
HOUSE BILL 3090

State of Washington

61st Legislature

2010 Regular Session

By Representatives Orcutt, Blake, McCune, Kretz, and Haler

Read first time 01/22/10. Referred to Committee on Agriculture & Natural Resources.

1 AN ACT Relating to streamlining natural resources management;
2 amending RCW 76.09.360, 76.09.040, 76.09.050, 76.09.100, 76.09.150,
3 76.09.260, 76.09.470, 90.64.010, 90.64.020, 90.64.170, 90.48.260,
4 77.55.021, 77.12.755, 77.12.870, 77.12.878, 77.15.390, 77.44.040,
5 77.55.121, 77.55.211, 77.55.131, 77.65.510, 77.70.210, 77.105.070,
6 79.13.620, 79.19.080, 79.70.030, 79.71.120, 79.105.500, 79.125.710,
7 79.125.730, 79.135.130, 79.135.140, 79.135.150, 79.135.320, 79.135.410,
8 79A.05.351, 79A.05.360, 79A.60.520, 79A.60.550, 79A.60.620, 79A.05.285,
9 79A.30.050, 79A.50.090, 79A.50.100, 79A.15.110, 78.44.280, 78.52.125,
10 78.56.040, 78.56.050, 78.56.060, 78.56.080, 78.56.090, 78.56.100,
11 78.56.110, 78.56.120, 78.56.160, 78.60.070, 78.60.080, 78.60.100,
12 90.03.247, 90.03.280, 90.03.290, 90.03.360, 90.03.590, 90.16.050,
13 90.16.090, 90.22.010, 90.22.020, 90.22.060, 90.24.010, 90.24.030,
14 90.24.060, 90.38.040, 90.48.170, 90.48.366, 90.48.445, 90.48.448,
15 90.74.020, 90.74.030, 90.82.048, 90.90.020, and 90.90.030; reenacting
16 and amending RCW 76.09.060 and 79A.05.255; adding a new section to
17 chapter 77.55 RCW; adding new sections to chapter 90.48 RCW; adding a
18 new section to chapter 76.09 RCW; creating a new section; recodifying
19 RCW 77.55.121; and repealing RCW 79.13.610, 79.105.220, 79.135.230,
20 79.135.310, 79.135.430, 79.145.030, 79A.05.670, 79A.05.735, 79A.50.070,
21 76.09.160, and 77.12.360.

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

2 NEW SECTION. **Sec. 1.** (1) The legislature finds that the state of
3 Washington maintains at least twelve state agencies that exist either
4 wholly or in part to manage, regulate, mediate, or enforce the state's
5 public and private natural resources, many of which have overlapping
6 jurisdiction and authorities.

7 (2) The legislature finds that the overlap of state natural
8 resources agencies creates unnecessary expenses for the state
9 government, confusion for the state's citizens, and hampers private
10 sector economic development.

11 (3) The legislature finds that it is important for state agencies
12 to communicate, share resources, and provide comments during each
13 other's rule-making processes. However, it is unnecessarily
14 duplicative for more than one state agency to be involved in the
15 implementation or enforcement of any one program.

16 **Sec. 2.** RCW 76.09.360 and 1997 c 290 s 2 are each amended to read
17 as follows:

18 The department (~~((together with the department of fish and wildlife,~~
19 ~~and the department of ecology relating to water quality protection,))~~)
20 shall develop a suitable process to permit landowners to secure all
21 permits required for the conduct of forest practices (~~((in a single~~
22 ~~multiyear permit))~~) to be (~~((jointly))~~) issued only by the (~~((departments~~
23 ~~and the departments shall report their findings to the legislature not~~
24 ~~later than December 31, 2000))~~) department.

25 NEW SECTION. **Sec. 3.** A new section is added to chapter 77.55 RCW
26 to read as follows:

27 The requirements of RCW 77.55.021 are to be considered satisfied
28 for any project that is required under chapter 76.09 RCW to submit a
29 forest practices application or that is associated with any project
30 that is required under chapter 76.09 RCW to submit a forest practices
31 application.

32 **Sec. 4.** RCW 76.09.040 and 2009 c 246 s 1 are each amended to read
33 as follows:

34 (1) Where necessary to accomplish the purposes and policies stated

1 in RCW 76.09.010, and to implement the provisions of this chapter, the
2 board shall adopt forest practices rules pursuant to chapter 34.05 RCW
3 and in accordance with the procedures enumerated in this section that:

4 (a) Establish minimum standards for forest practices;

5 (b) Provide procedures for the voluntary development of resource
6 management plans which may be adopted as an alternative to the minimum
7 standards in (a) of this subsection if the plan is consistent with the
8 purposes and policies stated in RCW 76.09.010 and the plan meets or
9 exceeds the objectives of the minimum standards;

10 (c) Set forth necessary administrative provisions;

11 (d) Establish procedures for the collection and administration of
12 forest practice fees as set forth by this chapter; and

13 (e) Allow for the development of watershed analyses.

14 Forest practices rules pertaining to water quality protection shall
15 be adopted by the board after reaching agreement with the director of
16 the department of ecology or the director's designee on the board with
17 respect thereto. All other forest practices rules shall be adopted by
18 the board.

19 Forest practices rules shall be administered and enforced by either
20 the department or the local governmental entity as provided in this
21 chapter. Such rules shall be adopted and administered so as to give
22 consideration to all purposes and policies set forth in RCW 76.09.010.

23 (2) The board shall prepare proposed forest practices rules(~~(.—In~~
24 ~~addition to any forest practices rules relating to water quality~~
25 ~~protection proposed by the board, the department of ecology may submit~~
26 ~~to the board)) including proposed forest practices rules relating to
27 water quality protection.~~

28 Prior to initiating the rule-making process, the proposed rules
29 shall be submitted for review and comments to the department of fish
30 and wildlife, the department of ecology, and to the counties of the
31 state. After receipt of the proposed forest practices rules, the
32 department of fish and wildlife, the department of ecology, and the
33 counties of the state shall have thirty days in which to review and
34 submit comments to the board(~~(, and to the department of ecology with~~
35 ~~respect to its proposed rules relating to water quality protection)).~~
36 After the expiration of such thirty day period the board (~~and the~~
37 ~~department of ecology~~) shall jointly hold one or more hearings on the
38 proposed rules pursuant to chapter 34.05 RCW. At such hearing(s) any

1 county may propose specific forest practices rules relating to problems
2 existing within such county. The board may adopt (~~and the department~~
3 ~~of ecology may approve~~) such proposals if they find the proposals are
4 consistent with the purposes and policies of this chapter.

5 (3) The board shall establish by rule a program for the acquisition
6 of riparian open space and critical habitat for threatened or
7 endangered species as designated by the board. Acquisition must be a
8 conservation easement. Lands eligible for acquisition are forest lands
9 within unconfined channel migration zones or forest lands containing
10 critical habitat for threatened or endangered species as designated by
11 the board. Once acquired, these lands may be held and managed by the
12 department, transferred to another state agency, transferred to an
13 appropriate local government agency, or transferred to a private
14 nonprofit nature conservancy corporation, as defined in RCW 64.04.130,
15 in fee or transfer of management obligation. The board shall adopt
16 rules governing the acquisition by the state or donation to the state
17 of such interest in lands including the right of refusal if the lands
18 are subject to unacceptable liabilities. The rules shall include
19 definitions of qualifying lands, priorities for acquisition, and
20 provide for the opportunity to transfer such lands with limited
21 warranties and with a description of boundaries that does not require
22 full surveys where the cost of securing the surveys would be
23 unreasonable in relation to the value of the lands conveyed. The rules
24 shall provide for the management of the lands for ecological protection
25 or fisheries enhancement. For the purposes of conservation easements
26 entered into under this section, the following apply: (a) For
27 conveyances of a conservation easement in which the landowner conveys
28 an interest in the trees only, the compensation must include the timber
29 value component, as determined by the cruised volume of any timber
30 located within the channel migration zone or critical habitat for
31 threatened or endangered species as designated by the board, multiplied
32 by the appropriate quality code stumpage value for timber of the same
33 species shown on the appropriate table used for timber harvest excise
34 tax purposes under RCW 84.33.091; (b) for conveyances of a conservation
35 easement in which the landowner conveys interests in both land and
36 trees, the compensation must include the timber value component in (a)
37 of this subsection plus such portion of the land value component as
38 determined just and equitable by the department. The land value

1 component must be the acreage of qualifying channel migration zone or
2 critical habitat for threatened or endangered species as determined by
3 the board, to be conveyed, multiplied by the average per acre value of
4 all commercial forest land in western Washington or the average for
5 eastern Washington, whichever average is applicable to the qualifying
6 lands. The department must determine the western and eastern
7 Washington averages based on the land value tables established by RCW
8 84.33.140 and revised annually by the department of revenue.

9 (4) Subject to appropriations sufficient to cover the cost of such
10 an acquisition program and the related costs of administering the
11 program, the department must establish a conservation easement in land
12 that an owner tenders for purchase; provided that such lands have been
13 taxed as forest lands and are located within an unconfined channel
14 migration zone or contain critical habitat for threatened or endangered
15 species as designated by the board. Lands acquired under this section
16 shall become riparian or habitat open space. These acquisitions shall
17 not be deemed to trigger the compensating tax of chapters 84.33 and
18 84.34 RCW.

19 (5) Instead of offering to sell interests in qualifying lands,
20 owners may elect to donate the interests to the state.

21 (6) Any acquired interest in qualifying lands by the state under
22 this section shall be managed as riparian open space or critical
23 habitat.

24 **Sec. 5.** RCW 76.09.050 and 2005 c 146 s 1003 are each amended to
25 read as follows:

26 (1) The board shall establish by rule which forest practices shall
27 be included within each of the following classes:

28 Class I: Minimal or specific forest practices that have no direct
29 potential for damaging a public resource and that may be conducted
30 without submitting an application or a notification except that when
31 the regulating authority is transferred to a local governmental entity,
32 those Class I forest practices that involve timber harvesting or road
33 construction within "urban growth areas," designated pursuant to
34 chapter 36.70A RCW, are processed as Class IV forest practices, but are
35 not subject to environmental review under chapter 43.21C RCW;

36 Class II: Forest practices which have a less than ordinary
37 potential for damaging a public resource that may be conducted without

1 submitting an application and may begin five calendar days, or such
2 lesser time as the department may determine, after written notification
3 by the operator, in the manner, content, and form as prescribed by the
4 department, is received by the department. However, the work may not
5 begin until all forest practice fees required under RCW 76.09.065 have
6 been received by the department. Class II shall not include forest
7 practices:

8 (a) On lands platted after January 1, 1960, as provided in chapter
9 58.17 RCW or on lands that have or are being converted to another use;

10 (b) Which require approvals under the provisions of the hydraulics
11 act, RCW 77.55.021;

12 (c) Within "shorelines of the state" as defined in RCW 90.58.030;

13 (d) Excluded from Class II by the board; or

14 (e) Including timber harvesting or road construction within "urban
15 growth areas," designated pursuant to chapter 36.70A RCW, which are
16 Class IV;

17 Class III: Forest practices other than those contained in Class I,
18 II, or IV. A Class III application must be approved or disapproved by
19 the department within thirty calendar days from the date the department
20 receives the application. However, the applicant may not begin work on
21 that forest practice until all forest practice fees required under RCW
22 76.09.065 have been received by the department;

23 Class IV: Forest practices other than those contained in Class I
24 or II: (a) On lands platted after January 1, 1960, as provided in
25 chapter 58.17 RCW, (b) on lands that have or are being converted to
26 another use, (c) on lands which, pursuant to RCW 76.09.070 as now or
27 hereafter amended, are not to be reforested because of the likelihood
28 of future conversion to urban development, (d) involving timber
29 harvesting or road construction on lands that are contained within
30 "urban growth areas," designated pursuant to chapter 36.70A RCW, except
31 where the forest landowner provides: (i) A written statement of intent
32 signed by the forest landowner not to convert to a use other than
33 commercial forest product operations for ten years, accompanied by
34 either a written forest management plan acceptable to the department or
35 documentation that the land is enrolled under the provisions of chapter
36 84.33 RCW; or (ii) a conversion option harvest plan approved by the
37 local governmental entity and submitted to the department as part of
38 the application, and/or (e) which have a potential for a substantial

1 impact on the environment and therefore require an evaluation by the
2 department as to whether or not a detailed statement must be prepared
3 pursuant to the state environmental policy act, chapter 43.21C RCW.
4 Such evaluation shall be made within ten days from the date the
5 department receives the application: PROVIDED, That nothing herein
6 shall be construed to prevent any local or regional governmental entity
7 from determining that a detailed statement must be prepared for an
8 action pursuant to a Class IV forest practice taken by that
9 governmental entity concerning the land on which forest practices will
10 be conducted. A Class IV application must be approved or disapproved
11 by the department within thirty calendar days from the date the
12 department receives the application, unless the department determines
13 that a detailed statement must be made, in which case the application
14 must be approved or disapproved by the department within sixty calendar
15 days from the date the department receives the application, unless the
16 commissioner of public lands, through the promulgation of a formal
17 order, determines that the process cannot be completed within such
18 period. However, the applicant may not begin work on that forest
19 practice until all forest practice fees required under RCW 76.09.065
20 have been received by the department.

