

APPENDIX A

WATERSHED PLANNING LAWS

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Chapter 90.82 RCW
WATERSHED PLANNING

(Formerly Water resource management)

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RCW 90.82.005**Purpose.**

The purpose of this chapter is to develop a more thorough and cooperative method of determining what the current water resource situation is in each water resource inventory area of the state and to provide local citizens with the maximum possible input concerning their goals and objectives for water resource management and development.

It is necessary for the legislature to establish processes and policies that will result in providing state agencies with more specific guidance to manage the water resources of the state consistent with current law and direction provided by local entities and citizens through the process established in accordance with this chapter.

[1997 c 442 § 101.]

RCW 90.82.010

Finding.

The legislature finds that the local development of watershed plans for managing water resources and for protecting existing water rights is vital to both state and local interests. The local development of these plans serves vital local interests by placing it in the hands of people: Who have the greatest knowledge of both the resources and the aspirations of those who live and work in the watershed; and who have the greatest stake in the proper, long-term management of the resources. The development of such plans serves the state's vital interests by ensuring that the state's water resources are used wisely, by protecting existing water rights, by protecting instream flows for fish, and by providing for the economic well-being of the state's citizenry and communities. Therefore, the legislature believes it necessary for units of local government throughout the state to engage in the orderly development of these watershed plans.

[1997 c 442 § 102.]

RCW 90.82.020**Definitions.**

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Department" means the department of ecology.

(2) "Implementing rules" for a WRIA plan are the rules needed to give force and effect to the parts of the plan that create rights or obligations for any party including a state agency or that establish water management policy.

(3) "Minimum instream flow" means a minimum flow under chapter 90.03 or 90.22 RCW or a base flow under chapter 90.54 RCW.

(4) "WRIA" means a water resource inventory area established in chapter 173-500 WAC as it existed on January 1, 1997.

(5) "Water supply utility" means a water, combined water-sewer, irrigation, reclamation, or public utility district that provides water to persons or other water users within the district or a division or unit responsible for administering a publicly governed water supply system on behalf of a county.

(6) "WRIA plan" or "plan" means the product of the planning unit including any rules adopted in conjunction with the product of the planning unit.

[1997 c 442 § 103.]

RCW 90.82.030**Principles.**

In order to have the best possible program for appropriating and administering water use in the state, the legislature establishes the following principles and criteria to carry out the purpose and intent of chapter 442, Laws of 1997.

(1) All WRIA planning units established under this chapter shall develop a process to assure that water resource user interests and directly involved interest groups at the local level have the opportunity,

in a fair and equitable manner, to give input and direction to the process.

(2) If a planning unit requests technical assistance from a state agency as part of its planning activities under this chapter and the assistance is with regard to a subject matter over which the agency has jurisdiction, the state agency shall provide the technical assistance to the planning unit.

(3) Plans developed under chapter 442, Laws of 1997 shall be consistent with and not duplicative of efforts already under way in a WRIA, including but not limited to watershed analysis conducted under state forest practices statutes and rules.

[1997 c 442 § 104.]

RCW 90.82.040

WRIA planning units -- Watershed planning grants -- Eligibility criteria -- Administrative costs.

(1) Once a WRIA planning unit has been initiated under RCW 90.82.060 and a lead agency has been designated, it shall notify the department and may apply to the department for funding assistance for conducting the planning. Funds shall be provided from and to the extent of appropriations made by the legislature to the department expressly for this purpose.

(2)(a) Each planning unit that has complied with subsection (1) of this section is eligible to receive watershed planning grants in the following amounts for three phases of watershed planning:

(i) Initiating governments may apply for an initial organizing grant of up to fifty thousand dollars for a single WRIA or up to seventy-five thousand dollars for a multi-WRIA management area in accordance with RCW 90.82.060(4);

(ii)(A) A planning unit may apply for up to two hundred thousand dollars for each WRIA in the management area for conducting watershed assessments in accordance with RCW 90.82.070, except that a planning unit that chooses to conduct a detailed assessment or studies under (a)(ii)(B) of this subsection or whose initiating governments choose or have chosen to include an instream flow or water quality component in accordance with RCW 90.82.080 or 90.82.090 may apply for up to one hundred thousand additional dollars for each instream flow and up to one hundred thousand additional dollars for each water quality component included for each WRIA to conduct an assessment on that optional component and for each WRIA in which the assessments or studies under (a)(ii)(B) of this subsection are conducted.

(B) A planning unit may elect to apply for up to one hundred thousand additional dollars to conduct a detailed assessment of multipurpose water storage opportunities or for studies of specific multipurpose storage projects which opportunities or projects are consistent with and support the other elements of the planning unit's watershed plan developed under this chapter; and

(iii) A planning unit may apply for up to two hundred fifty thousand dollars for each WRIA in the management area for developing a watershed plan and making recommendations for actions by local, state, and federal agencies, tribes, private property owners, private organizations, and individual citizens, including a recommended list of strategies and projects that would further the purpose of the plan in accordance with RCW 90.82.060 through 90.82.100.

(b) A planning unit may request a different amount for phase two or phase three of watershed planning than is specified in (a) of this subsection, provided that the total amount of funds awarded do

not exceed the maximum amount the planning unit is eligible for under (a) of this subsection. The department shall approve such an alternative allocation of funds if the planning unit identifies how the proposed alternative will meet the goals of this chapter and provides a proposed timeline for the completion of planning. However, the up to one hundred thousand additional dollars in funding for instream flow and water quality components and for water storage assessments or studies that a planning unit may apply for under (a)(ii)(A) of this subsection may be used only for those instream flow, water quality, and water storage purposes.

(c) By December 1, 2001, or within one year of initiating phase one of watershed planning, whichever occurs later, the initiating governments for each planning unit must inform the department whether they intend to have the planning unit establish or amend instream flows as part of its planning process. If they elect to have the planning unit establish or amend instream flows, the planning unit is eligible to receive one hundred thousand dollars for that purpose in accordance with (a)(ii) of this subsection. If the initiating governments for a planning unit elect not to establish or amend instream flows as part of the unit's planning process, the department shall retain one hundred thousand dollars to carry out an assessment to support establishment of instream flows and to establish such flows in accordance with RCW 90.54.020(3)(a) and chapter 90.22 RCW. The department shall not use these funds to amend an existing instream flow unless requested to do so by the initiating governments for a planning unit.

(d) In administering funds appropriated for supplemental funding for optional plan components under (a)(ii) of this subsection, the department shall give priority in granting the available funds to proposals for setting or amending instream flows.

(3)(a) The department shall use the eligibility criteria in this subsection (3) instead of rules, policies, or guidelines when evaluating grant applications at each stage of the grants program.

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

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

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

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

(c) In ranking grant applications submitted at each stage of the grants program, the department shall give preference to applications in the following order of priority:

(i) Applications from existing planning groups that have been in existence for at least one year;

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

(A) First, multi-WRIA planning; and

(B) Second, single WRIA planning;

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

(A) First, multi-WRIA planning; and

(B) Second, single WRIA planning.

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

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

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

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

[2001 c 237 § 2; 1998 c 247 § 1; 1997 c 442 § 105.]

NOTES:

Finding -- Intent -- 2001 c 237: "The legislature is committed to meeting the needs of a growing population and a healthy economy statewide; to meeting the needs of fish and healthy watersheds statewide; and to advancing these two principles together, in increments over time.

The legislature finds that improved management of the state's water resources, clarifying the authorities, requirements, and timelines for establishing instream flows, providing timely decisions on water transfers, clarifying the authority of water conservancy boards, and enhancing the flexibility of our water management system to meet both environmental and economic goals are important steps to providing a better future for our state.

The need for these improvements is particularly urgent as we are faced with drought conditions. The failure to act now will only increase the potential negative effects on both the economy and the environment, including fisheries resources.

Deliberative action over several legislative sessions and interim periods between sessions will be required to address the long-term goal of improving the responsiveness of the state water code to meet the diverse water needs of the state's citizenry. It is the intent of the legislature to begin this work now by providing tools to enable the state to respond to imminent drought conditions and other immediate problems relating to water resources management. It is also the legislature's intent to lay the groundwork for future legislation for addressing the state's long-term water problems." [2001 c 237 § 1.]

Severability -- 2001 c 237: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2001 c 237 § 33.]

Effective date -- 2001 c 237: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes

effect immediately [May 10, 2001]." [2001 c 237 § 34.]

Intent -- 2001 c 237: See note following RCW 90.66.065.

RCW 90.82.050

Limitations on liability.

(1) This chapter shall not be construed as creating a new cause of action against the state or any county, city, town, water supply utility, conservation district, or planning unit.

(2) Notwithstanding RCW 4.92.090, 4.96.010, and 64.40.020, no claim for damages may be filed against the state or any county, city, town, water supply utility, tribal governments, conservation district, or planning unit that or member of a planning unit who participates in a WRIA planning unit for performing responsibilities under this chapter.

[1997 c 442 § 106.]

RCW 90.82.060

Initiation of watershed planning -- Scope of planning -- Technical assistance from state agencies.

