violation of receiving  
37 water quality standards or appreciable environmental degradation will  
38 result.

1       (4) The development of multipurpose water storage facilities shall  
2 be a high priority for programs of water allocation, planning,  
3 management, and efficiency. The department, other state agencies,  
4 local governments, and planning units formed under section 204 or 205  
5 of this act shall evaluate the potential for the development of new  
6 storage projects and the benefits of storage in reducing damage to  
7 stream banks and property, increasing the use of land, providing water  
8 for municipal, industrial, agricultural, power generation, and other  
9 beneficial uses, and improving stream flow regimes for fisheries and  
10 other instream uses.

11       (5) Adequate and safe supplies of water shall be preserved and  
12 protected in potable condition to satisfy human domestic needs.

13       (~~(5)~~) (6) Multiple-purpose impoundment structures are to be  
14 preferred over single-purpose structures. Due regard shall be given to  
15 means and methods for protection of fishery resources in the planning  
16 for and construction of water impoundment structures and other  
17 artificial obstructions.

18       (~~(6)~~) (7) Federal, state, and local governments, individuals,  
19 corporations, groups and other entities shall be encouraged to carry  
20 out practices of conservation as they relate to the use of the waters  
21 of the state. In addition to traditional development approaches,  
22 improved water use efficiency and conservation shall be emphasized in  
23 the management of the state's water resources and in some cases will be  
24 a potential new source of water with which to meet future needs  
25 throughout the state.

26       (~~(7)~~) (8) Development of water supply systems, whether publicly  
27 or privately owned, which provide water to the public generally in  
28 regional areas within the state shall be encouraged. Development of  
29 water supply systems for multiple domestic use which will not serve the  
30 public generally shall be discouraged where water supplies are  
31 available from water systems serving the public.

32       (~~(8)~~) (9) Full recognition shall be given in the administration  
33 of water allocation and use programs to the natural interrelationships  
34 of surface and ground waters.

35       (~~(9)~~) (10) Expressions of the public interest will be sought at  
36 all stages of water planning and allocation discussions.

37       (~~(10)~~) (11) Water management programs, including but not limited  
38 to, water quality, flood control, drainage, erosion control and storm  
39 runoff are deemed to be in the public interest.