21 Forest practices under Classes I, II, and III are exempt from the
22 requirements for preparation of a detailed statement under the state
23 environmental policy act.

24 (2) Except for those forest practices being regulated by local
25 governmental entities as provided elsewhere in this chapter, no Class
26 II, Class III, or Class IV forest practice shall be commenced or
27 continued after January 1, 1975, unless the department has received a
28 notification with regard to a Class II forest practice or approved an
29 application with regard to a Class III or Class IV forest practice
30 containing all information required by RCW 76.09.060 as now or
31 hereafter amended. However, in the event forest practices regulations
32 necessary for the scheduled implementation of this chapter and RCW
33 90.48.420 have not been adopted in time to meet such schedules, the
34 department shall have the authority to regulate forest practices and
35 approve applications on such terms and conditions consistent with this
36 chapter and RCW 90.48.420 and the purposes and policies of RCW
37 76.09.010 until applicable forest practices regulations are in effect.

1 (3) Except for those forest practices being regulated by local
2 governmental entities as provided elsewhere in this chapter, if a
3 notification or application is delivered in person to the department by
4 the operator or the operator's agent, the department shall immediately
5 provide a dated receipt thereof. In all other cases, the department
6 shall immediately mail a dated receipt to the operator.

7 (4) Except for those forest practices being regulated by local
8 governmental entities as provided elsewhere in this chapter, forest
9 practices shall be conducted in accordance with the forest practices
10 regulations, orders and directives as authorized by this chapter or the
11 forest practices regulations, and the terms and conditions of any
12 approved applications.

13 (5) Except for those forest practices being regulated by local
14 governmental entities as provided elsewhere in this chapter, the
15 department of natural resources shall notify the applicant in writing
16 of either its approval of the application or its disapproval of the
17 application and the specific manner in which the application fails to
18 comply with the provisions of this section or with the forest practices
19 regulations. Except as provided otherwise in this section, if the
20 department fails to either approve or disapprove an application or any
21 portion thereof within the applicable time limit, the application shall
22 be deemed approved and the operation may be commenced: PROVIDED, That
23 this provision shall not apply to applications which are neither
24 approved nor disapproved pursuant to the provisions of subsection (7)
25 of this section: PROVIDED, FURTHER, That if seasonal field conditions
26 prevent the department from being able to properly evaluate the
27 application, the department may issue an approval conditional upon
28 further review within sixty days: PROVIDED, FURTHER, That the
29 department shall have until April 1, 1975, to approve or disapprove an
30 application involving forest practices allowed to continue to April 1,
31 1975, under the provisions of subsection (2) of this section. Upon
32 receipt of any notification or any satisfactorily completed application
33 the department shall in any event no later than two business days after
34 such receipt transmit a copy to the (~~departments of ecology and fish~~
35 ~~and wildlife, and to the~~) county, city, or town in whose jurisdiction
36 the forest practice is to be commenced. (~~Any comments by such~~
37 ~~agencies shall be directed to the department of natural resources.~~)

1 (6) For those forest practices regulated by the board and the
2 department, if the county, city, or town believes that an application
3 is inconsistent with this chapter, the forest practices regulations, or
4 any local authority consistent with RCW 76.09.240 as now or hereafter
5 amended, it may so notify the department and the applicant, specifying
6 its objections.

7 (7) For those forest practices regulated by the board and the
8 department, the department shall not approve portions of applications
9 to which a county, city, or town objects if:

10 (a) The department receives written notice from the county, city,
11 or town of such objections within fourteen business days from the time
12 of transmittal of the application to the county, city, or town, or one
13 day before the department acts on the application, whichever is later;
14 and

15 (b) The objections relate to lands either:

16 (i) Platted after January 1, 1960, as provided in chapter 58.17
17 RCW; or

18 (ii) On lands that have or are being converted to another use.

19 The department shall either disapprove those portions of such
20 application or appeal the county, city, or town objections to the
21 appeals board. If the objections related to subparagraphs (b)(i) and
22 (ii) of this subsection are based on local authority consistent with
23 RCW 76.09.240 as now or hereafter amended, the department shall
24 disapprove the application until such time as the county, city, or town
25 consents to its approval or such disapproval is reversed on appeal.
26 The applicant shall be a party to all department appeals of county,
27 city, or town objections. Unless the county, city, or town either
28 consents or has waived its rights under this subsection, the department
29 shall not approve portions of an application affecting such lands until
30 the minimum time for county, city, or town objections has expired.

31 (8) For those forest practices regulated by the board and the
32 department, in addition to any rights under the above paragraph, the
33 county, city, or town may appeal any department approval of an
34 application with respect to any lands within its jurisdiction. The
35 appeals board may suspend the department's approval in whole or in part
36 pending such appeal where there exists potential for immediate and
37 material damage to a public resource.

1 (9) For those forest practices regulated by the board and the
2 department, appeals under this section shall be made to the appeals
3 board in the manner and time provided in RCW 76.09.220(8). In such
4 appeals there shall be no presumption of correctness of either the
5 county, city, or town or the department position.

6 (10) For those forest practices regulated by the board and the
7 department, the department shall, within four business days notify the
8 county, city, or town of all notifications, approvals, and disapprovals
9 of an application affecting lands within the county, city, or town,
10 except to the extent the county, city, or town has waived its right to
11 such notice.

12 (11) For those forest practices regulated by the board and the
13 department, a county, city, or town may waive in whole or in part its
14 rights under this section, and may withdraw or modify any such waiver,
15 at any time by written notice to the department.

16 (12) Notwithstanding subsections (2) through (5) of this section,
17 forest practices applications or notifications are not required for
18 exotic insect and disease control operations conducted in accordance
19 with RCW 76.09.060(8) where eradication can reasonably be expected.

20 **Sec. 6.** RCW 76.09.060 and 2007 c 480 s 11 and 2007 c 106 s 1 are
21 each reenacted and amended to read as follows:

22 (1) The department shall prescribe the form and contents of the
23 notification and application. The forest practices rules shall specify
24 by whom and under what conditions the notification and application
25 shall be signed or otherwise certified as acceptable. Activities
26 conducted by the department or a contractor under the direction of the
27 department under the provisions of RCW 76.04.660, shall be exempt from
28 the landowner signature requirement on any forest practice application
29 required to be filed. The application or notification shall be
30 delivered in person to the department, sent by first-class mail to the
31 department or electronically filed in a form defined by the department.
32 The form for electronic filing shall be readily convertible to a paper
33 copy, which shall be available to the public pursuant to chapter 42.56
34 RCW. The information required may include, but is not limited to:

35 (a) Name and address of the forest landowner, timber owner, and
36 operator;

1 (b) Description of the proposed forest practice or practices to be
2 conducted;

3 (c) Legal description and tax parcel identification numbers of the
4 land on which the forest practices are to be conducted;

5 (d) Planimetric and topographic maps showing location and size of
6 all lakes and streams and other public waters in and immediately
7 adjacent to the operating area and showing all existing and proposed
8 roads and major tractor roads;

9 (e) Description of the silvicultural, harvesting, or other forest
10 practice methods to be used, including the type of equipment to be used
11 and materials to be applied;

12 (f) Proposed plan for reforestation and for any revegetation
13 necessary to reduce erosion potential from roadsides and yarding roads,
14 as required by the forest practices rules;

15 (g) Soil, geological, and hydrological data with respect to forest
16 practices;

17 (h) The expected dates of commencement and completion of all forest
18 practices specified in the application;

19 (i) Provisions for continuing maintenance of roads and other
20 construction or other measures necessary to afford protection to public
21 resources;

22 (j) An affirmation that the statements contained in the
23 notification or application are true; and

24 (k) All necessary application or notification fees.

25 (2) Long range plans may be submitted to the department for review
26 and consultation.

27 (3) The application for a forest practice or the notification of a
28 forest practice is subject to the reforestation requirement of RCW
29 76.09.070.

30 (a) If the application states that any land will be or is intended
31 to be converted:

32 (i) The reforestation requirements of this chapter and of the
33 forest practices rules shall not apply if the land is in fact converted
34 unless applicable alternatives or limitations are provided in forest
35 practices rules issued under RCW 76.09.070;

36 (ii) Completion of such forest practice operations shall be deemed
37 conversion of the lands to another use for purposes of chapters 84.33

1 and 84.34 RCW unless the conversion is to a use permitted under a
2 current use tax agreement permitted under chapter 84.34 RCW;

3 (iii) The forest practices described in the application are subject
4 to applicable county, city, town, and regional governmental authority
5 permitted under RCW 76.09.240 as well as the forest practices rules.

6 (b) Except as provided elsewhere in this section, if the landowner
7 harvests without an approved application or notification or the
8 landowner does not state that any land covered by the application or
9 notification will be or is intended to be converted, and the department
10 or the county, city, town, or regional governmental entity becomes
11 aware of conversion activities to a use other than commercial timber
12 operations, as that term is defined in RCW 76.09.020, then the
13 department shall send to (~~the department of ecology and~~) the
14 appropriate county, city, town, and regional governmental entities the
15 following documents:

16 (i) A notice of a conversion to nonforestry use;

17 (ii) A copy of the applicable forest practices application or
18 notification, if any; and

19 (iii) Copies of any applicable outstanding final orders or
20 decisions issued by the department related to the forest practices
21 application or notification.

22 (c) Failure to comply with the reforestation requirements contained
23 in any final order or decision shall constitute a removal of
24 designation under the provisions of RCW 84.33.140, and a change of use
25 under the provisions of RCW 84.34.080, and, if applicable, shall
26 subject such lands to the payments and/or penalties resulting from such
27 removals or changes.

28 (d) Conversion to a use other than commercial forest product
29 operations within six years after approval of the forest practices
30 application or notification without the consent of the county, city, or
31 town shall constitute a violation of each of the county, municipal
32 city, town, and regional authorities to which the forest practice
33 operations would have been subject if the application had stated an
34 intent to convert.

35 (e) Land that is the subject of a notice of conversion to a
36 nonforestry use produced by the department and sent to the department
37 of ecology and a local government under this subsection is subject to
38 the development prohibition and conditions provided in RCW 76.09.460.

1 (f) Landowners who have not stated an intent to convert the land
2 covered by an application or notification and who decide to convert the
3 land to a nonforestry use within six years of receiving an approved
4 application or notification must do so in a manner consistent with RCW
5 76.09.470.

6 (g) The application or notification must include a statement
7 requiring an acknowledgment by the forest landowner of his or her
8 intent with respect to conversion and acknowledging that he or she is
9 familiar with the effects of this subsection.

10 (4) Whenever an approved application authorizes a forest practice
11 which, because of soil condition, proximity to a water course or other
12 unusual factor, has a potential for causing material damage to a public
13 resource, as determined by the department, the applicant shall, when
14 requested on the approved application, notify the department two days
15 before the commencement of actual operations.

16 (5) Before the operator commences any forest practice in a manner
17 or to an extent significantly different from that described in a
18 previously approved application or notification, there shall be
19 submitted to the department a new application or notification form in
20 the manner set forth in this section.