(1) Planning conducted under this chapter must provide for a process to allow the local citizens within a WRIA or multi-WRIA area to join together in an effort to: (a) Assess the status of the water resources of their WRIA or multi-WRIA area; and (b) determine how best to manage the water resources of the WRIA or multi-WRIA area to balance the competing resource demands for that area within the parameters under RCW 90.82.120.

(2) Watershed planning under this chapter may be initiated for a WRIA only with the concurrence of: (a) All counties within the WRIA; (b) the largest city or town within the WRIA unless the WRIA does not contain a city or town; and (c) the water supply utility obtaining the largest quantity of water from the WRIA or, for a WRIA with lands within the Columbia Basin project, the water supply utility obtaining from the Columbia Basin project the largest quantity of water for the WRIA. To apply for a grant for organizing the planning unit as provided for under RCW 90.82.040(2)(a), these entities shall designate the entity that will serve as the lead agency for the planning effort and indicate how the planning unit will be staffed.

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

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

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

(6) The organizing grant shall be used to organize the planning unit and to determine the scope of the planning to be conducted. In determining the scope of the planning activities, consideration shall be given to all existing plans and related planning activities. The scope of planning must include water quantity elements as provided in RCW 90.82.070, and may include water quality elements as contained

in RCW 90.82.090, habitat elements as contained in RCW 90.82.100, and instream flow elements as contained in RCW 90.82.080. The initiating governments shall work with state government, other local governments within the management area, and affected tribal governments, in developing a planning process. The initiating governments may hold public meetings as deemed necessary to develop a proposed scope of work and a proposed composition of the planning unit. In developing a proposed composition of the planning unit, the initiating governments shall provide for representation of a wide range of water resource interests.

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

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

[2001 c 229 § 1; 1998 c 247 § 2.]

RCW 90.82.070

Water quantity component.

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

(1) The assessment shall include:

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

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

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

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

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

(f) An identification of the location of areas where aquifers are known to recharge surface bodies of water and areas known to provide for the recharge of aquifers from the surface; and

(g) An estimate of the surface and ground water available for further appropriation, taking into account the minimum instream flows adopted by rule or to be adopted by rule under this chapter for streams in the management area including the data necessary to evaluate necessary flows for fish.

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

(3) The assessment may include the identification of potential site locations for water storage projects. The potential site locations may be for either large or small projects and cover the full range of possible alternatives. The possible alternatives include off-channel storage, underground storage, the enlargement or enhancement of existing storage, and on-channel storage.

[2001 2nd sp.s. c 19 § 2; 1998 c 247 § 3.]

NOTES:

Intent -- 2001 2nd sp.s. c 19: "The legislature recognizes the potential for additional water storage as a solution to the water supply needs of the state. Last year the legislature created a task force to examine the role of increased water storage in providing water supplies to meet the needs of fish, population growth, and economic development, and to enhance the protection of people's lives and their property and the protection of aquatic habitat through flood control facilities. One solution discussed by the task force to address the state's water supply problem is to store water when there is excess runoff and stream flow, and deliver or release it during the low flow period when it is needed. The task force discussed the need for assessments of potential site locations for water storage projects. The legislature intends this act to assist in obtaining the assessments relating to water storage." [2001 2nd sp.s. c 19 § 1.]

RCW 90.82.080

Instream flow component -- Rules.

(1)(a) If the initiating governments choose, by majority vote, to include an instream flow component, it shall be accomplished in the following manner:

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

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

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

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

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

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

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

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

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

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

[1998 c 247 § 4.]

NOTES:

***Reviser's note:** RCW 34.05.230 was amended by 2001 c 25 § 1, deleting the text that refers to expedited rules adoption. For expedited rules adoption, see RCW 34.05.353.

RCW 90.82.085

Instream flows -- Assessing and setting or amending.

By October 1, 2001, the department of ecology shall complete a final nonproject environmental impact statement that evaluates stream flows to meet the alternative goals of maintaining, preserving, or enhancing instream resources and the technically defensible methodologies for determining these stream flows. Planning units and state agencies assessing and setting or amending instream flows must, as a minimum, consider the goals and methodologies addressed in the nonproject environmental impact statement. A planning unit or state agency may assess, set, or amend instream flows in a manner that varies from the final nonproject environmental impact statement if consistent with applicable instream flow laws.

[2001 c 237 § 3.]

NOTES:

Finding -- Intent -- Severability -- Effective date -- 2001 c 237: See notes following RCW 90.82.040.

Intent -- 2001 c 237: See note following RCW 90.66.065.

RCW 90.82.090**Water quality component.**

If the initiating governments choose to include a water quality component, the watershed plan shall include the following elements:

- (1) An examination based on existing studies conducted by federal, state, and local agencies of the degree to which legally established water quality standards are being met in the management area;
- (2) An examination based on existing studies conducted by federal, state, and local agencies of the causes of water quality violations in the management area, including an examination of information regarding pollutants, point and nonpoint sources of pollution, and pollution-carrying capacities of water bodies in the management area. The analysis shall take into account seasonal stream flow or level variations, natural events, and pollution from natural sources that occurs independent of human activities;
- (3) An examination of the legally established characteristic uses of each of the nonmarine bodies of water in the management area;
- (4) An examination of any total maximum daily load established for nonmarine bodies of water in the management area, unless a total maximum daily load process has begun in the management area as of the date the watershed planning process is initiated under RCW 90.82.060;
- (5) An examination of existing data related to the impact of fresh water on marine water quality;
- (6) A recommended approach for implementing the total maximum daily load established for achieving compliance with water quality standards for the nonmarine bodies of water in the management area, unless a total maximum daily load process has begun in the management area as of the date the watershed planning process is initiated under RCW 90.82.060; and
- (7) Recommended means of monitoring by appropriate government agencies whether actions taken

to implement the approach to bring about improvements in water quality are sufficient to achieve compliance with water quality standards.

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

[1998 c 247 § 5.]

RCW 90.82.100

Habitat component.

If the initiating governments choose to include a habitat component, the watershed plan shall be coordinated or developed to protect or enhance fish habitat in the management area. Such planning must rely on existing laws, rules, or ordinances created for the purpose of protecting, restoring, or enhancing fish habitat, including the shoreline management act, chapter 90.58 RCW, the growth management act, chapter 36.70A RCW, and the forest practices act, chapter 76.09 RCW. Planning established under this section shall be integrated with strategies developed under other processes to respond to potential and actual listings of salmon and other fish species as being threatened or endangered under the federal endangered species act, 16 U.S.C. Sec. 1531 et seq. Where habitat restoration activities are being developed under chapter 246, Laws of 1998, such activities shall be relied on as the primary nonregulatory habitat component for fish habitat under this chapter.

[1998 c 247 § 6.]

RCW 90.82.110

Identification of projects and activities.

The planning unit shall review historical data such as fish runs, weather patterns, land use patterns, seasonal flows, and geographic characteristics of the management area, and also review the planning, projects, and activities that have already been completed regarding natural resource management or enhancement in the management area and the products or status of those that have been initiated but not completed for such management in the management area, and incorporate their products as appropriate so as not to duplicate the work already performed or underway.

The planning group is encouraged to identify projects and activities that are likely to serve both short-term and long-term management goals and that warrant immediate financial assistance from the state, federal, or local government. If there are multiple projects, the planning group shall give consideration to ranking projects that have the greatest benefit and schedule those projects that should be implemented first.

[1998 c 247 § 7.]

RCW 90.82.120

Plan parameters.

(1) Watershed planning developed and approved under this chapter shall not contain provisions that: (a) Are in conflict with existing state statutes, federal laws, or tribal treaty rights; (b) impair or diminish in any manner an existing water right evidenced by a claim filed in the water rights claims registry established under chapter 90.14 RCW or a water right certificate or permit; (c) require a modification in

the basic operations of a federal reclamation project with a water right the priority date of which is before June 11, 1998, or alter in any manner whatsoever the quantity of water available under the water right for the reclamation project, whether the project has or has not been completed before June 11, 1998; (d) affect or interfere with an ongoing general adjudication of water rights; (e) modify or require the modification of any waste discharge permit issued under chapter 90.48 RCW; (f) modify or require the modification of activities or actions taken or intended to be taken under a habitat restoration work schedule developed under chapter 246, Laws of 1998; or (g) modify or require the modification of activities or actions taken to protect or enhance fish habitat if the activities or actions are: (i) Part of an approved habitat conservation plan and an incidental take permit, an incidental take statement, a management or recovery plan, or other cooperative or conservation agreement entered into with a federal or state fish and wildlife protection agency under its statutory authority for fish and wildlife protection that addresses the affected habitat; or (ii) part of a water quality program adopted by an irrigation district under chapter 87.03 RCW or a board of joint control under chapter 87.80 RCW. This subsection (1)(g) applies as long as the activities or actions continue to be taken in accordance with the plan, agreement, permit, or statement. Any assessment conducted under RCW 90.82.070, 90.82.090, or 90.82.100 shall take into consideration such activities and actions and those taken under the forest practices rules, including watershed analysis adopted under the forest practices act, chapter 76.09 RCW.

