

ANALYSIS OF HB 2514

House Agriculture & Ecology Committee
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BACKGROUND: Water Resource Management. With the adoption of the surface water code in 1917 and the groundwater code in 1945, new rights to the use of water are to be established under a permit system. (RCW 90.03.250 and 90.44.050.) However, certain uses of groundwater not exceeding 5,000 gallons per day are exempted from this permit requirement. (RCW 90.44.050.) Other laws authorize the state to establish minimum flows and levels for streams and lakes. (RCW 90.22.010, 90.54.020, and 90.54.050.) The permit system and the state's laws for managing water resources are administered by the Department of Ecology (DOE). The DOE also regulates the discharge of pollution to the surface and ground waters of the state. (Chapter 90.48 RCW.)

Water Resource Planning. The groundwater code permits the DOE to designate and manage groundwater areas, sub-areas, or depth zones to prevent the overdraft of groundwaters. (RCW 90.44.130.) As amended in 1985, the code allows groundwater management studies to be initiated locally and allows local governments to assume the lead agency role in developing local groundwater management programs. (RCW 90.44.400 through 90.44.440.) The Water Resources Act directs the DOE to develop a comprehensive state water resources program for making decisions on future water resource allocation and use. (RCW 90.54.040.) The act permits the DOE to develop the program in segments. Under the act, the DOE has divided the state into 62 water resource inventory areas (WRIAs). (Chapter 173-500 WAC.)

SUMMARY: Integrated Watershed Management. Local governments may choose to provide for the development of integrated watershed management for any one or any combination of the following: water quantity aspects of water resource management, water quality, and the protection or enhancement of water-related wildlife and fish habitat. If management for any of these three is so initiated, minimum instream flows must be established for the principal streams in the watershed. The area covered by such watershed management is called the management area and, with certain exceptions, is made up of one or more WRIAs. (Section 4(1)&(2).)

Beginning the Process. The county with the largest area in a proposed management area, the city in that area using the largest amount of water from the area, the city cumulatively diverting and withdrawing the largest amount of water from within the area, and the water supply utility that provides the largest quantity of water in the area may jointly and unanimously choose to initiate the development of integrated watershed management in that area. If they so choose, the county must convene a public meeting to discuss the appointment of a planning unit. Notices of the meeting must be sent and published. (Section 9(1).) At or following the meeting, the cities and counties are to vote as to whether to proceed with the development of watershed management. (Section 9(4).)

Cities and counties--. The cities and counties that may choose to proceed, choose a lead agency, and choose the type of planning unit to be used are the counties with territory in the

proposed management area, the cities located in that area, and cities receiving water delivered from that area. The cities must approve such an action by majority vote, with each city having one vote, and the counties must approve the action by unanimous vote, with each county having one vote. The vote of each city and each county must be assigned directly, in person or in writing, by certain elected officials of the city and the county. (Section 9(5).) The county with the largest area in the boundaries of the management area is the lead agency, unless the cities and counties approve the designation of another governmental agency with its written consent. (Section 9(3).) The lead agency is the entity that provides administrative staff support for the planning unit and receives grants for the unit. (Section 3(4).)

Planning Unit. If integrated watershed management is to be conducted in the management area, it is to be conducted by one planning unit. The cities and counties may choose an existing planning group for local representation on the planning unit or they may identify the composition of a new group for that representation. If they do not choose such an existing or new group, the membership to be used for the planning unit is specified. (Section 10(1).)

Existing or New Group. For an existing group to be chosen, it must have been in existence for at least one year. The representation of governmental entities and interests on such an existing group must be generally similar to the representation in the specified unit or the planning group membership must be that specified by other law. The existing group chosen in this manner plus the membership specified for the state and tribal governments make up the planning unit. (Section 10(2).) If the cities and counties create new group, they must include the interests represented by the governmental entities and interests appointed to the specified planning unit and must take care to ensure that diverse interests are represented. The new group created in this manner plus the membership specified for the state and tribal governments make up the planning unit. (Section 10(3).) Such an existing or new group must have positions that directly represent cities and positions that directly represent counties. (Section 10(4).)