21 (6) Except as provided in RCW 76.09.350(4), the notification to or
22 the approval given by the department to an application to conduct a
23 forest practice shall be effective for a term of two years from the
24 date of approval or notification and shall not be renewed unless a new
25 application is filed and approved or a new notification has been filed.
26 At the option of the applicant, an application or notification may be
27 submitted to cover a single forest practice or a number of forest
28 practices within reasonable geographic or political boundaries as
29 specified by the department. An application or notification that
30 covers more than one forest practice may have an effective term of more
31 than two years. The board shall adopt rules that establish standards
32 and procedures for approving an application or notification that has an
33 effective term of more than two years. Such rules shall include
34 extended time periods for application or notification approval or
35 disapproval. On an approved application with a term of more than two
36 years, the applicant shall inform the department before commencing
37 operations.

1 (7) Notwithstanding any other provision of this section, no prior
2 application or notification shall be required for any emergency forest
3 practice necessitated by fire, flood, windstorm, earthquake, or other
4 emergency as defined by the board, but the operator shall submit an
5 application or notification, whichever is applicable, to the department
6 within forty-eight hours after commencement of such practice or as
7 required by local regulations.

8 (8) Forest practices applications or notifications are not required
9 for forest practices conducted to control exotic forest insect or
10 disease outbreaks, when conducted by or under the direction of the
11 department of agriculture in carrying out an order of the governor or
12 director of the department of agriculture to implement pest control
13 measures as authorized under chapter 17.24 RCW, and are not required
14 when conducted by or under the direction of the department in carrying
15 out emergency measures under a forest health emergency declaration by
16 the commissioner of public lands as provided in RCW 76.06.130.

17 (a) For the purposes of this subsection, exotic forest insect or
18 disease has the same meaning as defined in RCW 76.06.020.

19 (b) In order to minimize adverse impacts to public resources,
20 control measures must be based on integrated pest management, as
21 defined in RCW 17.15.010, and must follow forest practices rules
22 relating to road construction and maintenance, timber harvest, and
23 forest chemicals, to the extent possible without compromising control
24 objectives.

25 (c) Agencies conducting or directing control efforts must provide
26 advance notice to the appropriate regulatory staff of the department of
27 the operations that would be subject to exemption from forest practices
28 application or notification requirements.

29 (d) When the appropriate regulatory staff of the department are
30 notified under (c) of this subsection, they must consult with the
31 landowner, interested agencies, and affected tribes, and assist the
32 notifying agencies in the development of integrated pest management
33 plans that comply with forest practices rules as required under (b) of
34 this subsection.

35 (e) Nothing under this subsection relieves agencies conducting or
36 directing control efforts from requirements of the federal clean water
37 act as administered by the department of ecology under RCW 90.48.260.

1 (f) Forest lands where trees have been cut as part of an exotic
2 forest insect or disease control effort under this subsection are
3 subject to reforestation requirements under RCW 76.09.070.

4 (g) The exemption from obtaining approved forest practices
5 applications or notifications does not apply to forest practices
6 conducted after the governor, the director of the department of
7 agriculture, or the commissioner of public lands have declared that an
8 emergency no longer exists because control objectives have been met,
9 that there is no longer an imminent threat, or that there is no longer
10 a good likelihood of control.

11 **Sec. 7.** RCW 76.09.100 and 1975 1st ex.s. c 200 s 7 are each
12 amended to read as follows:

13 If the department (~~(of ecology)~~) determines that a person has
14 failed to comply with the forest practices regulations relating to
15 water quality protection, and (~~(that the department of natural~~
16 ~~resources has not issued a stop work order or notice to comply, the~~
17 ~~department of ecology shall inform the department thereof. If)~~) the
18 department of natural resources fails to take authorized enforcement
19 action within twenty-four hours under RCW 76.09.080, 76.09.090,
20 76.09.120, or 76.09.130, the (~~(department of ecology may petition to~~
21 ~~the chairman)~~) chair of the appeals board(~~(, who)~~) shall, within forty-
22 eight hours, either deny (~~(the petition)~~) further consideration or
23 direct the department of natural resources to immediately issue a stop
24 work order or notice to comply, or to impose a penalty. No civil or
25 criminal penalties shall be imposed for past actions or omissions if
26 such actions or omissions were conducted pursuant to an approval or
27 directive of the department of natural resources.

28 **Sec. 8.** RCW 76.09.150 and 2000 c 11 s 7 are each amended to read
29 as follows:

30 (1) The department shall make inspections of forest lands, before,
31 during and after the conducting of forest practices as necessary for
32 the purpose of ensuring compliance with this chapter and the forest
33 practices rules and to ensure that no material damage occurs to the
34 natural resources of this state as a result of such practices.

35 (2) Any duly authorized representative of the department shall have

1 the right to enter upon forest land at any reasonable time to enforce
2 the provisions of this chapter and the forest practices rules.

3 (3) The department (~~(or the department of ecology)~~) may apply for
4 an administrative inspection warrant to either Thurston county superior
5 court, or the superior court in the county in which the property is
6 located. An administrative inspection warrant may be issued where:

7 (a) The department has attempted an inspection of forest lands
8 under this chapter to ensure compliance with this chapter and the
9 forest practices rules or to ensure that no potential or actual
10 material damage occurs to the natural resources of this state, and
11 access to all or part of the forest lands has been actually or
12 constructively denied; or

13 (b) The department has reasonable cause to believe that a violation
14 of this chapter or of rules adopted under this chapter is occurring or
15 has occurred.

16 (4) In connection with any watershed analysis, any review of a
17 pending application by an identification team appointed by the
18 department, any compliance studies, any effectiveness monitoring, or
19 other research that has been agreed to by a landowner, the department
20 may invite representatives of other agencies, tribes, and interest
21 groups to accompany a department representative and, at the landowner's
22 election, the landowner, on any such inspections. Reasonable efforts
23 shall be made by the department to notify the landowner of the persons
24 being invited onto the property and the purposes for which they are
25 being invited.

26 **Sec. 9.** RCW 76.09.260 and 1974 ex.s. c 137 s 26 are each amended
27 to read as follows:

28 The department shall represent the state's interest in matters
29 pertaining to forestry and forest practices, including federal matters
30 and matters relating to representing the state for the purposes of the
31 federal water pollution control act as it relates to forest practices,
32 and may consult with and cooperate with the federal government and
33 other states, as well as other public agencies, in the study and
34 enhancement of forestry and forest practices. The department is
35 authorized to accept, receive, disburse, and administer grants or other
36 funds or gifts from any source, including private individuals or

1 agencies, the federal government, and other public agencies for the
2 purposes of carrying out the provisions of this chapter.

3 ~~((Nothing in this chapter shall modify the designation of the
4 department of ecology as the agency representing the state for all
5 purposes of the Federal Water Pollution Control Act.))~~

6 **Sec. 10.** RCW 76.09.470 and 2007 c 106 s 3 are each amended to read
7 as follows:

8 (1) If a landowner who did not state an intent to convert his or
9 her land to a nonforestry use decides to convert his or her land to a
10 nonforestry use within six years of receiving an approved forest
11 practices application or notification under this chapter, the landowner
12 must:

13 (a) Stop all forest practices activities on the parcels subject to
14 the proposed land use conversion to a nonforestry use;

15 (b) Contact the ~~((department of ecology and the))~~ applicable
16 county, city, town, or regional governmental entity to begin the
17 permitting process; and

18 (c) Notify the department and withdraw any applicable applications
19 or notifications or request a new application for conversion.

20 (2) Upon being contacted by a landowner under this section, the
21 county, city, town, or regional governmental entity must:

22 (a) Notify the department and request from the department the
23 status of any applicable forest practices applications, notifications,
24 or final orders or decisions; and

25 (b) Complete the following activities:

26 (i) Require that the landowner be in full compliance with chapter
27 43.21C RCW, if applicable;

28 (ii) Receive notification from the department that the landowner
29 has resolved any outstanding final orders or decisions issued by the
30 department; and

31 (iii) Make a determination as to whether or not the condition of
32 the land in question is in full compliance with local ordinances and
33 regulations. If full compliance is not found, a mitigation plan to
34 address violations of local ordinances or regulations must be required
35 for the parcel in question by the county, city, town, or regional
36 governmental entity. Required mitigation plans must be prepared by the
37 landowner and approved by the county, city, town, or regional

1 governmental entity. Once approved, the mitigation plan must be
2 implemented by the landowner. Mitigation measures that may be required
3 include, but are not limited to, revegetation requirements to plant and
4 maintain trees of sufficient maturity and appropriate species
5 composition to restore critical area and buffer function or to be in
6 compliance with applicable local government regulations.

7 NEW SECTION. **Sec. 11.** A new section is added to chapter 90.48 RCW
8 to read as follows:

9 All responsibilities and duties of the department under this
10 chapter are transferred to the department of natural resources for any
11 discharge or other water quality issue related to a project required to
12 obtain a forest practices approval under chapter 76.09 RCW.

13 **Sec. 12.** RCW 90.64.010 and 2009 c 143 s 2 are each amended to read
14 as follows:

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

17 (1) "Advisory and oversight committee" means a balanced committee
18 of agency, dairy farm, and interest group representatives convened to
19 provide oversight and direction to the dairy nutrient management
20 program.

21 (2) "Bypass" means the intentional diversion of waste streams from
22 any portion of a treatment facility.

23 (3) "Catastrophic" means a tornado, hurricane, earthquake, flood,
24 or other extreme condition that causes an overflow from a required
25 waste retention structure.

26 (4) "Certification" means:

27 (a) The acknowledgment by a local conservation district that a
28 dairy producer has constructed or otherwise put in place the elements
29 necessary to implement his or her dairy nutrient management plan; and

30 (b) The acknowledgment by a dairy producer that he or she is
31 managing dairy nutrients as specified in his or her approved dairy
32 nutrient management plan.

33 (5) "Chronic" means a series of wet weather events that precludes
34 the proper operation of a dairy nutrient management system that is
35 designed for the current herd size.

1 (6) "Conservation commission" or "commission" means the
2 conservation commission under chapter 89.08 RCW.

3 (7) "Conservation districts" or "district" means a subdivision of
4 state government organized under chapter 89.08 RCW.

5 (8) "Concentrated dairy animal feeding operation" means a dairy
6 animal feeding operation subject to regulation under this chapter which
7 the director designates under RCW 90.64.020 or meets the following
8 criteria:

9 (a) Has more than seven hundred mature dairy cows, whether milked
10 or dry cows, that are confined; or

11 (b) Has more than two hundred head of mature dairy cattle, whether
12 milked or dry cows, that are confined and either:

13 (i) From which pollutants are discharged into navigable waters
14 through a manmade ditch, flushing system, or other similar manmade
15 device; or

16 (ii) From which pollutants are discharged directly into surface or
17 ground waters of the state that originate outside of and pass over,
18 across, or through the facility or otherwise come into direct contact
19 with the animals confined in the operation.

20 (9) "Dairy animal feeding operation" means a lot or facility where
21 the following conditions are met:

22 (a) Dairy animals that have been, are, or will be stabled or
23 confined and fed for a total of forty-five days or more in any twelve-
24 month period; and

25 (b) Crops, vegetation forage growth, or postharvest residues are
26 not sustained in the normal growing season over any portion of the lot
27 or facility. Two or more dairy animal feeding operations under common
28 ownership are considered, for the purposes of this chapter, to be a
29 single dairy animal feeding operation if they adjoin each other or if
30 they use a common area for land application of wastes.

31 (10) "Dairy farm" means any farm that is licensed to produce milk
32 under chapter 15.36 RCW.

33 (11) "Dairy nutrient" means any organic waste produced by dairy
34 cows or a dairy farm operation.

35 (12) "Dairy nutrient management plan" means a plan meeting the
36 requirements established under RCW 90.64.026.

37 (13) "Dairy producer" means a person who owns or operates a dairy
38 farm.

1 (14) "Department" means the department of (~~ecology under chapter~~
2 ~~43.21A RCW~~) agriculture.

3 (15) "Director" means the director of the department (~~of~~
4 ~~ecology,~~) or his or her designee.

5 (16) "Upset" means an exceptional incident in which there is an
6 unintentional and temporary noncompliance with technology-based permit
7 effluent limitations because of factors beyond the reasonable control
8 of the dairy. An upset does not include noncompliance to the extent
9 caused by operational error, improperly designed treatment facilities,
10 inadequate treatment facilities, lack of preventive maintenance, or
11 careless or improper operation.