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

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

[1998 c 247 § 8.]

RCW 90.82.130

Plan approval -- Public notice and hearing -- Revisions.

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

(b) If the proposal is approved by the planning unit, the unit shall submit the proposal to the counties with territory within the management area. If the planning unit has received funding beyond the initial organizing grant under RCW 90.82.040, such a proposal approved by the planning unit shall be submitted to the counties within four years of the date that funds beyond the initial funding are first drawn upon by the planning unit.

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

(2)(a) The legislative authority of each of the counties with territory in the management area shall provide public notice of and conduct at least one public hearing on the proposed watershed plan submitted under this section. After the public hearings, the legislative authorities of these counties shall convene in joint session to consider the proposal. The counties may approve or reject the proposed

watershed plan for the management area, but may not amend it. Approval of such a proposal shall be made by a majority vote of the members of each of the counties with territory in the management area.

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

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

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

[2001 c 237 § 4; 1998 c 247 § 9.]

NOTES:

Finding -- Intent -- Severability--Effective date -- 2001 c 237: See notes following RCW 90.82.040.

Intent -- 2001 c 237: See note following RCW 90.66.065.

RCW 90.82.140

Use of monitoring recommendations in RCW 77.85.210.

In conducting assessments and other studies that include monitoring components or recommendations, the department and planning units shall implement the monitoring recommendations developed under RCW 77.85.210.

[2001 c 298 § 2.]

NOTES:

Finding -- Intent -- 2001 c 298: See note following RCW 77.85.210.

RCW 90.82.900

Part headings not law -- 1997 c 442.

As used in this act, part headings constitute no part of the law.

[1997 c 442 § 803.]

RCW 90.82.901

Severability -- 1997 c 442.

If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

[1997 c 442 § 805.]

RCW 90.82.902

Captions not law -- 1998 c 247.

As used in this act, captions constitute no part of the law.

[1998 c 247 § 15.]

SECOND ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1336

Passed Legislature - 2003 1st Special Session

State of Washington

58th Legislature

2003 Regular Session

By House Committee on Appropriations (originally sponsored by Representatives Linville, Kirby, Grant, Rockefeller, Quall, Hunt, Shabro, Jarrett, Delvin, Morris and Conway; by request of Governor Locke)

READ FIRST TIME 03/10/03.

1 AN ACT Relating to watershed planning; amending RCW 90.82.040,
2 90.82.080, and 90.82.130; adding a new section to chapter 90.82 RCW;
3 and creating a new section.

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

5 NEW SECTION. Sec. 1. The legislature declares and reaffirms that
6 a core principle embodied in chapter 90.82 RCW is that state agencies
7 must work cooperatively with local citizens in a process of planning
8 for future uses of water by giving local citizens and the governments
9 closest to them the ability to determine the management of water in the
10 WRIA or WRIAs being planned.

11 The legislature further finds that this process of local planning
12 must have all the tools necessary to accomplish this task and that it
13 is essential for the legislature to provide a clear statutory process
14 for implementation so that the locally developed plan will be the
15 adopted and implemented plan to the greatest extent possible.

16 Sec. 2. RCW 90.82.040 and 2001 c 237 s 2 are each amended to read
17 as follows:

18 (1) Once a WRIA planning unit has been initiated under RCW

1 90.82.060 and a lead agency has been designated, it shall notify the
2 department and may apply to the department for funding assistance for
3 conducting the planning and implementation. Funds shall be provided
4 from and to the extent of appropriations made by the legislature to the
5 department expressly for this purpose.

6 (2) (a) Each planning unit that has complied with subsection (1) of
7 this section is eligible to receive watershed planning grants in the
8 following amounts for the first three phases of watershed planning and
9 phase four watershed plan implementation:

10 (i) Initiating governments may apply for an initial organizing
11 grant of up to fifty thousand dollars for a single WRIA or up to
12 seventy-five thousand dollars for a multi-WRIA management area in
13 accordance with RCW 90.82.060(4);

14 (ii) (A) A planning unit may apply for up to two hundred thousand
15 dollars for each WRIA in the management area for conducting watershed
16 assessments in accordance with RCW 90.82.070, except that a planning
17 unit that chooses to conduct a detailed assessment or studies under
18 (a) (ii) (B) of this subsection or whose initiating governments choose or
19 have chosen to include an instream flow or water quality component in
20 accordance with RCW 90.82.080 or 90.82.090 may apply for up to one
21 hundred thousand additional dollars for each instream flow and up to
22 one hundred thousand additional dollars for each water quality
23 component included for each WRIA to conduct an assessment on that
24 optional component and for each WRIA in which the assessments or
25 studies under (a) (ii) (B) of this subsection are conducted.

26 (B) A planning unit may elect to apply for up to one hundred
27 thousand additional dollars to conduct a detailed assessment of
28 multipurpose water storage opportunities or for studies of specific
29 multipurpose storage projects which opportunities or projects are
30 consistent with and support the other elements of the planning unit's
31 watershed plan developed under this chapter; and

32 (iii) A planning unit may apply for up to two hundred fifty
33 thousand dollars for each WRIA in the management area for developing a
34 watershed plan and making recommendations for actions by local, state,
35 and federal agencies, tribes, private property owners, private
36 organizations, and individual citizens, including a recommended list of
37 strategies and projects that would further the purpose of the plan in
38 accordance with RCW 90.82.060 through 90.82.100.

1 (b) A planning unit may request a different amount for phase two or
2 phase three of watershed planning than is specified in (a) of this
3 subsection, provided that the total amount of funds awarded do not
4 exceed the maximum amount the planning unit is eligible for under (a)
5 of this subsection. The department shall approve such an alternative
6 allocation of funds if the planning unit identifies how the proposed
7 alternative will meet the goals of this chapter and provides a proposed
8 timeline for the completion of planning. However, the up to one
9 hundred thousand additional dollars in funding for instream flow and
10 water quality components and for water storage assessments or studies
11 that a planning unit may apply for under (a)(ii)(A) of this subsection
12 may be used only for those instream flow, water quality, and water
13 storage purposes.

14 (c) By December 1, 2001, or within one year of initiating phase one
15 of watershed planning, whichever occurs later, the initiating
16 governments for each planning unit must inform the department whether
17 they intend to have the planning unit establish or amend instream flows
18 as part of its planning process. If they elect to have the planning
19 unit establish or amend instream flows, the planning unit is eligible
20 to receive one hundred thousand dollars for that purpose in accordance
21 with (a)(ii) of this subsection. If the initiating governments for a
22 planning unit elect not to establish or amend instream flows as part of
23 the unit's planning process, the department shall retain one hundred
24 thousand dollars to carry out an assessment to support establishment of
25 instream flows and to establish such flows in accordance with RCW
26 90.54.020(3)(a) and chapter 90.22 RCW. The department shall not use
27 these funds to amend an existing instream flow unless requested to do
28 so by the initiating governments for a planning unit.

29 (d) In administering funds appropriated for supplemental funding
30 for optional plan components under (a)(ii) of this subsection, the
31 department shall give priority in granting the available funds to
32 proposals for setting or amending instream flows.

33 (e) A planning unit may apply for a matching grant for phase four
34 watershed plan implementation following approval under the provisions
35 of RCW 90.82.130. A match of ten percent is required and may include
36 financial contributions or in-kind goods and services directly related
37 to coordination and oversight functions. The match can be provided by
38 the planning unit or by the combined commitments from federal agencies,

1 tribal governments, local governments, special districts, or other
2 local organizations. The phase four grant may be up to one hundred
3 thousand dollars for each planning unit for each of the first three
4 years of implementation. At the end of the three-year period, a two-
5 year extension may be available for up to fifty thousand dollars each
6 year. For planning units that cover more than one WRIA, additional
7 matching funds of up to twenty-five thousand dollars may be available
8 for each additional WRIA per year for the first three years of
9 implementation, and up to twelve thousand five hundred dollars per WRIA
10 per year for each of the fourth and fifth years.

11 (3) (a) The department shall use the eligibility criteria in this
12 subsection (3) instead of rules, policies, or guidelines when
13 evaluating grant applications at each stage of the grants program.

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

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

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

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

22 (c) In ranking grant applications submitted at each stage of the
23 grants program, the department shall give preference to applications in
24 the following order of priority:

25 (i) Applications from existing planning groups that have been in
26 existence for at least one year;

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

33 (A) First, multi-WRIA planning; and

34 (B) Second, single WRIA planning;

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

38 (A) First, multi-WRIA planning; and

1 (B) Second, single WRIA planning.

2 (d) Except for phase four watershed plan implementation, the
3 department may not impose any local matching fund requirement as a
4 condition for grant eligibility or as a preference for receiving a
5 grant.

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

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

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

14 NEW SECTION. **Sec. 3.** A new section is added to chapter 90.82 RCW
15 to read as follows:

16 (1) Within one year of accepting funding under RCW 90.82.040(2)(e),
17 the planning unit must complete a detailed implementation plan.
18 Submittal of a detailed implementation plan to the department is a
19 condition of receiving grants for the second and all subsequent years
20 of the phase four grant.