Alternative Specified Membership. A planning unit membership is specified and this membership is to be used unless a planning unit incorporating an existing or new group is created. That membership is: one member representing each county in the management area, appointed by the county; one member representing cities for each county in the area appointed by the cities within that county; one member representing water supply utilities for each county in the area, appointed jointly by the three water supply utilities providing the largest quantity of water in the county; one member representing all conservation districts in a single WRIA management area or up to two members representing all conservation districts in the multiple WRIA area, appointed jointly by the districts; three members representing various major interests in the area, appointed jointly by the cities in the area; six members representing various major interests in the area appointed jointly by the counties with territory within the area; one member representing the general citizenry appointed jointly by the cities in the area; three members representing the general citizenry appointed jointly by the counties in the area, of which at least one shall be a holder of a water right certificate and at least one shall be a holder of a registered water right claim; and up to three members representing state agencies, as determined by the Governor.

If one or more federal Indian reservations are located in whole or in part in the management area, or if one or more tribes located in this state have federally recognized ceded land in that area or fishing rights recognized under federal case law on lands in that area, the planning unit must promptly invite the tribal governments of each of these reservations and tribes to appoint one member. The Governor must appoint one of the state representatives as the lead state representative whose duty it is: to ensure that the state speaks with one voice; to coordinate state participation; and to secure and coordinate the state's technical assistance. (Section 10(5).)

Within 30 days of the convening of the planning unit, the counties and cities may increase the number of members on the unit representing major interests and the general citizenry by up to five members. They may do so in the same manner prescribed for choosing a planning unit. (Section 10(8).) A planning unit may invite representatives of federal agencies to participate as non-voting representatives. (Section 10(9).)

Major Interests. In appointing persons to a planning unit representing major interests in the area, the cities and counties must ensure that economic interests in the area are represented and must take care to provide a reasonably balanced representation of in-stream and out-of-stream interests in water. In doing so, they may consider industrial water users, general businesses, hydroelectric and thermal power producers, and irrigated agriculture, nonirrigated agriculture, forestry, recreation, environmental, and recreational and commercial fisheries interest groups, and others. (Section 10(6).)

Appointment Deadlines; Vacancies; Absences. Appointments of the initial members of the planning unit must be made within 60 days. If an appointment, other than a tribal appointment, is not made in a timely manner, the appointment is to be made by the counties. If a tribal appointment is not made in a timely manner, the position is to remain vacant. (Section 10(7).) A vacancy on a planning unit are filled in the same manner set for original appointments. (Section 12(2).) No person who is a member of a planning unit may designate another to act on his or her behalf. A certain number of a person's unexcused absences result in the person's position on the planning unit being considered vacant. (Section 12(3).)

Work of the Planning Unit. A planning unit must, as a matter of high priority: (a) review existing planning and activities regarding watershed management in the management area; and (b) identify projects and activities in the area that it believes will likely serve short-term or long-term management goals and warrant immediate financial assistance. The planning unit must prioritize the latter and submit its prioritized list to state and local government. (Section 4(4).)

Components to be Developed. Integrated watershed management established for *water quantity* management must include: an assessment of water supply and use in the management area, including an estimate of the amount of water represented by registered water right claims, permits, certificated rights, existing minimum instream flow rules, and any other quantified rights to water; an estimate of the water needed in the future for use; water recharge areas; an estimate of the surface and ground water available for further appropriation; and strategies for increasing water supplies in the area to supply water for the minimum instream flows and for other future needs. It may include a water allocation strategy. (Section 5.) If such management is established for *water quality*, it must include: an examination of the degree to which water quality standards are being met in the area; an analysis of the causes of water quality violations, an identification of the beneficial uses of bodies of water for water quality classification purposes; an identification waters for which basin-specific water quality standards may be adopted and recommendations for those standards; a detailed strategy for achieving compliance with water quality standards; and means of monitoring the effects of the actions taken to implement the strategy. (Section 7.) If such management is developed to protect or enhance water-related wildlife and fish *habitat* it must include: an analysis of the potential for protecting or enhancing such habitat in the area; an identification of activities, projects, and voluntary transactions that would provide the greatest benefit to such habitat; a prioritization of the activities, projects, and transactions; means of ensuring that they will be undertaken; and means of monitoring the effect of undertaking them. (Section 8.)