12 (17) "Violation" means the following acts or omissions:

13 (a) A discharge of pollutants into the waters of the state, except
14 those discharges that are due to a chronic or catastrophic event, or to
15 an upset as provided in 40 C.F.R. Sec. 122.41, or to a bypass as
16 provided in 40 C.F.R. Sec. 122.41, and that occur when:

17 (i) A dairy producer has a current national pollutant discharge
18 elimination system permit with a wastewater system designed, operated,
19 and maintained for the current herd size and that contains all process-
20 generated wastewater plus average annual precipitation minus
21 evaporation plus contaminated storm water runoff from a twenty-five
22 year, twenty-four hour rainfall event for that specific location, and
23 the dairy producer has complied with all permit conditions, including
24 dairy nutrient management plan conditions for appropriate land
25 application practices; or

26 (ii) A dairy producer does not have a national pollutant discharge
27 elimination system permit, but has complied with all of the elements of
28 a dairy nutrient management plan that: Prevents the discharge of
29 pollutants to waters of the state, is commensurate with the dairy
30 producer's current herd size, and is approved and certified under RCW
31 90.64.026;

32 (b) Failure to register as required under RCW 90.64.017;

33 (c)(i) Until July 1, 2011, failure to keep for a period of three
34 years all records necessary to show that applications of nutrients to
35 the land were within acceptable agronomic rates, unless otherwise
36 required by law; and

37 (ii) Beginning July 1, 2011, failure to keep for a period of five

1 years all records necessary to show that applications of nutrients to
2 the land were within acceptable agronomic rates;

3 (d) The lack of an approved dairy nutrient management plan by July
4 1, 2002; or

5 (e) The lack of a certified dairy nutrient management plan for a
6 dairy farm after December 31, 2003.

7 **Sec. 13.** RCW 90.64.020 and 1993 c 221 s 3 are each amended to read
8 as follows:

9 (1) The director of the department (~~(of ecology)~~) may designate any
10 dairy animal feeding operation as a concentrated dairy animal feeding
11 operation upon determining that it is a significant contributor of
12 pollution to the surface or ground waters of the state. In making this
13 designation the director shall consider the following factors:

14 (a) The size of the animal feeding operation and the amount of
15 wastes reaching waters of the state;

16 (b) The location of the animal feeding operation relative to waters
17 of the state;

18 (c) The means of conveyance of animal wastes and process waters
19 into the waters of the state;

20 (d) The slope, vegetation, rainfall, and other factors affecting
21 the likelihood or frequency of discharge of animal wastes and process
22 waste waters into the waters of the state; and

23 (e) Other relevant factors as established by the department by
24 rule.

25 (2) A notice of intent to apply for a permit shall not be required
26 from a concentrated dairy animal feeding operation designated under
27 this section until the director has conducted an on-site inspection of
28 the operation and determined that the operation should and could be
29 regulated under the permit program.

30 **Sec. 14.** RCW 90.64.170 and 2005 c 510 s 1 are each amended to read
31 as follows:

32 (1) The legislature finds that a livestock nutrient management
33 program is essential to protecting the quality of the waters of the
34 state and ensuring a healthy and productive livestock industry.

35 (2) The department(~~(s of agriculture and ecology)~~) shall examine
36 (~~(their)~~) its current statutory authorities and provide the legislature

1 with recommendations for statutory changes to fully implement a
2 livestock nutrient management program within the department (~~of~~
3 ~~agriculture~~) for concentrated animal feeding operations, animal
4 feeding operations, and dairies, as authorized in RCW 90.48.260(~~(~~
5 ~~90.64.813,~~) and 90.64.901. (~~In developing recommended statutory~~
6 ~~changes, the departments shall consult with the livestock nutrient~~
7 ~~management program development and oversight committee created in RCW~~
8 ~~90.64.813.~~) The recommendations must be submitted to the legislature
9 by the department(~~s of agriculture and ecology~~) prior to applying to
10 the environmental protection agency for delegated authority to
11 administer the CAFO portion of the national pollutant discharge
12 elimination system permit program under the federal clean water act.

13 (3) For purposes of chapter 510, Laws of 2005, animal feeding
14 operations (AFOs) and concentrated animal feeding operations (CAFOs)
15 have the same meaning as defined in 40 C.F.R. 122.23.

16 (4) This section applies to all operations that meet the definition
17 of an AFO. This section does not apply to true pasture and rangeland
18 operations that do not meet the definition of AFO, however, such
19 operations may have confinement areas that may qualify as an AFO.

20 NEW SECTION. **Sec. 15.** A new section is added to chapter 90.48 RCW
21 to read as follows:

22 All responsibilities and duties of the department under this
23 chapter are transferred to the department of agriculture with regard to
24 any matters falling within the scope of chapter 90.64 RCW.

25 **Sec. 16.** RCW 90.48.260 and 2007 c 341 s 55 are each amended to
26 read as follows:

27 Unless otherwise designated in this chapter, the department of
28 ecology is hereby designated as the state water pollution control
29 agency for all purposes of the federal clean water act as it exists on
30 February 4, 1987, and is hereby authorized to participate fully in the
31 programs of the act as well as to take all action necessary to secure
32 to the state the benefits and to meet the requirements of that act.
33 With regard to the national estuary program established by section 320
34 of that act, the department shall exercise its responsibility jointly
35 with the Puget Sound partnership, created in RCW 90.71.210. The
36 department of ecology may delegate its authority under this chapter,

1 including its national pollutant discharge elimination permit system
2 authority and duties regarding animal feeding operations and
3 concentrated animal feeding operations, to the department of
4 agriculture through a memorandum of understanding. Until any such
5 delegation receives federal approval, the department of agriculture's
6 adoption or issuance of animal feeding operation and concentrated
7 animal feeding operation rules, permits, programs, and directives
8 pertaining to water quality shall be accomplished after reaching
9 agreement with the director of the department of ecology. Adoption or
10 issuance and implementation shall be accomplished so that compliance
11 with such animal feeding operation and concentrated animal feeding
12 operation rules, permits, programs, and directives will achieve
13 compliance with all federal and state water pollution control laws.
14 The powers granted herein include, among others, and notwithstanding
15 any other provisions of chapter 90.48 RCW or otherwise, the following:

16 (1) Complete authority to establish and administer a comprehensive
17 state point source waste discharge or pollution discharge elimination
18 permit program which will enable the department to qualify for full
19 participation in any national waste discharge or pollution discharge
20 elimination permit system and will allow the department to be the sole
21 agency issuing permits required by such national system operating in
22 the state of Washington subject to the provisions of RCW 90.48.262(2).
23 Program elements authorized herein may include, but are not limited to:
24 (a) Effluent treatment and limitation requirements together with timing
25 requirements related thereto; (b) applicable receiving water quality
26 standards requirements; (c) requirements of standards of performance
27 for new sources; (d) pretreatment requirements; (e) termination and
28 modification of permits for cause; (f) requirements for public notices
29 and opportunities for public hearings; (g) appropriate relationships
30 with the secretary of the army in the administration of his
31 responsibilities which relate to anchorage and navigation, with the
32 administrator of the environmental protection agency in the performance
33 of his duties, and with other governmental officials under the federal
34 clean water act; (h) requirements for inspection, monitoring, entry,
35 and reporting; (i) enforcement of the program through penalties,
36 emergency powers, and criminal sanctions; (j) a continuing planning
37 process; and (k) user charges.

1 (2) The power to establish and administer state programs in a
2 manner which will insure the procurement of moneys, whether in the form
3 of grants, loans, or otherwise; to assist in the construction,
4 operation, and maintenance of various water pollution control
5 facilities and works; and the administering of various state water
6 pollution control management, regulatory, and enforcement programs.

7 (3) The power to develop and implement appropriate programs
8 pertaining to continuing planning processes, area-wide waste treatment
9 management plans, and basin planning.

10 The governor shall have authority to perform those actions required
11 of him or her by the federal clean water act.

12 **Sec. 17.** RCW 77.55.021 and 2008 c 272 s 1 are each amended to read
13 as follows:

14 (1) Except as provided in RCW 77.55.031, 77.55.051, ~~((and))~~
15 77.55.041, and section 3 of this act, in the event that any person or
16 government agency desires to undertake a hydraulic project, the person
17 or government agency shall, before commencing work thereon, secure the
18 approval of the department in the form of a permit as to the adequacy
19 of the means proposed for the protection of fish life.

20 (2) A complete written application for a permit may be submitted in
21 person or by registered mail and must contain the following:

22 (a) General plans for the overall project;

23 (b) Complete plans and specifications of the proposed construction
24 or work within the mean higher high water line in saltwater or within
25 the ordinary high water line in freshwater;

26 (c) Complete plans and specifications for the proper protection of
27 fish life; and

28 (d) Notice of compliance with any applicable requirements of the
29 state environmental policy act, unless otherwise provided for in this
30 chapter.

31 (3)(a) Protection of fish life is the only ground upon which
32 approval of a permit may be denied or conditioned. Approval of a
33 permit may not be unreasonably withheld or unreasonably conditioned.
34 Except as provided in this subsection and subsections (8), (10), and
35 (12) of this section, the department has forty-five calendar days upon
36 receipt of a complete application to grant or deny approval of a
37 permit. The forty-five day requirement is suspended if:

1 (i) After ten working days of receipt of the application, the
2 applicant remains unavailable or unable to arrange for a timely field
3 evaluation of the proposed project;

4 (ii) The site is physically inaccessible for inspection;

5 (iii) The applicant requests a delay; or

6 (iv) The department is issuing a permit for a storm water discharge
7 and is complying with the requirements of RCW 77.55.161(3)(b).

8 (b) Immediately upon determination that the forty-five day period
9 is suspended, the department shall notify the applicant in writing of
10 the reasons for the delay.

11 (c) The period of forty-five calendar days may be extended if the
12 permit is part of a multiagency permit streamlining effort and all
13 participating permitting agencies and the permit applicant agree to an
14 extended timeline longer than forty-five calendar days.

15 (4) If the department denies approval of a permit, the department
16 shall provide the applicant a written statement of the specific reasons
17 why and how the proposed project would adversely affect fish life.
18 Issuance, denial, conditioning, or modification of a permit shall be
19 appealable to the department or the board as specified in RCW 77.55.301
20 within thirty days of the notice of decision.

21 (5)(a) The permittee must demonstrate substantial progress on
22 construction of that portion of the project relating to the permit
23 within two years of the date of issuance.

24 (b) Approval of a permit is valid for a period of up to five years
25 from the date of issuance, except as provided in (c) of this subsection
26 and in RCW 77.55.151.

27 (c) A permit remains in effect without need for periodic renewal
28 for hydraulic projects that divert water for agricultural irrigation or
29 stock watering purposes and that involve seasonal construction or other
30 work. A permit for streambank stabilization projects to protect farm
31 and agricultural land as defined in RCW 84.34.020 remains in effect
32 without need for periodic renewal if the problem causing the need for
33 the streambank stabilization occurs on an annual or more frequent
34 basis. The permittee must notify the appropriate agency before
35 commencing the construction or other work within the area covered by
36 the permit.

37 (6) The department may, after consultation with the permittee,
38 modify a permit due to changed conditions. The modification becomes

1 effective unless appealed to the department or the board as specified
2 in RCW 77.55.301 within thirty days from the notice of the proposed
3 modification. For hydraulic projects that divert water for
4 agricultural irrigation or stock watering purposes, or when the
5 hydraulic project or other work is associated with streambank
6 stabilization to protect farm and agricultural land as defined in RCW
7 84.34.020, the burden is on the department to show that changed
8 conditions warrant the modification in order to protect fish life.

9 (7) A permittee may request modification of a permit due to changed
10 conditions. The request must be processed within forty-five calendar
11 days of receipt of the written request. A decision by the department
12 may be appealed to the board within thirty days of the notice of the
13 decision. For hydraulic projects that divert water for agricultural
14 irrigation or stock watering purposes, or when the hydraulic project or
15 other work is associated with streambank stabilization to protect farm
16 and agricultural land as defined in RCW 84.34.020, the burden is on the
17 permittee to show that changed conditions warrant the requested
18 modification and that such a modification will not impair fish life.

19 (8)(a) The department, the county legislative authority, or the
20 governor may declare and continue an emergency. If the county
21 legislative authority declares an emergency under this subsection, it
22 shall immediately notify the department. A declared state of emergency
23 by the governor under RCW 43.06.010 shall constitute a declaration
24 under this subsection.