21 (2) Each implementation plan must contain strategies to provide
22 sufficient water for: (a) Production agriculture; (b) commercial,
23 industrial, and residential use; and (c) instream flows. Each
24 implementation plan must contain timelines to achieve these strategies
25 and interim milestones to measure progress.

26 (3) The implementation plan must clearly define coordination and
27 oversight responsibilities; any needed interlocal agreements, rules, or
28 ordinances; any needed state or local administrative approvals and
29 permits that must be secured; and specific funding mechanisms.

30 (4) In developing the implementation plan, the planning unit must
31 consult with other entities planning in the watershed management area
32 and identify and seek to eliminate any activities or policies that are
33 duplicative or inconsistent.

34 (5) By December 1, 2003, and by December 1st of each subsequent
35 year, the director of the department shall report to the appropriate
36 legislative standing committees regarding statutory changes necessary

1 to enable state agency approval or permit decision making needed to
2 implement a plan approved under this chapter.

3 **Sec. 4.** RCW 90.82.080 and 1998 c 247 s 4 are each amended to read
4 as follows:

5 (1)(a) If the initiating governments choose, by majority vote, to
6 include an instream flow component, it shall be accomplished in the
7 following manner:

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

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

28 (b) The department shall undertake rule making to adopt flows under
29 (a) of this subsection. The department may adopt the rules either by
30 the regular rules adoption process provided in chapter 34.05 RCW, the
31 expedited rules adoption process as set forth in RCW (~~34.05.230~~)
32 34.05.353, or through a rules adoption process that uses public
33 hearings and notice provided by the county legislative authority to the
34 greatest extent possible. Such rules do not constitute significant
35 legislative rules as defined in RCW 34.05.328, and do not require the
36 preparation of small business economic impact statements.

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

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

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

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

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

28 (4) Nothing in this chapter either: (a) Affects the department's
29 authority to establish flow requirements or other conditions under RCW
30 90.48.260 or the federal clean water act (33 U.S.C. Sec. 1251 et seq.)
31 for the licensing or relicensing of a hydroelectric power project under
32 the federal power act (16 U.S.C. Sec. 791 et seq.); or (b) affects or
33 impairs existing instream flow requirements and other conditions in a
34 current license for a hydroelectric power project licensed under the
35 federal power act.

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

1 (6) The department shall report annually to the appropriate
2 legislative standing committees on the progress of instream flows being
3 set under this chapter, as well as progress toward setting instream
4 flows in those watersheds not being planned under this chapter. The
5 report shall be made by December 1, 2003, and by December 1st of each
6 subsequent year.

7 **Sec. 5.** RCW 90.82.130 and 2001 c 237 s 4 are each amended to read
8 as follows:

9 (1) (a) Upon completing its proposed watershed plan, the planning
10 unit may approve the proposal by consensus of all of the members of the
11 planning unit or by consensus among the members of the planning unit
12 appointed to represent units of government and a majority vote of the
13 nongovernmental members of the planning unit.

14 (b) If the proposal is approved by the planning unit, the unit
15 shall submit the proposal to the counties with territory within the
16 management area. If the planning unit has received funding beyond the
17 initial organizing grant under RCW 90.82.040, such a proposal approved
18 by the planning unit shall be submitted to the counties within four
19 years of the date that funds beyond the initial funding are first drawn
20 upon by the planning unit.

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

25 (2) (a) With the exception of a county legislative authority that
26 chooses to opt out of watershed planning as provided in (c) of this
27 subsection, the legislative authority of each of the counties with
28 territory in the management area shall provide public notice of and
29 conduct at least one public hearing on the proposed watershed plan
30 submitted under this section. After the public hearings, the
31 legislative authorities of these counties shall convene in joint
32 session to consider the proposal. The counties may approve or reject
33 the proposed watershed plan for the management area, but may not amend
34 it. Approval of such a proposal shall be made by a majority vote of
35 the members of each of the counties with territory in the management
36 area.

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

7 (c) A county legislative authority may choose to opt out of
8 watershed planning under this chapter and the public hearing processes
9 under (a) and (b) of this subsection if the county's affected territory
10 within a particular management area is: (i) Less than five percent of
11 the total territory within the management area; or (ii) five percent or
12 more of the total territory within the management area and all other
13 initiating governments within the management area consent. A county
14 meeting these conditions and choosing to opt out shall notify the
15 department and the other initiating governments of that choice prior to
16 commencement of plan adoption under the provisions of (a) of this
17 subsection. A county choosing to opt out under the provisions of this
18 section shall not be bound by obligations contained in the watershed
19 plan adopted for that management area under this chapter. Even if a
20 county chooses to opt out under the provisions of this section, the
21 other counties within a management area may adopt a proposed watershed
22 plan as provided in this chapter.

23 (3) The planning unit shall not add an element to its watershed
24 plan that creates an obligation unless each of the governments to be
25 obligated has at least one representative on the planning unit and the
26 respective members appointed to represent those governments agree to
27 adding the element that creates the obligation. A member's agreeing to
28 add an element shall be evidenced by a recorded vote of all members of
29 the planning unit in which the members record support for adding the
30 element. If the watershed plan is approved under subsections (1) and
31 (2) of this section and the plan creates obligations: (a) For agencies
32 of state government, the agencies shall adopt by rule the obligations
33 of both state and county governments and rules implementing the state
34 obligations, or, with the consent of the planning unit, may adopt
35 policies, procedures, or agreements related to the obligations or
36 implementation of the obligations in addition to or in lieu of rules.
37 The obligations on state agencies are binding upon adoption of the
38 obligations (~~into rule~~), and the agencies shall take other actions to

1 fulfill their obligations as soon as possible, and should annually
2 review implementation needs with respect to budget and staffing; ((or))
3 (b) for counties, the obligations are binding on the counties and the
4 counties shall adopt any necessary implementing ordinances and take
5 other actions to fulfill their obligations as soon as possible, and
6 should annually review implementation needs with respect to budget and
7 staffing; or (c) for an organization voluntarily accepting an
8 obligation, the organization must adopt policies, procedures,
9 agreements, rules, or ordinances to implement the plan, and should
10 annually review implementation needs with respect to budget and
11 staffing.

12 (4) After a plan is adopted in accordance with subsection (3) of
13 this section, and if the department participated in the planning
14 process, the plan shall be deemed to satisfy the watershed planning
15 authority of the department with respect to the components included
16 under the provisions of RCW 90.82.070 through 90.82.100 for the
17 watershed or watersheds included in the plan. The department shall use
18 the plan as the framework for making future water resource decisions
19 for the planned watershed or watersheds. Additionally, the department
20 shall rely upon the plan as a primary consideration in determining the
21 public interest related to such decisions.

22 (5) Once a WRIA plan has been approved under subsection (2) of this
23 section for a watershed, the department may develop and adopt
24 modifications to the plan or obligations imposed by the plan only
25 through a form of negotiated rule making that uses the same processes
26 that applied in that watershed for developing the plan.

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

--- END ---

Attachment

**Memorandum of Understanding
For the Coordinated Implementation
of
Chapter 247, Laws of 1998: Watershed Management
(Engrossed Substitute House Bill 2514),
and
Chapter 246, Laws of 1998: Salmon Recovery Planning
(Engrossed Substitute House Bill 2496),
By the Participating Agencies
Of the State of Washington:**

The Department of Agriculture, The Conservation Commission, The Department of Community, Trade, and Economic Development, The Department of Ecology, The Department of Fish and Wildlife, The Department of Health, The Department of Natural Resources, The Department of Transportation, The Interagency Committee for Outdoor Recreation, The Puget Sound Water Quality Action Team, The Salmon Recovery Office, Within the Governor's Office, and The State Parks and Recreation Commission

1. Purpose: The purposes of this agreement are:

To clarify the roles and responsibilities of participating Washington State agencies in support of watershed planning and salmon recovery at the local level, pursuant to the Watershed Management Act and the Salmon Recovery Planning Act;

To foster cooperative working relationships among the participating state agencies, local governments, and tribal governments;

To help coordinate and, where possible, to simplify the implementation procedures articulated in the Watershed Management Act and the Salmon Recovery Planning Act.

2. Authority:

Specific mandates to undertake the watershed planning and habitat restoration activities identified in this Memorandum of Understanding were provided through the Watershed Management Act, Chapter 247, Laws of 1998 (ESHB 2514) and the Salmon Recovery Planning Act, Chapter 246, Laws of 1998 (ESHB 2496). In addition, the participating agencies have authorities to conduct the activities described in this Memorandum through their respective enabling statutes and delegated federal authorities. The Joint Natural Resources Cabinet requested the preparation of this Memorandum of Understanding through its Water/Endangered Species Act Work Group.