A planning unit cannot add a component to its integrated watershed management that creates an obligation for a unit of general government unless the members of the planning unit appointed

to represent that unit of government agree to adding the component, as evidenced by a recorded vote on it. (Section 11(1).) The planning unit must identify within the management: necessary implementation actions, monitoring, and adaptive management; and the entities responsible for these and their coordination. (Section 11(2).) It may choose to develop, as part of its watershed management, drafts of state administrative rules and local ordinances that would be needed. (Section 11(3).)

Instream Flows. Minimum instream flows must be established by rule for the principal streams in the management area. At the time a planning unit is chosen or initial appointments are made, the cities and counties may decide that the planning unit will not participate in identifying such flows in the area. If so, they must request the DOE to adopt rules establishing those flows in the management area. In all other management areas, it is DOE's duty to attempt to achieve consensus among all of the members of the planning unit regarding the flows. If such consensus is achieved, the DOE must promptly adopt these flows by rule in the manner for negotiated rule-making. Consensus is determined by a recorded vote of the members of the planning unit present for the vote. It is achieved if: each of the members who has been appointed to represent the state, to represent tribal government, to represent directly counties, or to represent directly cities records his or her support for the proposed flows as part of the recorded vote or abstains from voting on the proposal; and a majority of the other members of the planning unit present records support for the flows as part of the recorded vote. Notice that such a recorded vote will be taken on proposed minimum instream flows must be sent to each member appointed to the planning unit and must be announced at a previous meeting. (Section 6.) If consensus is not achieved within two years, the DOE shall promptly initiate rule-making to establish minimum instream flows for these streams, or if needed, to modify existing flow rules. (Section 6(3)&(4).)

If the cities and counties requested the DOE to set minimum instream flows, the principal-streams are the streams determined by the DOE to be the principal streams. In any other management area, the principal streams are the main stem of the stream with the largest annual average flow in each WRIA in the area and any tributary or other streams in the area determined to be principal streams by the planning unit. However, minimum instream flows cannot be proposed or adopted for the main stem of the Columbia River or the main stem of the Snake River under this process. (Section 6(5)&(7).)

Approval by Planning Unit. Upon completing its proposed integrated watershed management for the area, the planning unit must publish notice of and conduct at least one public hearing on the proposal. It may approve the proposal by consensus of the members of the planning unit. Consensus is provided and evidenced in the same manner as provided for consensus on minimum instream flows except that, if one or more of the members of the planning unit appointed to represent tribal government vote to oppose the proposal as part of a recorded vote on it, consensus is nonetheless achieved if the other required support for the proposal is provided in the vote. If such a tribal representative votes to oppose the proposal, the state must immediately initiate consultation with the represented tribal government. Such a proposal approved by the planning unit must be submitted to the counties within four years of the date funding from DOE, beyond the first \$50,000 for organizing, was first received by the planning unit or the state must develop and adopt integrated watershed management for the management area for those aspects of activities for which the funding was received. (Section 11(4).)

Approval by Counties. The legislative authority of each of the counties with territory in the management area must provide public notice of and conduct at least one public hearing on the proposal. The counties may approve or reject the proposal, but may not amend it. If a proposed integrated watershed management is not approved, it is returned to the planning unit with recommendations for revisions. To be approved, it must be approved by the legislative

authorities of the counties. (Section 11(6).)

If integrated watershed management is approved by the planning unit and the counties and that management creates obligations for state agencies, the obligations are binding and the agencies must adopt implementing rules and take other actions to fulfill their obligations as soon as possible. Similarly, if it creates obligations for a unit of local government in the management area, the obligations are binding on the unit of local government and it must adopt implementing ordinances and take other actions to fulfill the obligations as soon as possible. (Section 11(7).)