25 (b) The department, through its authorized representatives, shall
26 issue immediately, upon request, oral approval for a stream crossing,
27 or work to remove any obstructions, repair existing structures, restore
28 streambanks, protect fish life, or protect property threatened by the
29 stream or a change in the stream flow without the necessity of
30 obtaining a written permit prior to commencing work. Conditions of the
31 emergency oral permit must be established by the department and reduced
32 to writing within thirty days and complied with as provided for in this
33 chapter.

34 (c) The department may not require the provisions of the state
35 environmental policy act, chapter 43.21C RCW, to be met as a condition
36 of issuing a permit under this subsection.

37 (9) All state and local agencies with authority under this chapter
38 to issue permits or other authorizations in connection with emergency

1 water withdrawals and facilities authorized under RCW 43.83B.410 shall
2 expedite the processing of such permits or authorizations in keeping
3 with the emergency nature of such requests and shall provide a decision
4 to the applicant within fifteen calendar days of the date of
5 application.

6 (10) The department or the county legislative authority may
7 determine an imminent danger exists. The county legislative authority
8 shall notify the department, in writing, if it determines that an
9 imminent danger exists. In cases of imminent danger, the department
10 shall issue an expedited written permit, upon request, for work to
11 remove any obstructions, repair existing structures, restore banks,
12 protect fish resources, or protect property. Expedited permit requests
13 require a complete written application as provided in subsection (2) of
14 this section and must be issued within fifteen calendar days of the
15 receipt of a complete written application. Approval of an expedited
16 permit is valid for up to sixty days from the date of issuance. The
17 department may not require the provisions of the state environmental
18 policy act, chapter 43.21C RCW, to be met as a condition of issuing a
19 permit under this subsection.

20 (11)(a) For any property, except for property located on a marine
21 shoreline, that has experienced at least two consecutive years of
22 flooding or erosion that has damaged or has threatened to damage a
23 major structure, water supply system, septic system, or access to any
24 road or highway, the county legislative authority may determine that a
25 chronic danger exists. The county legislative authority shall notify
26 the department, in writing, when it determines that a chronic danger
27 exists. In cases of chronic danger, the department shall issue a
28 permit, upon request, for work necessary to abate the chronic danger by
29 removing any obstructions, repairing existing structures, restoring
30 banks, restoring road or highway access, protecting fish resources, or
31 protecting property. Permit requests must be made and processed in
32 accordance with subsections (2) and (3) of this section.

33 (b) Any projects proposed to address a chronic danger identified
34 under (a) of this subsection that satisfies the project description
35 identified in RCW 77.55.181(1)(a)(ii) are not subject to the provisions
36 of the state environmental policy act, chapter 43.21C RCW. However,
37 the project is subject to the review process established in RCW
38 77.55.181(3) as if it were a fish habitat improvement project.

1 (12) The department may issue an expedited written permit in those
2 instances where normal permit processing would result in significant
3 hardship for the applicant or unacceptable damage to the environment.
4 Expedited permit requests require a complete written application as
5 provided in subsection (2) of this section and must be issued within
6 fifteen calendar days of the receipt of a complete written application.
7 Approval of an expedited permit is valid for up to sixty days from the
8 date of issuance. The department may not require the provisions of the
9 state environmental policy act, chapter 43.21C RCW, to be met as a
10 condition of issuing a permit under this subsection.

11 **Sec. 18.** RCW 77.12.755 and 2003 c 311 s 10 are each amended to
12 read as follows:

13 ~~((In coordination with the department of natural resources and lead
14 entity groups,))~~ The department must establish a ranked inventory of
15 fish passage barriers on land owned by small forest landowners based on
16 the principle of fixing the worst first within a watershed consistent
17 with the fish passage priorities of the forest and fish report. The
18 department shall first gather and synthesize all available existing
19 information about the locations and impacts of fish passage barriers in
20 Washington. This information must include, but not be limited to, the
21 most recently available limiting factors analysis conducted pursuant to
22 RCW 77.85.060(2), the stock status information contained in the
23 department of fish and wildlife salmonid stock inventory (SASSI), the
24 salmon and steelhead habitat inventory and assessment project (SSHIAP),
25 and any comparable science-based assessment when available. The
26 inventory of fish passage barriers must be kept current and at a
27 minimum be updated by the beginning of each calendar year. Nothing in
28 this section grants the department or others additional right of entry
29 onto private property.

30 **Sec. 19.** RCW 77.12.870 and 2009 c 333 s 21 are each amended to
31 read as follows:

32 (1) The department(~~(, in consultation with the Northwest straits
33 commission, the department of natural resources, and other interested
34 parties,))~~) must create and maintain a database of known derelict
35 fishing gear, including the type of gear and its location.

1 (2) A person who loses or abandons commercial fishing gear within
2 the waters of the state is encouraged to report the location of the
3 loss and the type of gear lost to the department within forty-eight
4 hours of the loss.

5 **Sec. 20.** RCW 77.12.878 and 2002 c 281 s 6 are each amended to read
6 as follows:

7 (1) The director shall create a rapid response plan in cooperation
8 with the aquatic nuisance species committee and its member agencies
9 that describes actions to be taken when a prohibited aquatic animal
10 species is found to be infesting a water body. These actions include
11 eradication or control programs where feasible and containment of
12 infestation where practical through notification, public education, and
13 the enforcement of regulatory programs.

14 (2) The commission may adopt rules to implement the rapid response
15 plan.

16 (3) The director(~~(, the department of ecology, and the Washington~~
17 ~~state parks and recreation commission)) may post signs at water bodies
18 that are infested with aquatic animal species that are classified as
19 prohibited aquatic animal species under RCW 77.12.020 or with invasive
20 species of the plant kingdom. The signs should identify the prohibited
21 plant and animal species present and warn users of the water body of
22 the hazards and penalties for possessing and transporting these
23 species. Educational signs may be placed at uninfested sites.~~

24 **Sec. 21.** RCW 77.15.390 and 2001 c 253 s 40 are each amended to
25 read as follows:

26 (1) A person is guilty of unlawful taking of seaweed if the person
27 takes, possesses, or harvests seaweed and:

28 (a) The person does not have and possess the license required by
29 chapter 77.32 RCW for taking seaweed; or

30 (b) The action violates any rule of the department (~~or the~~
31 ~~department of natural resources)) regarding seasons, possession limits,
32 closed areas, closed times, or any other rule addressing the manner or
33 method of taking, possessing, or harvesting of seaweed.~~

34 (2) Unlawful taking of seaweed is a misdemeanor. This does not
35 affect rights of the state to recover civilly for trespass, conversion,
36 or theft of state-owned valuable materials.

1 **Sec. 22.** RCW 77.44.040 and 1996 c 222 s 4 are each amended to read
2 as follows:

3 The goals of the warm water game fish enhancement program are to
4 improve the fishing for warm water game fish using cost-effective
5 management. Development of new ponds and lakes shall be an important
6 and integral part of the program. The department shall work (~~with the~~
7 ~~department of natural resources~~) to coordinate the reclamation of
8 surface mines and the development of warm water game fish ponds.
9 Improvement of warm water fishing shall be coordinated with the
10 protection and conservation of cold water fish populations. This shall
11 be accomplished by carefully designing the warm water projects to have
12 minimal adverse effects upon the cold water fish populations. New pond
13 and lake development should have beneficial effects upon wildlife due
14 to the increase in lacustrine and wetland habitat that will accompany
15 the improvement of warm water fish habitat. The department shall not
16 develop projects that will increase the populations of undesirable or
17 deleterious fish species such as carp, squawfish, walking catfish, and
18 others.

19 Fish culture programs shall be used in conditions where they will
20 prove to be cost-effective, and may include the purchase of warm water
21 fish from aquatic farmers defined in RCW 15.85.020. Consideration
22 should be made for development of urban area enhancement of fishing
23 opportunity for put-and-take species, such as channel catfish, that are
24 amenable to production by low-cost fish culture methods. Fish culture
25 shall also be used for stocking of high value species, such as walleye,
26 smallmouth bass, and tiger musky. Introduction of special genetic
27 strains that show high potential for recreational fishing improvement,
28 including Florida strain largemouth bass and striped bass, shall be
29 considered.

30 Transplantation and introduction of exotic warm water fish shall be
31 carefully reviewed to assure that adverse effects to native fish and
32 wildlife populations do not occur. This review shall include an
33 analysis of consequences from disease and parasite introduction.

34 Population management through the use of fish toxicants, including
35 rotenone or derris root, shall be an integral part of the warm water
36 game fish enhancement program. However, any use of fish toxicants
37 shall be subject to a thorough review to prevent adverse effects to

1 cold water fish, desirable warm water fish, and other biota.
2 Eradication of deleterious fish species shall be a goal of the program.

3 Habitat improvement shall be a major aspect of the warm water game
4 fish enhancement program. Habitat improvement opportunities shall be
5 defined with scientific investigations, field surveys, and by using the
6 extensive experience of other state management entities. Installation
7 of cover, structure, water flow control structures, screens, spawning
8 substrate, vegetation control, and other management techniques shall be
9 fully used. The department shall work to gain access to privately
10 owned waters that can be developed with habitat improvements to improve
11 the warm water resource for public fishing.

12 The department shall use the resources of cooperative groups to
13 assist in the planning and implementation of the warm water game fish
14 enhancement program. In the development of the program the department
15 shall actively involve the organized fishing clubs that primarily fish
16 for warm water fish. The warm water fish enhancement program shall be
17 cooperative between the department and private landowners; private
18 landowners shall not be required to alter the uses of their private
19 property to fulfill the purposes of the warm water fish enhancement
20 program. The director shall not impose restrictions on the use of
21 private property, or take private property, for the purpose of the warm
22 water fish enhancement program.

23 **Sec. 23.** RCW 77.55.121 and 2005 c 146 s 404 are each amended to
24 read as follows:

25 (1) Beginning in January 1998, the department (~~(and the department~~
26 ~~of natural resources))~~) shall implement a habitat incentives program
27 based on the recommendations of federally recognized Indian tribes,
28 landowners, the regional fisheries enhancement groups, the timber,
29 fish, and wildlife cooperators, and other interested parties. The
30 program shall allow a private landowner to enter into an agreement with
31 the department(~~(s)~~) to enhance habitat on the landowner's property for
32 food fish, game fish, or other wildlife species. In exchange, the
33 landowner shall receive state regulatory certainty with regard to
34 future applications for a permit or a forest practices permit on the
35 property covered by the agreement. The overall goal of the program is
36 to provide a mechanism that facilitates habitat development on private
37 property while avoiding an adverse state regulatory impact to the

1 landowner at some future date. A single agreement between the
2 department(~~(s)~~) and a landowner may encompass up to one thousand acres.
3 A landowner may enter into multiple agreements with the
4 department(~~(s)~~), provided that the total acreage covered by such
5 agreements with a single landowner does not exceed ten thousand acres.
6 The department(~~(s-are)~~) is not obligated to enter into an agreement
7 unless the department(~~(s)~~) finds that the agreement is in the best
8 interest of protecting fish or wildlife species or their habitat.

9 (2) A habitat incentives agreement shall be in writing and shall
10 contain at least the following: (a) A description of the property
11 covered by the agreement; (b) an expiration date; (c) a description of
12 the condition of the property prior to the implementation of the
13 agreement; and (d) other information needed by the landowner and the
14 departments for future reference and decisions.

15 (3) As part of the agreement, the department may stipulate the
16 factors that will be considered when the department evaluates a
17 landowner's application for a permit on property covered by the
18 agreement. The department's identification of these evaluation factors
19 shall be in concurrence with (~~the department of natural resources~~
20 ~~and~~) affected federally recognized Indian tribes. In general, future
21 decisions related to the issuance, conditioning, or denial of a permit
22 must be based on the conditions present on the landowner's property at
23 the time of the agreement, unless all parties agree otherwise.

24 (4) As part of the agreement, the department (~~(of natural~~
25 ~~resources)~~) may stipulate the factors that will be considered when the
26 department (~~(of natural resources)~~) evaluates a landowner's application
27 for a forest practices permit under chapter 76.09 RCW on property
28 covered by the agreement. The department's (~~(of natural resources)~~)
29 identification of these evaluation factors shall be in concurrence with
30 (~~the department and~~) affected federally recognized Indian tribes. In
31 general, future decisions related to the issuance, conditioning, or
32 denial of forest practices permits shall be based on the conditions
33 present on the landowner's property at the time of the agreement,
34 unless all parties agree otherwise.