3. Scope:

The scope of this agreement encompasses all activities of participating state agencies necessary to implement the Watershed Management Act (ESHB 2514), and to implement

in a coordinated way the related portions of the Salmon Recovery Planning Act (ESHB 2496), notably the critical pathways, limiting factors analysis, and habitat restoration efforts described in Sections 7 & 8, and the mitigation criteria development described in Section 16. While this agreement specifies some key coordinating procedures, it presumes continuing interagency cooperation to implement these efforts.

4. Basic Principles:

Commitment to the success of watershed-based salmon recovery and watershed planning efforts;

Good faith sharing of information;

Timely response to questions from local planning groups and to situations requiring coordinated state agency action. Response to situations requiring coordinated state agency action and to questions or requests for assistance from local planning groups will be subject to each agency's resources constraints. Some agencies may only be able to participate at the statewide leads level.

Care, clarity, and discipline as one participating state agency represents another, to responsibly inform the local planning process in a timely way about the state's roles, authorities, and intended contributions, while honoring each agency's own responsibilities for explicitly agreeing to any commitments, to ensure that they are realistic and consistent with its available resources and legal authorities.

5. Role of participating state agencies in support of local government planning under the Watershed Management Act and the Salmon Recovery Planning Act:

The participating agencies are committed to cooperation and coordination to honor as effectively as possible the requests from the local planning groups for support of local watershed management and restoration efforts, subject to agencies' resource constraints. This support includes these dimensions:

Encouragement and support for local governments to coordinate their work under the Watershed Management Act and the Salmon Recovery Planning Act

Providing technical assistance at the assessment and planning stages, including clarification of state standards and expectations;

Policy review and approval of watershed management plans;

Technical and other resource support for plan implementation, including

Watershed Management Act watershed implementation grants, and Salmon recovery project funding under the Salmon Recovery Planning Act.

Monitoring and evaluation of the results of these efforts, especially Watershed management plans,

Limiting factors identification for salmon recovery planning, and Salmon recovery project lists.

6. Coordination of requests from local planning groups for state assistance:

For watershed management planning, Ecology will serve as the clearinghouse for requests to the Governor, as provided in the Watershed Management Act. Receipt of the request will trigger notification of all participating agencies through their designated leads.

For salmon recovery, the Conservation Commission will develop technical guidance for local lead entities to use as a guide in developing project lists.

The Department of Ecology and the Conservation Commission will coordinate to the maximum extent possible the local requests for technical assistance

7. Overall Management and Statewide Coordination:

Overall management of the state agencies in implementing the Watershed Management Act and the Salmon Recovery Planning Act is vested in the Director, Commissioner, or Secretary of each participating agency. General interagency coordination and leadership is provided at the Director's level through the Joint Natural Resources Cabinet, and at a more detailed level for participating agencies through the statewide leads as described in Section 8, below, and the Governor's Salmon Recovery Office.

The statewide leads for participating agencies, in consultation with the Governor's Salmon Recovery Office, will serve as a statewide interagency caucus for coordinating statewide support for local watershed planning and salmon recovery. When a coordinated multi-agency policy interpretation is required, local state caucuses will be able to elevate, as needed, issues involving policy gaps or interpretation to the statewide leads. Agencies not participating in this memorandum of understanding may be invited through their directors to designate a representative to participate with the statewide leads on multi-agency issues.

The statewide leads will also serve as a resource to the local state caucuses for dispute resolution, as needed.

8. Designation of Statewide Lead for each agency:

The Director, Secretary, or Commissioner of each participating agency will designate a lead point of contact for statewide implementation of the Watershed Management Act and the Salmon Recovery Planning Act. This statewide lead will in turn identify the person to represent the agency at the local state caucus, as well as the appropriate people to work on specific issues, as required.

This statewide lead will be responsible for the overall management and coordination of watershed planning and salmon recovery activities for the agency. Any statewide lead may call a meeting of other affected statewide leads for dispute resolution or coordination on emerging issues as necessary.

9. Designation of the lead state agency for each local planning area:

For watershed management planning:

It is understood that the local initiating governments under the Watershed Planning Act may determine the number of state

agency representatives participating in each local planning unit. The Watershed Management Act provides that state agencies may organize and agree upon their representation on the planning unit.

Ecology will identify the local planning areas where it proposes to have the lead staff role for state agencies. This proposed list will be distributed to the Governor's Office, other participating state agencies, initiating local governments and affected tribal governments for comment. The state agencies will be invited to indicate where they want to participate directly, or to play a lead role, where Ecology's resources are constrained. (Ecology estimates it will initially have staff resources to assume a lead role in response to invitations from about twenty local planning areas.)

Once Ecology has received comments from the other interested state agencies it will identify, with the consensus of the designated statewide leads, which agency will have the state agency lead in each of the local planning areas. Ecology will then report this information to other agencies through their designated statewide leads, the local planning groups through the lead local agency or initiating governments, and the Joint Natural Resources Cabinet.

The designation of any additional state agency representatives to the local planning unit will be based on the requests from the local initiating governments to seat additional agencies at the local planning table. Ecology will coordinate local requests for state agency participation with the applicable Director, Commissioner, or Secretary, and the designated statewide leads for the affected agencies.

For salmon recovery, the Conservation Commission has the lead for coordinating the work of technical assistance groups (TAGS).

To help coordinate watershed management planning and salmon recovery work at the local level, participating state agencies agree to coordinate their work through the local state caucus and the technical assistance group, and make efficient use of work products and meeting times.

10. Designating the state watershed interagency lead and each state agency's primary watershed contact(s) for each local planning effort:

For watershed management planning:

Once the state agency with the lead role in a planning area has been designated, that agency will identify the lead state staff person to represent the lead agency to that local planning effort, and will communicate that name to Ecology, if the lead agency is other than Ecology. Ecology will distribute the name to other state agencies, the local planning groups, and the affected tribal governments.

Participating state agencies will be represented at the local planning unit by the state watershed interagency lead, except that where

there are additional state agency representatives designated to serve on the local planning unit, each additional state agency representative will represent his or her own agency. In any case, state agencies will strive for a coordinated and uniform state message.

For salmon recovery, the Conservation Commission will designate the lead point of contact for each technical assistance group (TAG).

For both watershed management planning and salmon recovery:

When each state agency identifies or changes its representative to each local planning effort, that agency's designated statewide lead will communicate that information to Ecology for distribution to other state agencies, and to the lead local government contact for distribution to the participating local agencies and affected tribal governments. The agency may designate separate people to represent the agency at the local planning effort, and to represent the agency at the local state caucus and the technical assistance group.

11. Areas of coordination: In each area of support for local planning and restoration efforts, participating agencies will keep each other informed of major upcoming developments and progress. These include:

- Start-up support;
- Contributions to assessments;
- Specifically sharing GIS data sets and other information, including the limiting factors analysis and background data developed under the Salmon Recovery Planning Act;
- Technical assistance being provided to local entities for watershed planning and salmon recovery;
- Alternative mitigation criteria being developed by the Alternative Mitigation Strategies Work Group; and
- Grant coordination for protection and restoration projects, including contributing information on the pool of potentially available grant sources.

In addition, participating agencies will help integrate the work products and work groups envisioned by the Salmon Recovery Planning Act and the Watershed Management Act, especially related to watershed characterization and limiting factors analysis.

12. Coordination between watershed management planning and salmon recovery:

The Salmon Recovery Planning Act requires lead entities to use a critical pathways methodology to develop a habitat project plan. The methodology must include a limiting factors analysis (which may have substantial overlap with a watershed management plan), identify local habitat projects' sponsors, determine how projects will be monitored and evaluated, and develop an adaptive management strategy. If a lead entity has completed a limiting factors analysis or

a watershed management plan for a planning area, participating state agencies agree to use this analysis or plan as a factor in awarding grants for watershed planning and salmon recovery where possible, subject to statutory constraints.

If watershed planning groups include a habitat element in their plan, state agencies will encourage lead entities under the Salmon Recovery Planning Act and watershed planning groups under the Watershed Management Act to jointly develop habitat project lists.

To achieve an efficient and effective use of state dollars, the Interagency Review Team established by the Salmon Recovery Planning Act and the Department of Ecology will coordinate these habitat project grants and watershed planning grants.

13. Key responsibilities of each participating state agency in support of the local planning process ("local state caucus" and technical assistance group expectations):

Good faith participation: Participating agencies accept the responsibility to participate in local state caucus meetings and technical assistance groups in good faith.

For watershed management planning:

Local state caucus chair: The state agency with the lead in each local planning area will designate the local state caucus chair for the area.

The purposes of the local state caucus are:

To coordinate positions, interests, and potential contributions of participating state agencies to the local planning unit's efforts;

To communicate and coordinate representation issues; and

To elevate interagency policy coordination issues for consideration by the statewide leads or other interagency teams identified by the statewide leads.

To be effective, the local state caucus should also:

Monitor the local planning unit's level of understanding of the state's roles, policies, expectations, potential contributions and constraints, and help clarify misunderstandings early.

Anticipate emerging issues in the planning process, to start consideration of potential agency obligations and areas where a coordinated state position will have to be developed.

