

2 **2SHB 2200** - S AMD

3 By Committee on Ways & Means

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 **GENERAL PERMITS**

23 NEW SECTION. **Sec. 301.** The legislature finds that the present
24 delay in the processing of water right applications is not beneficial
25 to the citizens of the state nor is it in keeping with the goal of
26 managing the resource to the highest possible standard and maximum net
27 benefit.

28 The legislature further finds that water conservation efforts would
29 be greatly enhanced by a permit system that encourages water right
30 applicants to use only the amount of water actually necessary to meet
31 their needs.

32 NEW SECTION. **Sec. 302.** A new section is added to chapter 90.03
33 RCW to read as follows:

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

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

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

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

32 NEW SECTION. **Sec. 303.** A new section is added to chapter 90.03
33 RCW to read as follows:

34 An application for registration as a nonconsumptive, nonbypass
35 water user under the general permit system established under section
36 302 of this act must be made on a form adopted and provided by the
37 department. Within sixty days of receipt of a properly completed
38 application, the department shall determine whether the proposed use is

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

20 NEW SECTION. **Sec. 304.** A new section is added to chapter 90.03
21 RCW to read as follows:

22 Nothing in sections 302 and 303 of this act authorizes the
23 impairment or operates to impair any existing water rights. A water
24 right holder under sections 302 and 303 of this act shall not make
25 withdrawals that impair a senior water right. A holder of a senior
26 water right who believes his or her water right is impaired may file a
27 complaint with the department of ecology. Where such complaints of
28 impairment have been received, the department of ecology shall make all
29 reasonable efforts to resolve them in a timely manner through agreement
30 of the parties. Nothing in section 302 or 303 of this act may be
31 construed as waiving any requirement established under chapter 90.48
32 RCW or federal law that a permittee secure a discharge permit regarding
33 water quality.

34

PART IV

35

REGULATORY AUTHORITY AFTER *SINKING CREEK*

1 NEW SECTION. **Sec. 401.** 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 V**

10 **WATER RIGHTS FOR INSTREAM PURPOSES**

11 NEW SECTION. **Sec. 501.** 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. 502.** 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. 503.** 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 VI

15 WATER RIGHTS ADMINISTRATION EFFICIENCIES

16 **Sec. 601.** 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. 602.** 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. 603.** 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. 604.** 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. 605.** 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. 606.** 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. 607.** 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 614 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. 608.** 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. 609.** 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. 610.** 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. 611.** 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. 612. 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. 613. 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. 614.** 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 VII**

30 **STORAGE**

31 **Sec. 701.** 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.

1 **PART VIII**
2 **MISCELLANEOUS**

3 NEW SECTION. **Sec. 801.** PART HEADINGS AND CAPTIONS NOT LAW. Part
4 headings and captions used in this act do not constitute any part of
5 the law.

6 NEW SECTION. **Sec. 802.** Sections 2, 101 through 105, and 201
7 through 211 of this act shall constitute a new chapter in Title 90 RCW.

8 NEW SECTION. **Sec. 803.** If specific funding for the purposes of
9 sections 101 through 105, 201 through 211, and 301 through 304 of this
10 act, referencing by bill and section numbers, is not provided by June
11 30, 1996, in the omnibus appropriations act, sections 101 through 105,
12 201 through 211, and 301 through 304 of this act are null and void."

13 **2SHB 2200** - S AMD
14 By Committee on Ways & Means

15
16 On page 1, line 1 of the title, after "management;" strike the
17 remainder of the title and insert "amending RCW 90.03.380, 90.42.080,
18 90.03.340, 90.03.270, 90.03.280, 90.03.290, 90.03.320, 90.03.260,
19 90.44.060, 90.03.250, and 90.54.020; adding new sections to chapter
20 90.03 RCW; adding a new section to chapter 43.27A RCW; adding new
21 sections to chapter 43.21B RCW; adding a new chapter to Title 90 RCW;
22 and creating new sections."

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