35 (5) The agreement is binding on and may be used by only the
36 landowner who entered into the agreement with the department. The
37 agreement shall not be appurtenant with the land. However, if a new
38 landowner chooses to maintain the habitat enhancement efforts on the

1 property, the new landowner and the department and the department of
2 natural resources may jointly choose to retain the agreement on the
3 property.

4 (6) If the department (~~(and the department of natural resources)~~)
5 receives multiple requests for agreements with private landowners under
6 the habitat incentives program, the department(~~(s)~~) shall prioritize
7 these requests and shall enter into as many agreements as possible
8 within available budgetary resources.

9 **Sec. 24.** RCW 77.55.211 and 2005 c 146 s 406 are each amended to
10 read as follows:

11 The department(~~(, the department of ecology, and the department of~~
12 ~~natural resources)~~) shall (~~(jointly)~~) develop an informational brochure
13 that describes when permits and any other authorizations are required
14 for flood damage prevention and reduction projects, and recommend(~~(s)~~)
15 ways to best proceed through the various regulatory permitting
16 processes.

17 **Sec. 25.** RCW 77.55.131 and 2005 c 146 s 405 are each amended to
18 read as follows:

19 The department (~~(and the department of ecology)~~) will work
20 cooperatively with the United States army corps of engineers to develop
21 a memorandum of agreement outlining dike vegetation management
22 guidelines so that dike owners are eligible for coverage under P.L. 84-
23 99, and state requirements established pursuant to RCW 77.55.021 are
24 met.

25 **Sec. 26.** RCW 77.65.510 and 2009 c 195 s 1 are each amended to read
26 as follows:

27 (1) The department must establish and administer a direct retail
28 endorsement to serve as a single license that permits a Washington
29 license holder or alternate operator to commercially harvest retail-
30 eligible species and to clean, dress, and sell his or her catch
31 directly to consumers at retail, including over the internet. The
32 direct retail endorsement must be issued as an optional addition to all
33 holders of: (a) A commercial fishing license for retail-eligible
34 species that the department offers under this chapter; and (b) an

1 alternate operator license who are designated as an alternate operator
2 on a commercial fishing license for retail eligible species.

3 (2) The direct retail endorsement must be offered at the time of
4 application for the qualifying commercial fishing license. Individuals
5 in possession of a qualifying commercial fishing license issued under
6 this chapter, and alternate operators designated on such a license, may
7 add a direct retail endorsement to their current license at any time.
8 Individuals who do not have a commercial fishing license for retail-
9 eligible species issued under this chapter, and who are not designated
10 as alternate operators on such a license, may not receive a direct
11 retail endorsement. The costs, conditions, responsibilities, and
12 privileges associated with the endorsed commercial fishing license is
13 not affected or altered in any way by the addition of a direct retail
14 endorsement. These costs include the base cost of the license and any
15 revenue and excise taxes.

16 (3) An individual need only add one direct retail endorsement to
17 his or her license portfolio. If a direct retail endorsement is
18 selected by an individual holding more than one commercial fishing
19 license issued under this chapter, a single direct retail endorsement
20 is considered to be added to all qualifying commercial fishing licenses
21 held by that individual, and is the only license required for the
22 individual to sell at retail any retail-eligible species permitted by
23 all of the underlying endorsed licenses. If a direct retail
24 endorsement is selected by an individual designated as an alternate
25 operator on more than one commercial license issued under this chapter,
26 a single direct retail endorsement is the only license required for the
27 individual to sell at retail any retail-eligible species permitted by
28 all of the underlying endorsed licenses on which the individual is
29 designated as an alternate operator. The direct retail endorsement
30 applies only to the Washington license holder or alternate operator
31 obtaining the endorsement.

32 (4) In addition to any fees charged for the endorsed licenses and
33 harvest documentation as required by this chapter or the rules of the
34 department, the department may set a reasonable annual fee not to
35 exceed the administrative costs to the department for a direct retail
36 endorsement.

37 (5) The holder of a direct retail endorsement is responsible for
38 documenting the commercial harvest of salmon and crab according to the

1 provisions of this chapter, the rules of the department for a wholesale
2 fish dealer, and the reporting requirements of the endorsed license.
3 Any retail-eligible species caught by the holder of a direct retail
4 endorsement must be documented on fish tickets.

5 (6) The direct retail endorsement must be displayed in a readily
6 visible manner by the seller wherever and whenever a sale to someone
7 other than a licensed wholesale dealer occurs. The commission may
8 require that the holder of a direct retail endorsement notify the
9 department up to eighteen hours before conducting an in-person sale of
10 retail-eligible species, except for in-person sales that have a
11 cumulative retail sales value of less than one hundred fifty dollars in
12 a twenty-four hour period that are sold directly from the vessel. For
13 sales occurring in a venue other than in person, such as over the
14 internet, through a catalog, or on the phone, the direct retail
15 endorsement number of the seller must be provided to the buyer both at
16 the time of sale and the time of delivery. All internet sales must be
17 conducted in accordance with federal laws and regulations.

18 (7) The direct retail endorsement is to be held by a natural person
19 and is not transferrable or assignable. If the endorsed license is
20 transferred, the direct retail endorsement immediately becomes void,
21 and the transferor is not eligible for a full or prorated reimbursement
22 of the annual fee paid for the direct retail endorsement. Upon
23 becoming void, the holder of a direct retail endorsement must surrender
24 the physical endorsement to the department.

25 (8) The holder of a direct retail endorsement must abide by the
26 provisions of Title 69 RCW as they apply to the processing and retail
27 sale of seafood. The department must distribute a pamphlet(~~(, provided~~
28 ~~by the department of agriculture,)~~) with the direct retail endorsement
29 generally describing the labeling requirements set forth in chapter
30 69.04 RCW as they apply to seafood.

31 (9) The holder of a qualifying commercial fishing license issued
32 under this chapter, or an alternate operator designated on such a
33 license, must either possess a direct retail endorsement or a wholesale
34 dealer license provided for in RCW 77.65.280 in order to lawfully sell
35 their catch or harvest in the state to anyone other than a licensed
36 wholesale dealer.

37 (10) The direct retail endorsement entitles the holder to sell a

1 retail-eligible species only at a temporary food service establishment
2 as that term is defined in RCW 69.06.045, or directly to a restaurant
3 or other similar food service business.

4 **Sec. 27.** RCW 77.70.210 and 2000 c 107 s 70 are each amended to
5 read as follows:

6 (1) A herring spawn on kelp fishery license is required to
7 commercially take herring eggs which have been deposited on vegetation
8 of any type.

9 (2) A herring spawn on kelp fishery license may be issued only to
10 a person who:

11 (a) Holds a herring fishery license issued under RCW 77.65.200 and
12 77.70.120; and

13 (b) Is the highest bidder in an auction conducted under subsection
14 (3) of this section.

15 (3) The department shall sell herring spawn on kelp commercial
16 fishery licenses at auction to the highest bidder. Bidders shall
17 identify their sources of kelp. (~~Kelp harvested from state-owned~~
18 ~~aquatic lands as defined in RCW 79.90.465 requires the written consent~~
19 ~~of the department of natural resources.~~) The department shall give
20 all holders of herring fishery licenses thirty days' notice of the
21 auction.

22 **Sec. 28.** RCW 77.105.070 and 1994 c 264 s 47 are each amended to
23 read as follows:

24 The department shall (~~work with the department of ecology and~~
25 ~~local government entities to~~) streamline the siting process for new
26 enhancement projects. The department is encouraged to work with the
27 legislature to develop statutory changes that enable expeditious
28 processing and granting of permits for fish enhancement projects.

29 **Sec. 29.** RCW 79.13.620 and 2003 c 334 s 378 are each amended to
30 read as follows:

31 (1) It is the purpose of (~~chapter 163, Laws of 1996~~) this section
32 that all state agricultural lands, grazing lands, and grazeable
33 woodlands (~~shall~~) be managed in keeping with the statutory and
34 constitutional mandates under which each agency operates. (~~Chapter~~

1 ~~163, Laws of 1996 is consistent with section 1, chapter 4, Laws of 1993~~
2 ~~sp. sess.)~~)

3 (2) (~~The ecosystem standards developed under chapter 4, Laws of~~
4 ~~1993 sp. sess. for state owned agricultural and grazing lands are~~
5 ~~defined as desired ecological conditions. The standards are not~~
6 ~~intended to prescribe practices. For this reason,)) Land managers are
7 encouraged to use an adaptive management approach in selecting and
8 implementing practices that work towards meeting the standards based on
9 the best available science and evaluation tools.~~

10 (3) (~~For as long as the chapter 4, Laws of 1993 sp. sess.~~
11 ~~ecosystem standards remain in effect, they)) Land shall be ((~~applied~~)
12 managed through a collaborative process that incorporates the following
13 principles:~~

14 (a) The land manager and lessee or permittee shall look at the land
15 together and make every effort to reach agreement on management and
16 resource objectives for the land under consideration;

17 (b) They will then discuss management options and make every effort
18 to reach agreement on which of the available options will be used to
19 achieve the agreed-upon objectives;

20 (c) No land manager or owner ever gives up his or her management
21 prerogative;

22 (d) Efforts will be made to make land management plans economically
23 feasible for landowners, managers, and lessees and to make the land
24 management plan compatible with the lessee's entire operation;

25 (e) Coordinated resource management planning is encouraged where
26 either multiple ownerships, or management practices, or both, are
27 involved;

28 (f) The department of fish and wildlife shall consider multiple
29 use, including grazing, on lands owned or managed by the department of
30 fish and wildlife where it is compatible with the management objectives
31 of the land; and

32 (g) The department shall allow multiple use on lands owned or
33 managed by the department where multiple use can be demonstrated to be
34 compatible with RCW 79.10.100, 79.10.110, and 79.10.120.

35 (4) The ecosystem standards are to be achieved by applying
36 appropriate land management practices on riparian lands and on the
37 uplands in order to reach the desired ecological conditions.

1 ~~((5) The legislature urges that state agencies that manage grazing~~
2 ~~lands make planning and implementation of chapter 163, Laws of 1996,~~
3 ~~using the coordinated resource management and planning process, a high~~
4 ~~priority, especially where either multiple ownerships, or multiple use~~
5 ~~resources objectives, or both, are involved. In all cases, the choice~~
6 ~~of using the coordinated resource management planning process will be~~
7 ~~a voluntary decision by all concerned parties including agencies,~~
8 ~~private landowners, lessees, permittees, and other interests.))~~

9 **Sec. 30.** RCW 79.19.080 and 2003 c 334 s 531 are each amended to
10 read as follows:

11 Periodically, at intervals to be determined by the board, the
12 department shall identify trust lands which are expected to convert to
13 commercial, residential, or industrial uses within ten years. The
14 department shall adhere to existing local comprehensive plans, zoning
15 classifications, and duly adopted local policies when making this
16 identification and determining the fair market value of the property.

17 The department shall hold a public hearing on the proposal in the
18 county where the state land is located. At least fifteen days but not
19 more than thirty days before the hearing, the department shall publish
20 a public notice of reasonable size in display advertising form, setting
21 forth the date, time, and place of the hearing, at least once in one or
22 more daily newspapers of general circulation in the county and at least
23 once in one or more weekly newspapers circulated in the area where the
24 trust land is located. At the same time that the published notice is
25 given, the department shall give written notice of the hearings to the
26 ~~((departments of fish and wildlife and general administration, to the~~
27 ~~parks and recreation commission, and to the))~~ county, city, or town in
28 which the property is situated. The department shall disseminate a
29 news release pertaining to the hearing among printed and electronic
30 media in the area where the trust land is located. The public notice
31 and news release also shall identify trust lands in the area which are
32 expected to convert to commercial, residential, or industrial uses
33 within ten years.

34 A summary of the testimony presented at the hearings shall be
35 prepared for the board's consideration. The board shall designate
36 trust lands which are expected to convert to commercial, residential,
37 or industrial uses as urban land. Descriptions of lands designated by

1 the board shall be made available to the county and city or town in
2 which the land is situated and for public inspection and copying at the
3 department's administrative office in Olympia, Washington and at each
4 area office.