For salmon recovery:

TAG leadership: The Conservation Commission will establish the technical assistance groups' lead positions, and define their roles.

TAG purpose: The essential purpose of the technical assistance groups defined under the Salmon Recovery Planning Act is to conduct the limiting factors identifications.

For alternative mitigation strategies: The Alternative Mitigation Strategies Work Group, co-chaired by Ecology, the Department of Transportation and the Washington Department of Fish and Wildlife, will serve as a working group to develop criteria to be used by participating state agencies and local planning efforts in the development of watershed management and salmon recovery plans.

Informational materials: Each participating state agency will make informational materials available for use by local leads and local planning groups.

Each participating agency will provide some basic written materials for use by local leads and local planning groups, including lead entities and technical assistance groups under the Salmon Recovery Planning Act, outlining the basic authorities, role, and expectations of the agency, as well as the kinds of contributions the agency expects to make in support of local planning and restoration.

Participating agencies will also provide updated or supplementary information as the local planning processes unfold, in response to (or in anticipation of) the major questions from the local planning groups or lead entities. Written information is encouraged, but resource and timing constraints are recognized.

Dispute resolution: Any local state caucus member or state TAG member may elevate disputes at the caucus or TAG level to the statewide leads of the agencies involved. The statewide leads will consult with each other and identify the appropriate people to work on resolution.

14. Key responsibilities of state watershed interagency leads for watershed planning:

Communications link: Each state watershed interagency lead will establish regular communications with the other state agencies involved with that local planning effort, to follow-up and prepare for local planning meetings and public hearings focussed on that local area. This local lead will try to anticipate upcoming issues and alert other agencies to the anticipated response that will be needed. It is understood that agencies will respond in a timely way to questions posed by the local group.

State caucus of participating agencies at the local level: The local lead will convene and chair an interagency consultation and coordination process ("local state caucus") with the representatives of the participating state agencies identified through each agency's lead. Insofar as possible, these meetings or consultations will use a consensus approach to decision-making, when a group decision is required.

Representing other participating state agencies: The state watershed interagency lead will identify and give early notice to any state agencies that may be "obligated," within the meaning of the Watershed Planning act, by any proposed plan element. The responsibilities of the state watershed interagency lead will include

- Educating the local planning unit about the "obligations" provisions of the Watershed Planning Act, and how participating state agencies will take an organized approach to responding;
- Clearly conveying the interests and expectations of participating state agencies in watershed planning and management to the local planning unit, including applicable state law, standards and requirements;
- Negotiating local planning unit ground rules to flag potential obligations for early agency consideration;
- Negotiating up front with the local planning unit sufficient review time at key points in the planning process, and especially to review the final draft proposed watershed plan, before a state representative to the planning unit is asked to approve it. The amount of review time required will vary depending on prior review opportunities and the nature of the obligations in the final proposed plan.

Ensuring consultation with tribal governments: The state watershed interagency lead will ensure consultation with affected tribes, including those with usual and accustomed territory or ceded lands, before committing to obligate the state on any particular instream flow levels or other issues that affect tribal treaty rights and co-management responsibilities.

15. Approval and commitment process for local plans and resulting obligations for statewide agencies under the Watershed Planning Act:

Watershed planning (Chapter 247, Section 9) final plan review provisions: It is understood that state agencies that would incur an obligation under the plan will have the opportunity to concur with the obligation before a proposed watershed plan becomes final. However, once there is consensus among the represented units of government (including the state, where state agencies would be obligated), and once local public hearings and adoptions are conducted, state agencies are directed to support implementation, without an additional review step under Chapter 247.

Obligations to implement recommendations means following established public processes: The Watershed Management Act (Chapter 247, Laws of 1998) requires participating governments to implement recommendations in adopted plans (obligations). For state agencies this means a good faith commitment to propose amended rules, propose amended permit modifications, redirect resources, and other actions. This does not imply that public processes established to review draft rules, permits, or other state actions are superceded by Chapter 247, or that agencies can pre-commit to adopt the proposed rules or issue permits contrary to the requirements of existing legislation, including the Administrative Procedures Act, Shoreline Management Act, Growth Management Act, and other laws which must be followed to implement recommendations of watershed plans. At the request of the local planning unit, state agencies may conduct adoption processes concurrent with the development of the watershed management plan.

Input to local planning: Participating agencies accept the responsibility to stay current with local planning as it unfolds, to provide early input into those plans, to minimize the likelihood or extent of disapproval, and to minimize the length of time necessary to conduct the final review.

Participating agencies agree to review in a timely way all communications and information distributed to them by the state watershed interagency lead, who will, in turn, help agencies focus on the particular issues requiring response.

Participating agencies agree to help explicitly consider any implied obligations in the watershed plan, and to work on these early in the process whenever possible. Participating state agencies understand that they will only be obligated for explicit written commitments to take or defer action, not for implied commitments.

Participating agencies further agree to provide notification and plan element approval/disapproval in a timely manner, and to have lead staff available to meet at the local caucus level or with the local planning unit on concurrence issues and at other key times in the process. Participating agencies understand the importance of working difficult obligation issues early, and helping to develop mutually acceptable alternatives where possible.

Coordinated interagency review of the plan in progress, and the completed proposed watershed plan: The state watershed interagency lead will negotiate with the local planning unit sufficient time for affected participating state agencies to review proposed watershed plan elements as they are developed, and again in a final draft form, before state agencies are asked to concur with obligations in the plan. The amount of review time required will vary depending on prior review opportunities and the nature of the obligations in the final proposed plan.

It is incumbent on each participating agency to alert the state watershed interagency lead in writing when the agency determines that its written concurrence on a plan element will be necessary.

The state watershed interagency lead may not support (i.e. must withhold approval or consensus from) a plan element that does not have the written support of all "obligated" participating agencies.

The result of this review process should include:

Explicit, written identification of which provisions of the local plan would create obligations upon each agency;

Explicit written identification of which related agency programs are included in the plan, and which are outside the scope of the plan. This is intended as a final communications check on any expectations to withhold or delay imposing related requirements on participating local entities, until after identified plan obligations are completed.

Explicit agreement, agreement with conditions, or lack of agreement with those provisions. Any obligations by state agencies for the commitment of existing resources in support of plan implementation will be expressed in writing to the lead local agency, with a copy to Ecology for coordination purposes.

A written description of the process each agency intends to follow to satisfy any other obligations in support of the approved plan (i.e. subject to rule adoption requirements, or legislative appropriation, or a competitive grant award process, etc.).

Some state agencies may not be participating in this memorandum of understanding, but may be affected by local watershed management planning and salmon recovery planning:

"Participating agencies" are the state agencies committed through the signatures of their agency heads to participating in watershed management and salmon recovery planning through this memorandum of understanding.

Local state caucus chairs will clarify for local governments which agencies are participating in a coordinated way through this memorandum of understanding, and which would require separate communication and coordination efforts.

The expectation is that these other agencies would also want the earliest possible notice of potential obligations, and would also attempt to resolve issues as early in the planning process as possible, subject to their resource constraints. Where they were not able to work on planning issues early, they would expect to represent their own issues at public hearings without prejudice.

16. Amendments and updates: As experience is gained with the implementation of this Memorandum of Understanding at the state and local levels, changes may be needed to respond to emerging issues. This memorandum of understanding can be updated, refined, or amended in writing as needed through the statewide leads, in consultation with the Governor's Salmon Recovery Office, with concurrence by the Joint Natural Resources Cabinet.

17. Severability: State agency severability from this Memorandum of Understanding requires consultation with the Joint Natural Resources Cabinet and formal notification to the Governor.

18. Conclusion: In signing this document, the head of each participating agency reaffirms the importance of coordinated state agency support for local watershed management and restoration as mandated by the Watershed Management Act (Chapter 247, Laws of 1998, ESHB 2514) and the Salmon Recovery Planning Act (Chapter 246, Laws of 1998, ESHB 2496), and commits that agency to support these efforts as outlined above.

Signed:

Jim Jesernig, Director Date

Department of Agriculture
Steve Meyer Date
Executive Director, Conservation Commission
Tom Fitzsimmons Date
Director, Department of Ecology
Larry Peck, Deputy Director Date
Department of Fish and Wildlife
Kris Van Gorkom Date
Deputy Secretary, Department of Health
Tim Douglas Date
Community, Trade and Economic Development
Jennifer Belcher Date
Commissioner of Public Lands
Department of Natural Resources
Sid Morrison, Secretary Date
Department of Transportation
Nancy McKay, Chair Date
Puget Sound Water Quality Action Team
Curt Smitch, Special Assistant Date
Governor's Salmon Recovery Office
Laura Eckert Johnson Date
Interagency Committee for Outdoor Recreation
Cleve Pinnix Date
State Parks and Recreation Commission

Lee Faulconer Date
Department of Agriculture
Ed Manary Date
Conservation Commission
Joe Williams Date
Department of Ecology
Jim Fox Date
Interagency Committee for Outdoor Recreation
Steve Wells Date

Community, Trade and Economic Development

Erik Fairchild Date

Department of Health

Craig Partridge Date

Department of Natural Resources

Karen Terwilleger Date

Department of Fish and Wildlife

Shari Schaftlein Date

Department of Transportation

John Dohrmann Date

Puget Sound Water Quality Action Team

Phil Miller Date

Governor's Salmon Recovery Office

Bill Jolly Date

State Parks and Recreation Commission

CHAPTER 173-548 WAC
WATER RESOURCES PROGRAM IN THE
METHOW RIVER BASIN, WRIA 48

Last Update: 11/19/91

WAC

- 173-548-010 General provision.
- 173-548-020 Establishment of base flows.
- 173-548-030 Future allocations—Reservation of surface water for beneficial uses.
- 173-548-040 Priority of future water rights during times of water shortage.
- 173-548-050 Streams and lakes closed to further consumptive appropriations.
- 173-548-060 Ground water.
- 173-548-070 Effect on prior rights.
- 173-548-080 Enforcement.
- 173-548-090 Appeals.
- 173-548-100 Regulation review.