Financial Assistance. The DOE must develop and administer a grant program to provide direct financial assistance to planning units. Three separate grants may be awarded: initial organizing grants of up to \$50,000/WRIA; grants of up to \$250,000/WRIA for watershed assessments and establishment of instream flows; and grants of up to \$250,000/WRIA for the development of integrated watershed management and implementation. The total amount of the grants may not exceed \$500,000/WRIA. Authorized uses of and eligibility criteria for receiving the grants are specified. Any moneys made available for implementation in a management area under such a grant are available only for implementation that commences after a unit's integrated watershed management has been adopted for the area by the counties. (Section 13(1),(2),(3)&(4).)

Except for the original organizing grant, preference is to be given to applications in the following order of priority: (1) applications for comprehensive proposals that address protection and enhancement of water-related fish and wildlife habitat, water quality protection and enhancement, and water supply to meet the needs of growing population and in watersheds where additional water supply is critical to continued economic health; (2) applications to develop integrated watershed management for an entire watershed, an entire tributary system to the Columbia or Snake rivers, or an entire evolutionarily significant unit under the federal Endangered Species Act (ESA); (3) applications that propose to address protection and enhancement of water-related wildlife and fish habitat in watersheds that have aquatic species listed as endangered or threatened under the ESA; (4) applications that propose to address protection and enhancement of water quality in watersheds with impaired water quality; and (5) applications that address water supply needs in watersheds with growing populations and in watersheds where additional water supply is critical to continued economic health. (Section 13(5).)

Technical Assistance. The lead state representative on a planning unit must establish a program to provide technical assistance. The program cannot establish requirements or standards that must be satisfied by watershed management. It must use staff assigned by the governor, state agencies' staff, and staff from institutions of higher education. The DOE may contract out the technical assistance in certain instances and must conduct an annual workshop for planning units. The lead state representative must assist planning units in ensuring that the management developed is coordinated with, and consistent with, that of other planning units that share common borders or major stream basins. The state must provide mediation services to resolve disputes between planning units. (Section 14.)

DOE Rules. The DOE may adopt its implementing rules that have been approved by counties as part of integrated watershed management and may adopt rules when necessary for providing grant monies or to set minimum instream flows identified by consensus either by the regular rules adoption process, the expedited rules adoption process, or through a rules adoption process that uses the public hearings and notice provided by the planning unit and the county as a substitute for the regular rules adoption requirements. Such rules do not constitute significant legislative rules, and do not require the preparation of small business economic impact statements. (Section 13(8).)

Prohibitions. Watershed management developed in this manner may not contain provisions that (a) are in conflict with state statute, federal law, or tribal treaty rights; (b) impair or diminish in any manner existing water rights; or (c) require a modification in the basic operations of a federal reclamation project the water right of which has a priority (seniority) date that is earlier than the effective date of the bill, or alter in any manner whatsoever the quantity of water available under the water right for the project. (Section 4(3).) Nothing in this legislation may be construed as affecting or impairing in any manner whatsoever water rights existing before the effective date of the legislation. (Section 16.)

Exemptions. Activities or actions taken to protect or enhance water-related wildlife and fish habitat cannot be required to be modified by integrated watershed management approved under this process or any implementing state rules or local ordinances if the activities or actions are: (1) part of a habitat conservation plan and 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 (2) part of an agreement regulating forest practices, which is approved by the Department of Natural Resources and other appropriate state agencies under the Forest Practices Act for the affected habitat. (Section 15.)

Other. A county or conservation district is considered to have territory within a management area only if the territory of the county or district located in one of the WRIA's in the area constitutes at least 15% of the area of the WRIA. (Section 12(4).) All state agencies with rule-making authority for programs that affect watershed management developed under this process must review those rules and programs for consistency with this watershed process and make recommendations to the Legislature for any necessary statutory changes. (Section 14(6).)

EFFECTIVE DATE: The bill contains an emergency clause and takes effect immediately.