5 The hearing and notice requirements of this section apply to those
6 trust lands which have been identified by the department prior to July
7 1, 1984, as being expected to convert to commercial, residential, or
8 industrial uses within the next ten years, and which have not been sold
9 or exchanged prior to July 1, 1984.

10 **Sec. 31.** RCW 79.70.030 and 2003 c 334 s 549 are each amended to
11 read as follows:

12 In order to set aside, preserve, and protect natural areas within
13 the state, the department is authorized, in addition to any other
14 powers, to:

15 (1) Establish the criteria for selection, acquisition, management,
16 protection, and use of such natural areas, including:

17 (a) Limiting public access to natural area preserves consistent
18 with the purposes of this chapter. Where appropriate, and on a case-
19 by-case basis, a buffer zone with an increased low level of public
20 access may be created around the environmentally sensitive areas;

21 (b) Developing a management plan for each designated natural area
22 preserve. The plan must identify the significant resources to be
23 conserved consistent with the purposes of this chapter and identify the
24 areas with potential for low-impact public and environmental
25 educational uses. The plan must specify the types of management
26 activities and public uses that are permitted, consistent with the
27 purposes of this chapter. The department must make the plans available
28 for review and comment by the public, and state, tribal, and local
29 agencies, prior to final approval;

30 (2) Cooperate or contract with any federal, state, or local
31 governmental agency, private organizations, or individuals in carrying
32 out the purpose of this chapter;

33 (3) Consistent with the plan, acquire by gift, devise, purchase,
34 grant, dedication, or means other than eminent domain, the fee or any
35 lesser right or interest in real property which shall be held and
36 managed as a natural area;

1 (4) Acquire by gift, devise, grant, or donation any personal
2 property to be used in the acquisition and/or management of natural
3 areas;

4 (5) Inventory existing public, state, and private lands in
5 cooperation with the council to assess possible natural areas to be
6 preserved within the state;

7 (6) Maintain a natural heritage program to provide assistance in
8 the selection and nomination of areas containing natural heritage
9 resources for registration or dedication. The program shall maintain
10 a classification of natural heritage resources, an inventory of their
11 locations, and a data bank for such information. (~~The department
12 shall cooperate with the department of fish and wildlife in the
13 selection and nomination of areas from the data bank that relate to
14 critical wildlife habitats.~~) Information from the data bank shall be
15 made available to public and private agencies and individuals for
16 environmental assessment and proprietary land management purposes.
17 Usage of the classification, inventory, or data bank of natural
18 heritage resources for any purpose inconsistent with the natural
19 heritage program is not authorized;

20 (7) Prepare a natural heritage plan which shall govern the natural
21 heritage program in the conduct of activities to create and manage a
22 system of natural areas that includes natural resources conservation
23 areas, and may include areas designated under the research natural area
24 program on federal lands in the state;

25 (a) The plan shall list the natural heritage resources to be
26 considered for registration and shall provide criteria for the
27 selection and approval of natural areas under this chapter;

28 (b) The department shall provide opportunities for input, comment,
29 and review to the public, other public agencies, and private groups
30 with special interests in natural heritage resources during preparation
31 of the plan;

32 (c) Upon approval by the council and adoption by the department,
33 the plan shall be updated and submitted biennially to the appropriate
34 committees of the legislature for their information and review. The
35 plan shall take effect ninety days after the adjournment of the
36 legislative session in which it is submitted unless the reviewing
37 committees suggest changes or reject the plan; and

1 (8) Maintain a state register of natural areas containing
2 significant natural heritage resources to be called the Washington
3 register of natural area preserves. Selection of natural areas for
4 registration shall be in accordance with criteria listed in the natural
5 heritage plan and accomplished through voluntary agreement between the
6 owner of the natural area and the department. No privately owned lands
7 may be proposed to the council for registration without prior notice to
8 the owner or registered without voluntary consent of the owner. No
9 state or local governmental agency may require such consent as a
10 condition of any permit or approval of or settlement of any civil or
11 criminal proceeding or to penalize any landowner in any way for failure
12 to give, or for withdrawal of, such consent.

13 (a) The department shall adopt rules as authorized by RCW 43.12.065
14 and 79.70.030(1) and chapter 34.05 RCW relating to voluntary natural
15 area registration.

16 (b) After approval by the council, the department may place sites
17 onto the register or remove sites from the register.

18 (c) The responsibility for management of registered natural area
19 preserves shall be with the preserve owner. A voluntary management
20 agreement may be developed between the department and the owners of the
21 sites on the register.

22 (d) Any public agency may register lands under provisions of this
23 chapter.

24 **Sec. 32.** RCW 79.71.120 and 1997 c 371 s 1 are each amended to read
25 as follows:

26 The property currently designated as the Elk river natural area
27 preserve is transferred from management under chapter 79.70 RCW as a
28 natural area preserve to management under chapter 79.71 RCW as a
29 natural resources conservation area. The legislature finds that
30 hunting is a suitable low-impact public use within the Elk river
31 natural resources conservation area. The department of natural
32 resources shall incorporate this legislative direction into the
33 management plan developed for the Elk river natural resources
34 conservation area. (~~The department shall work with the department of
35 fish and wildlife to identify hunting opportunities compatible with the
36 area's conservation purposes.~~)

1 **Sec. 33.** RCW 79.105.500 and 2007 c 341 s 58 are each amended to
2 read as follows:

3 The legislature finds that the department provides, manages, and
4 monitors aquatic land dredged material disposal sites on state-owned
5 aquatic lands for materials dredged from rivers, harbors, and shipping
6 lanes. These disposal sites (~~(are)~~) should be approved through a
7 cooperative planning process by the department(~~(s of natural resources~~
8 ~~and ecology)~~), the United States army corps of engineers, and the
9 United States environmental protection agency (~~(in cooperation with the~~
10 ~~Puget Sound partnership)~~). These disposal sites are essential to the
11 commerce and well-being of the citizens of the state of Washington.
12 Management and environmental monitoring of these sites are necessary to
13 protect environmental quality and to (~~(assure)~~) ensure appropriate use
14 of state-owned aquatic lands. The creation of an aquatic land dredged
15 material disposal site account is a reasonable means to enable and
16 facilitate proper management and environmental monitoring of these
17 disposal sites.

18 **Sec. 34.** RCW 79.125.710 and 2005 c 155 s 517 are each amended to
19 read as follows:

20 Whenever application is made to the department by any incorporated
21 city or town or metropolitan park district for the use of any state-
22 owned tidelands or shorelands within the corporate limits of the city
23 or town or metropolitan park district for municipal park and/or
24 playground purposes, the department shall cause the application to be
25 entered in the records of its office, and shall then forward the
26 application to the governor, who shall appoint a committee of five
27 representative citizens of the city or town, in addition to the
28 commissioner (~~(and the director of ecology, both of)~~), whom shall be an
29 ex officio member(~~(s)~~) of the committee, to investigate the lands and
30 determine whether they are suitable and needed for park or playground
31 purposes; and, if they so find, the commissioner shall certify to the
32 governor that the property shall be deeded, when in accordance with RCW
33 79.125.200 and 79.125.700, to the city or town or metropolitan park
34 district and the governor shall then execute a deed in the name of the
35 state of Washington, attested by the secretary of state, conveying the
36 use of the lands to the city or town or metropolitan park district for

1 park or playground purposes for so long as it shall continue to hold,
2 use, and maintain the lands for park or playground purposes.

3 **Sec. 35.** RCW 79.125.730 and 2005 c 155 s 519 are each amended to
4 read as follows:

5 The (~~director of ecology~~) commissioner, in addition to serving as
6 an ex officio member of the committee, is authorized and directed to
7 assist the city or town or metropolitan park district in the
8 development and decoration of any lands so conveyed and to furnish
9 trees, grass, flowers, and shrubs (~~therefor~~).

10 **Sec. 36.** RCW 79.135.130 and 2005 c 155 s 703 are each amended to
11 read as follows:

12 (1) The department, upon the receipt of an application for a lease
13 for the purpose of planting and cultivating oyster beds or for the
14 purpose of cultivating clams or other edible shellfish, shall (~~notify~~
15 ~~the director of fish and wildlife of the filing of the application~~
16 ~~describing the tidelands or beds of navigable waters applied for. The~~
17 ~~director of fish and wildlife shall~~)) cause an inspection of the lands
18 applied for (~~to be made and shall make a full report to the department~~
19 ~~of the director's findings as to whether it is necessary,~~)) in order to
20 protect existing natural oyster beds, and to secure adequate seeding of
21 the lands, to retain the lands described in the application for lease
22 or any part of the lands, and in the event the (~~director~~) department
23 deems it advisable to retain the lands or any part of the lands for the
24 protection of existing natural oyster beds or to guarantee the
25 continuance of an adequate seed stock for existing natural oyster beds,
26 the lands shall not be subject to lease. However, if the (~~director~~)
27 department determines that the lands applied for or any part of the
28 lands may be leased, the (~~director~~) department shall (~~so notify the~~
29 ~~department and the director shall~~)) cause an examination of the lands
30 to be made to determine the presence, if any, of natural oysters,
31 clams, or other edible shellfish on the lands, and to fix the rental
32 value of the lands for use for oyster, clam, or other edible shellfish
33 cultivation. In the report (~~to~~), the department(~~, the director~~)
34 shall recommend a minimum rental for the lands and an estimation of the
35 value of the oysters, clams, or other edible shellfish, if any, then
36 present on the lands applied for. The lands approved by the

1 ((~~director~~)) department for lease may then be leased to the applicant
2 for a period of not less than five years nor more than ten years at a
3 rental not less than the minimum ((~~rental~~)) recommended ((~~by the~~
4 ~~director of fish and wildlife~~)) rent. In addition, before entering
5 upon possession of the land, the applicant shall pay the value of the
6 oysters, clams, or other edible shellfish, if any, then present on the
7 land as determined by the ((~~director~~)) department, plus the expense
8 incurred by the ((~~director~~)) department in investigating the quantity
9 of oysters, clams, or other edible shellfish, present on the land
10 applied for.

11 (2) When issuing new leases or reissuing existing leases the
12 department shall not permit the commercial harvest of subtidal
13 hardshell clams by means of hydraulic escalating when the upland within
14 five hundred feet of any lease tract is zoned for residential
15 development.

16 **Sec. 37.** RCW 79.135.140 and 2005 c 155 s 704 are each amended to
17 read as follows:

18 Before entering into possession of any leased tidelands or beds of
19 navigable waters, the applicant shall have the lands surveyed by a
20 registered land surveyor, and the applicant shall furnish to the
21 department ((~~and to the director of fish and wildlife,~~)) a map of the
22 leased premises signed and certified by the registered land surveyor.
23 The lessee shall also mark the boundaries of the leased premises by
24 piling monuments or other markers of a permanent nature ((~~as the~~
25 ~~director of fish and wildlife may direct~~)).

26 **Sec. 38.** RCW 79.135.150 and 2005 c 155 s 705 are each amended to
27 read as follows:

28 The department may, upon the filing of an application for a renewal
29 lease, inspect the tidelands or beds of navigable waters, and if the
30 department deems it in the best interests of the state to re-lease the
31 lands, the department shall issue to the applicant a renewal lease for
32 a further period not exceeding thirty years and under the terms and
33 conditions as may be determined by the department. However, in the
34 case of an application for a renewal lease it shall not be necessary
35 for the lands to be inspected and reported upon by the ((~~director of~~
36 ~~fish and wildlife~~)) department.

1 **Sec. 39.** RCW 79.135.320 and 2005 c 155 s 712 are each amended to
2 read as follows:

3 (1) (~~In the event that the fish and wildlife commission approves~~
4 ~~the vacation of the whole or any part of a reserve,~~) The department
5 may vacate and offer for lease the parts or all of the reserve as it
6 deems to be for the best interest of the state, and all moneys received
7 for the lease of the lands shall be paid to the department.

8 (2) Notwithstanding RCW 77.60.020, subsection (1) of this section,
9 or any other provision of state law, the state oyster reserves in Eld
10 Inlet, Hammersley Inlet, or Totten Inlet, situated in Mason or Thurston
11 counties shall permanently be designated as state oyster reserve lands.