WAC 173-548-010 General provision. These rules, including any subsequent additions and amendments, apply to waters within and contributing to the Methow River basin, WRIA 48 (see WAC 173-500-040). Chapter 173-500 WAC, the general rules of the department of ecology for the implementation of the comprehensive water resources program, applies to this chapter 173-548 WAC.

[Order DE 76-37, § 173-548-010, filed 12/28/76.]

WAC 173-548-020 Establishment of base flows.

- (1) Base flows are established for stream management units with monitoring to take place at certain control points as follows:

STREAM MANAGEMENT UNIT INFORMATION

Stream Management Unit Name, Control Station Name and Number	Control Station Location by River Mile, Section, Township, Range	Affected Stream Reach (includes tributaries)
<u>Lower Methow</u> Methow R. nr. Pateros (12.4499.50)	6.7 20-30-23E	Methow River confluence with Wells Pool to confluence with Twisp River.

Middle Methow

Methow R. nr.
Twisp
(12.4495.00) 40.0
17-33-22E

Methow River from
Twisp River to
confluence with
Chewack River.

Upper Methow

Methow R. nr.
Winthrop
(12.4473.89) 50.2
2-34-21E

Methow River from
confluence with
Chewack River to
confluence with
Little Boulder
Creek and including
Little Boulder Creek.

Methow Headwaters

Methow R. at
Little Boulder Cr.
(12.4473.83) 65.3
25-36-19E

Methow River from
confluence with
Little Boulder
Creek to headwaters.

Early Winters Creek

Early Winters Cr.
near Mazama 27-36-19E

Early Winters
Creek from
confluence with
Methow River to
headwaters.

Chewack River

Chewack R. nr.
Boulder Creek
(12.4475.00) 8.7
35-36-21E

Chewack River
confluence with
Methow River to
headwaters.

Twisp River

Twisp R. nr.
Twisp
(12.4489.98) 0.3
7-33-22E

Twisp River from
confluence with
Methow River to
headwaters.

(2) Base flows established for the stream management units in WAC 173-548-020(1) are as follows:

Base Flows in the Methow River
(All Figures in Cubic Feet Per Second)

[CODIFICATION NOTE: The graphic presentation of this table has been varied slightly in order that it would fall within the printing specification for the Washington Administrative Code. The following table was too wide to be accommodated in the width of the WAC column. The table as codified has been divided into two tables with Part 1 covering the Lower Methow, Middle Methow and Upper Methow and with Part 2 covering the Methow Headwaters, Early Winters Creek, Chewack River and Twisp River.]

PART 1

Month	Day	Lower Methow (12.4499.50)	Middle Methow (12.4495.00)	Upper Methow (12.4473.89)
Jan.	1	350	260	120
	15	350	260	120
Feb.	1	350	260	120
	15	350	260	120
Mar.	1	350	260	120
	15	350	260	120
Apr.	1	590	430	199
	15	860	650	300
May	1	1,300	1,000	480
	15	1,940	1,500	690
Jun.	1	2,220	1,500	790
	15	2,220	1,500	790
Jul.	1	2,150	1,500	694
	15	800	500	240
Aug.	1	480	325	153
	15	300	220	100
Sep.	1	300	220	100
	15	300	220	100
Oct.	1	360	260	122
	15	425	320	150
Nov.	1	425	320	150
	15	425	320	150
Dec.	1	390	290	135
	15	350	260	120

PART 2

Month	Day	Methow Headwaters (12.4473.83)	Early Winters Creek	Chewack River (12.4475.00)	Twisp River (12.4489.98)
Jan.	1	42	10	56	34
	15	42	10	56	34
Feb.	1	42	10	56	34
	15	42	10	56	34
Mar.	1	42	10	56	34
	15	42	10	56	34
Apr.	1	64	14	90	60
	15	90	23	140	100
May	1	130	32	215	170
	15	430	108	290	300
Jun.	1	1,160	290	320	440
	15	1,160	290	320	440
Jul.	1	500	125	292	390
	15	180	45	110	130
Aug.	1	75	20	70	58
	15	32	8	47	27
Sep.	1	32	8	47	27
	15	32	8	47	27
Oct.	1	45	11	56	35
	15	60	15	68	45
Nov.	1	60	15	68	45
	15	60	15	68	45
Dec.	1	51	12	62	39
	15	42	10	56	34

- (3) Base flow hydrographs, as represented in Figure 1 in the document entitled "water resources management program, Methow River basin" dated 1976, shall be used for definition of base flows on those days not specifically identified in WAC 173-548-020(2) and 173-548-030.
- (4) All rights hereafter established shall be subject to the base flows established in WAC 173-548-020(1) through (3), except as provided under WAC 173-548-030 herein.
- (5) Future appropriations of water which would conflict with base flows shall be authorized, by the director, only in those situations when it is clear that overriding considerations of the public interest will be served.

[Order DE 76-37, § 173-548-020, filed 12/28/76.]

WAC 173-548-030 Future allocations—Reservation of surface water for beneficial uses.

(1) The department determines that there are surface waters available for appropriation from the stream management units specified in the amount specified in cubic feet per second (cfs) during the time specified as follows:

(a) Maximum surface water available for future allocation from the indicated reach is as follows:

Month	Lower Methow	Middle Methow	Upper Methow	Methow Headwaters	Early Winters Creek	Chewack River	Twisp River
Oct.	95	50	44	15	29	09	14
Nov.	116	101	46	06	21	10	15
Dec.	112	99	44	17	26	10	15
Jan.	50	36	26	08	19	03	09
Feb.	51	37	29	09	19	04	10
Mar.	147	139	80	38	19	24	18
Apr.	565	590	273	336	35	118	148
May	2,922	2,927	784	412	403	809	703
Jun.	3,116	2,853	1,017	1,249	294	1,292	890
Jul.	965	877	583	608	189	308	298
Aug.	214	192	203	109	94	70	70
Sep.	62	55	76	33	47	23	26

All figures in cubic feet per second.

(b) The control station for each reach is defined in WAC 173-548-020.

(c) The appropriation limit is set forth to be an amount equal to the one in two year natural reach discharge on a monthly basis for all management reaches except Early Winters Creek. The appropriation limit for Early Winters Creek is set forth to be an amount equal to the estimated natural mean monthly streamflow for that stream.

(2) The amounts of water referred to in WAC 173-548-030(1) above are allocated for beneficial uses in the future as follows:

(a) Allocation of surface waters by use category (April through September):

Use Description	Apr.	May	Jun.	Jul.	Aug.	Sep.
<u>Lower Methow</u>						
Single Domestic and Stock Use	2.0	2.0	2.0	2.0	2.0	2.0
Base Flow	860	1,940	2,220	800	300	300

Public Water Supply,
Irrigation, and
Other Uses

Remaining waters up to the
appropriation limit set forth in
WAC 173-548-030 (1)(c)

Middle Methow

Single Domestic
and Stock Use

2.0 2.0 2.0 2.0 2.0 2.0

Base Flow

650 1,500 1,500 500 220 220

Public Water Supply,
Irrigation, and
Other Uses

Remaining waters up to the
appropriation limit set forth in
WAC 173-548-030 (1)(c)

Upper Methow

Single Domestic
and Stock Use

2.0 2.0 2.0 2.0 2.0 2.0

Base Flow

300 690 790 240 100 100

Public Water Supply,
Irrigation, and
Other Uses

Remaining waters up to the
appropriation limit set forth in
WAC 173-548-030 (1)(c)

Methow Headwaters

Single Domestic
and Stock Use

2.0 2.0 2.0 2.0 2.0 2.0

Base Flow

90 430 1,160 180 32 32

Public Water Supply,
Irrigation, and
Other Uses

Remaining waters up to the
appropriation limit set forth in
WAC 173-548-030 (1)(c)

Early Winters Creek

Single Domestic
and Stock Use

2.0 2.0 2.0 2.0 2.0 2.0

Base Flow

23 108 290 45 8.0 11.0

Public Water Supply,
Irrigation, and
Other Uses

Remaining waters up to the
appropriation limit set forth in
WAC 173-548-030 (1)(c)

Chewack River

Single Domestic and Stock Use	2.0	2.0	2.0	2.0	2.0	2.0
Base Flow	140	290	320	110	47	47
Public Water Supply, Irrigation, and Other Uses	Remaining waters up to the appropriation limit set forth in WAC 173-548-030 (1)(c)					

Twisp River

Single Domestic and Stock Use	2.0	2.0	2.0	2.0	2.0	2.0
Base Flow	100	300	440	130	27	27
Public Water Supply, Irrigation, and Other Uses	Remaining waters up to the appropriation limit set forth in WAC 173-548-030 (1)(c)					

All figures in cubic feet per second

(b) Allocation of surface waters by use category (October through March):

Use Description	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.
<u>Lower Methow</u>						
Single Domestic and Stock Use	2.0	2.0	2.0	2.0	2.0	2.0
Base Flow	425	425	350	350	350	350
Public Water Supply, Irrigation, and Other Uses	Remaining waters up to the appropriation limit set forth in WAC 173-548-030 (1)(c)					
<u>Middle Methow</u>						
Single Domestic and Stock Use	2.0	2.0	2.0	2.0	2.0	2.0
Base Flow	320	320	260	260	260	260
Public Water Supply, Irrigation, and	Remaining waters up to the appropriation limit set forth in					

<u>Other Uses</u> <u>Upper Methow</u>	WAC 173-548-030 (1)(c)					
Single Domestic and Stock Use	2.0	2.0	2.0	2.0	2.0	2.0
Base Flow	150	150	120	120	120	120
Public Water Supply, Irrigation, and Other Uses	Remaining waters up to the appropriation limit set forth in WAC 173-548-030 (1)(c)					
<u>Methow Headwaters</u>						
Single Domestic and Stock Use	2.0	2.0	2.0	2.0	2.0	2.0
Base Flow	60	60	42	42	42	42
Public Water Supply, Irrigation, and Other Uses	Remaining waters up to the appropriation limit set forth in WAC 173-548-030 (1)(c)					
<u>Early Winters Creek</u>						
Single Domestic and Stock Use	2.0	2.0	2.0	2.0	2.0	2.0
Base Flow	15	15	10	10	10	10
Public Water Supply, Irrigation, and Other Uses	Remaining waters up to the appropriation limit set forth in WAC 173-548-030 (1)(c)					
<u>Chewack River</u>						
Single Domestic and Stock Use	2.0	2.0	2.0	2.0	2.0	2.0
Base Flow	68	68	56	56	56	56
Public Water Supply, Irrigation, and Other Uses	Remaining waters up to the appropriation limit set forth in WAC 173-548-030 (1)(c)					

Twisp River

Single Domestic and Stock Use	2.0	2.0	2.0	2.0	2.0	2.0
Base Flow	45	45	34	34	34	34
Public Water Supply, Irrigation, and Other Uses	Remaining waters up to the appropriation limit set forth in WAC 173-548-030 (1)(c)					

All figures in cubic feet per second.

- (c) Allocations presented in this section do not limit the utilization of waters stored for later release, provided such storage does not infringe upon existing rights or base flow and is duly permitted under RCW 90.03.290 and 90.03.350.
- (d) As the amount of water allocated for each category of use approaches the amount available for future allocation set forth in WAC 173-548-030(1), the department shall review the program to determine whether there is a need for program revision.

[Order DE 76-37, § 173-548-030, filed 12/28/76.]

WAC 173-548-040 Priority of future water rights during times of water shortage.

- (1) As between rights established in the future pertaining to waters allocated in WAC 173-548-030 (2)(a) and (b), all rights subject to this program shall be regulated in descending order of use category priority regardless of the date of the priority of right.
- (2) As between rights established in the future within a single use category allocation of WAC 173-548-030, the date of priority shall control with an earlier dated right being superior to those rights with later dates.

[Order DE 76-37, § 173-548-040, filed 12/28/76.]

WAC 173-548-050 Streams and lakes closed to further consumptive appropriations.

The department, having determined based on existing information that there are no waters available for further appropriation through the establishment of rights to use water consumptively, closes the streams and lakes listed in (a) and (b), and ground water hydraulically connected with these surface waters to further consumptive appropriation[.] This includes rights to use water consumptively established through permit procedures and ground water withdrawals otherwise exempted from permit under RCW 90.44.050. Specific situations in which well construction may be approved are identified.

No wells shall be constructed for any purposes, including those exempt from permitting under RCW 90.44.050, unless one or more of the following conditions have been met and construction of the well has been approved in writing by the department prior to the beginning of well construction:

- (1) The proponent has a valid water right permit recognized by the department. For an existing community domestic use, a water right permit must be held by a purveyor of an approved system. (For the purposes of this chapter, an approved water system is one in compliance with the state drinking water regulations, chapter 246–290 WAC and the state surface and ground water codes, chapters 90.03 and 90.44 RCW); or
- (2) The proponent has obtained a valid state surface or ground water right through a transfer approved by the department under the statutory authority of chapter 90.03 or 90.44 RCW; or
- (3) The proponent is replacing or modifying an existing well developed under the exemption from permit clause of RCW 90.44.050 and this has been approved in writing by the department; or,
- (4) If the ground water being sought for withdrawal has been determined by the department not to be hydraulically connected with surface waters listed as closed, the department may approve a withdrawal. When insufficient evidence is available to the department to make a determination that ground and surface waters are not hydraulically connected, the department shall not approve the withdrawal of ground water unless the person proposing to withdraw the ground water provides additional information sufficient for the department to determine that hydraulic continuity does not exist and that water is available.
 - (a) stream closures . The following streams are closed all year, including all ground waters hydraulically connected to these streams.

Stream Name
(Includes Tributaries)

Wolf Creek
Bear Creek
(Davis Lake)
Thompson Creek
Beaver Creek
Alder Creek
Benson Creek
Texas Creek
Libby Creek
Cow Creek
Gold Creek
McFarland Creek
Squaw Creek
Black Canyon Creek
French Creek

(b) lake closures. The following lakes are closed all year, including all ground waters hydraulically connected to these lakes:

Name	Location
Alta Lake	3 mi. SW of Pateros
Black Lake	25 mi. N of Winthrop
Black Pine Lake	9 mi. SW of Twisp
Crater Lake	10 mi. W of Carlton
Davis Lake	Bear Creek Drainage
Eagle Lake	11 mi. SW of Carlton
French Creek	Sec.28, T.31N., R.23E.
Libby Lake	10 mi. W of Carlton
Louis Lake	20 mi. W of Winthrop
Middle Oval Lake	16 mi. W of Carlton
North Lake	20 mi. W of Winthrop
Patterson Lake	Sec.8, T.34N., R.21E.
Pearrygin Lake	Sec.36, T.35N., R.21E.
Slate Lake	14 mi. W of Winthrop
Sunrise Lake	16 mi. W of Methow
Upper Eagle Lake	12 mi. W of Carlton
West Oval Lake	16 mi. W of Carlton

[Statutory Authority: Chapters 34.05, 90.54, 18.104, 90.03 and 90.44 RCW. 91-23-093 (Order 91-27), § 173-548-050, filed 11/19/91, effective 12/20/91; Order DE 76-37, § 173-548-050, filed 12/28/76.]

WAC 173-548-060 Ground water. If it is determined that a future development of ground water measurably affects surface waters subject to the provisions of chapter 173-548 WAC, then rights to said ground water shall be subject to the same conditions as affected surface waters.

[Order DE 76-37, § 173-548-060, filed 12/28/76.]

WAC 173-548-070 Effect on prior rights. Nothing in this chapter shall be construed to lessen, enlarge, or modify existing rights acquired by appropriation or otherwise, and legally vested prior to the effective date of this chapter.

[Order DE 76-37, § 173-548-070, filed 12/28/76.]

WAC 173-548-080 Enforcement. In enforcement of this chapter, the department of ecology may impose such sanctions as are appropriate under authorities vested in it, including but not limited to the issuance of regulatory orders under RCW 43.27A.190 and civil penalties under RCW 90.03.600.

[Statutory Authority: Chapters 43.27A, 90.22 and 90.54 RCW. 88-13-037 (Order 88-11), § 173-548-080, filed 6/9/88.]

WAC 173-548-090 Appeals. All final written decisions of the department of ecology pertaining to permits, regulatory orders, and related decisions made pursuant to this chapter shall be subject to review by the pollution control hearings board in accordance with chapter 43.21B RCW.

[Statutory Authority: Chapters 43.27A, 90.22 and 90.54 RCW. 88-13-037 (Order 88-11), § 173-548-090, filed 6/9/88.]

WAC 173-548-100 Regulation review. The department of ecology shall initiate a review of the rules established in this chapter whenever new information, changing conditions, or statutory modifications make it necessary to consider revisions.

[Statutory Authority: Chapters 43.27A, 90.22 and 90.54 RCW. 88-13-037 (Order 88-11), § 173-548-100, filed 6/9/88.]