12 **Sec. 40.** RCW 79.135.410 and 2005 c 155 s 715 are each amended to
13 read as follows:

14 (1) The maximum daily wet weight harvest or possession of seaweed
15 for personal use from all state-owned aquatic lands and all privately
16 owned tidelands is ten pounds per person. The department (~~in~~
17 ~~cooperation with the department of fish and wildlife~~) may establish
18 seaweed harvest limits of less than ten pounds for conservation
19 purposes. This section shall in no way affect the ability of any state
20 agency to prevent harvest of any species of marine aquatic plant from
21 lands under its control, ownership, or management.

22 (2) Except as provided under subsection (3) of this section,
23 commercial harvesting of seaweed from state-owned aquatic lands, and
24 all privately owned tidelands is prohibited. This subsection shall in
25 no way affect commercial seaweed aquaculture.

26 (3) Upon (~~mutual~~) approval by the department (~~and the department~~
27 ~~of fish and wildlife~~), seaweed species of the genus *Macrocystis* may be
28 commercially harvested for use in the herring spawn-on-kelp fishery.

29 (4) Importation of seaweed species of the genus *Macrocystis* into
30 Washington state for the herring spawn-on-kelp fishery is subject to
31 the fish and shellfish disease control policies (~~of the department of~~
32 ~~fish and wildlife~~). *Macrocystis* shall not be imported from areas with
33 fish or shellfish diseases associated with organisms that are likely to
34 be transported with *Macrocystis*. The department shall incorporate this
35 policy on *Macrocystis* importation into its overall fish and shellfish
36 disease control policies.

1 **Sec. 41.** RCW 79A.05.255 and 2000 c 48 s 1 and 2000 c 11 s 35 are
2 each reenacted and amended to read as follows:

3 (1) There is created a winter recreation advisory committee to
4 advise the parks and recreation commission in the administration of
5 this chapter and to assist and advise the commission in the development
6 of winter recreation facilities and programs.

7 (2) The committee shall consist of:

8 (a) Six representatives of the nonsnowmobiling winter recreation
9 public appointed by the commission, including a resident of each of the
10 six geographical areas of this state where nonsnowmobiling winter
11 recreation activity occurs, as defined by the commission.

12 (b) Three representatives of the snowmobiling public appointed by
13 the commission.

14 (c) One (~~representative of the department of natural resources,~~
15 ~~one representative of the department of fish and wildlife, and one~~)
16 representative of (~~the Washington state association of counties, each~~
17 ~~of whom shall be~~) a statewide private association generally
18 representing the interests of county legislative bodies and executives
19 appointed by the director (~~of the particular department or~~
20 ~~association~~)).

21 (3) The terms of the members appointed under subsection (2)(a) and
22 (b) of this section shall begin on October 1st of the year of
23 appointment and shall be for three years or until a successor is
24 appointed, except in the case of appointments to fill vacancies for the
25 remainder of the unexpired term: PROVIDED, That the first of these
26 members shall be appointed for terms as follows: Three members shall
27 be appointed for one year, three members shall be appointed for two
28 years, and three members shall be appointed for three years.

29 (4) Members of the committee shall be reimbursed from the winter
30 recreational program account created by RCW 79A.05.235 for travel
31 expenses as provided in RCW 43.03.050 and 43.03.060.

32 (5) The committee shall meet at times and places it determines not
33 less than twice each year and additionally as required by the committee
34 chair or by majority vote of the committee. The chair of the committee
35 shall be chosen under procedures adopted by the committee. The
36 committee shall adopt any other procedures necessary to govern its
37 proceedings.

1 (6) The director of parks and recreation or the director's designee
2 shall serve as secretary to the committee and shall be a nonvoting
3 member.

4 **Sec. 42.** RCW 79A.05.351 and 2007 c 176 s 2 are each amended to
5 read as follows:

6 (1) The outdoor education and recreation grant program is hereby
7 created, subject to the availability of funds in the outdoor education
8 and recreation account. The commission shall establish and implement
9 the program by rule to provide opportunities for public agencies,
10 private nonprofit organizations, formal school programs, nonformal
11 after-school programs, and community-based programs to receive grants
12 from the account. Programs that provide outdoor education
13 opportunities to schools shall be fully aligned with the state's
14 essential academic learning requirements.

15 (2) The program shall be phased in beginning with the schools and
16 students with the greatest needs in suburban, rural, and urban areas of
17 the state. The program shall focus on students who qualify for free
18 and reduced-price lunch, who are most likely to fail academically, or
19 who have the greatest potential to drop out of school.

20 (3) The director shall set priorities and develop criteria for the
21 awarding of grants to outdoor environmental, ecological, agricultural,
22 or other natural resource-based education and recreation programs
23 considering at least the following:

24 (a) Programs that contribute to the reduction of academic failure
25 and dropout rates;

26 (b) Programs that make use of research-based, effective
27 environmental, ecological, agricultural, or other natural resource-
28 based education curriculum;

29 (c) Programs that contribute to healthy life styles through outdoor
30 recreation and sound nutrition;

31 (d) Various Washington state parks as venues and use of the
32 commission's personnel as a resource;

33 (e) Programs that maximize the number of participants that can be
34 served;

35 (f) Programs that will commit matching and in-kind resources;

36 (g) Programs that create partnerships with public and private
37 entities;

1 (h) Programs that provide students with opportunities to directly
2 experience and understand nature and the natural world; and

3 (i) Programs that include ongoing program evaluation, assessment,
4 and reporting of their effectiveness.

5 (4) The director shall create an advisory committee to assist and
6 advise the commission in the development and administration of the
7 outdoor education and recreation program. The director should solicit
8 representation on the committee from (~~the office of the superintendent~~
9 ~~of public instruction, the department of fish and wildlife,~~) the
10 business community, outdoor organizations with an interest in
11 education, and any others the commission deems sufficient to ensure a
12 cross section of stakeholders. When the director creates such an
13 advisory committee, its members shall be reimbursed from the outdoor
14 education and recreation program account for travel expenses as
15 provided in RCW 43.03.050 and 43.03.060.

16 (5) The outdoor education and recreation program account is created
17 in the custody of the state treasurer. Funds deposited in the outdoor
18 education and recreation program account shall be transferred only to
19 the commission to be used solely for the commission's outdoor education
20 and recreation program purposes identified in this section including
21 the administration of the program. The director may accept gifts,
22 grants, donations, or moneys from any source for deposit in the outdoor
23 education and recreation program account. Any public agency in this
24 state may develop and implement outdoor education and recreation
25 programs. The director may make grants to public agencies and contract
26 with any public or private agency or person to develop and implement
27 outdoor education and recreation programs. The outdoor education and
28 recreation program account is subject to allotment procedures under
29 chapter 43.88 RCW, but an appropriation is not required for
30 expenditures.

31 **Sec. 43.** RCW 79A.05.360 and 1999 c 249 s 1301 are each amended to
32 read as follows:

33 The commission may establish a system of underwater parks to
34 provide for diverse recreational diving opportunities and to conserve
35 and protect unique marine resources of the state of Washington. In
36 establishing and maintaining an underwater park system, the commission
37 may:

- 1 (1) Plan, construct, and maintain underwater parks;
- 2 (2) Acquire property and enter management agreements with other
3 units of state government for the management of lands, tidelands, and
4 bedlands as underwater parks;
- 5 (3) Construct artificial reefs and other underwater features to
6 enhance marine life and recreational uses of an underwater park;
- 7 (4) Accept gifts and donations for the benefit of underwater parks;
- 8 (5) Facilitate private efforts to construct artificial reefs and
9 underwater parks;
- 10 (6) Work with the federal government(~~(7)~~) and local governments
11 (~~and other appropriate agencies of state government, including but not~~
12 ~~limited to: The department of natural resources, the department of~~
13 ~~fish and wildlife and the natural heritage council~~) to carry out the
14 purposes of this chapter; and
- 15 (7) Contract with other state agencies or local governments for the
16 management of an underwater park unit.

17 **Sec. 44.** RCW 79A.60.520 and 2007 c 341 s 56 are each amended to
18 read as follows:

19 The commission(~~(, in consultation with the departments of ecology,~~
20 ~~fish and wildlife, natural resources, social and health services, and~~
21 ~~the Puget Sound partnership~~) shall conduct a literature search and
22 analyze pertinent studies to identify areas which are polluted or
23 environmentally sensitive within the state's waters. Based on this
24 review the commission shall designate appropriate areas as polluted or
25 environmentally sensitive, for the purposes of chapter 393, Laws of
26 1989 only.

27 **Sec. 45.** RCW 79A.60.550 and 1993 c 244 s 34 are each amended to
28 read as follows:

29 The (~~department of ecology, in consultation with the~~)
30 commission(~~(7)~~) shall, for initiation of the statewide program only,
31 develop criteria by rule for the design, installation, and operation of
32 sewage pumpout and dump units, taking into consideration the ease of
33 access to the unit by the boating public. (~~The department of ecology~~
34 ~~may adopt rules to administer the provisions of this section.~~)

1 **Sec. 46.** RCW 79A.60.620 and 2000 c 11 s 114 are each amended to
2 read as follows:

3 (1) The Washington sea grant program(~~(, in consultation with the~~
4 ~~department of ecology,~~) shall develop and conduct a voluntary spill
5 prevention education program that targets small spills from commercial
6 fishing vessels, ferries, cruise ships, ports, and marinas. Washington
7 sea grant shall coordinate the spill prevention education program with
8 recreational boater education performed by the state parks and
9 recreation commission.

10 (2) The spill prevention education program shall illustrate ways to
11 reduce oil contamination of bilge water, accidental spills of hydraulic
12 fluid and other hazardous substances during routine maintenance, and
13 reduce spillage during refueling. The program shall illustrate proper
14 disposal of oil and hazardous substances and promote strategies to meet
15 shoreside oil and hazardous substance handling, and disposal needs of
16 the targeted groups. The program shall include a series of training
17 workshops and the development of educational materials.

18 **Sec. 47.** RCW 79A.05.285 and 1999 c 249 s 907 are each amended to
19 read as follows:

20 The commission is authorized to evaluate and acquire land under RCW
21 (~~(79.01.612 in cooperation with the department of natural resources)~~)
22 79.10.030.

23 **Sec. 48.** RCW 79A.30.050 and 1995 c 200 s 6 are each amended to
24 read as follows:

25 (~~(1) If the authority and state agencies find it mutually~~
26 ~~beneficial to do so, they are authorized to collaborate and cooperate~~
27 ~~on projects of shared interest. Agencies authorized to collaborate~~
28 ~~with the authority include but are not limited to: The commission for~~
29 ~~activities and projects related to public recreation; the department of~~
30 ~~agriculture for projects related to the equine agricultural industry;~~
31 ~~the department of community, trade, and economic development with~~
32 ~~respect to community and economic development and tourism issues~~
33 ~~associated with development of the state horse park; Washington State~~
34 ~~University with respect to opportunities for animal research,~~
35 ~~education, and extension; the department of ecology with respect to~~
36 ~~opportunities for making the state horse park's waste treatment~~

1 ~~facilities a demonstration model for the handling of waste to protect~~
2 ~~water quality; and with local community colleges with respect to~~
3 ~~programs related to horses, economic development, business, and~~
4 ~~tourism.~~

5 (2)) The authority shall cooperate with 4-H clubs, pony clubs,
6 youth groups, and local park departments to provide youth recreational
7 activities. The authority shall also provide for preferential use of
8 an area of the horse park facility for youth and ~~((the disabled))~~
9 individuals with disabilities at nominal cost.

10 **Sec. 49.** RCW 79A.50.090 and 1969 ex.s. c 247 s 2 are each amended
11 to read as follows:

12 The department of natural resources shall ~~((not rescind the~~
13 ~~withdrawal of))~~ have reasonable access across all public land in any
14 existing and future state park ~~((nor sell any timber or other valuable~~
15 ~~material therefrom or grant any right of way or easement thereon,~~
16 ~~except as provided in the withdrawal order or for off-site drilling,~~
17 ~~without the concurrence of the state parks and recreation commission.~~

18 ~~The department of natural resources shall have reasonable access~~
19 ~~across such lands))~~ in order to reach other public lands administered
20 by the department of natural resources.

21 **Sec. 50.** RCW 79A.50.100 and 1995 c 399 s 209 are each amended to
22 read as follows:

23 (1) A public hearing may be held prior to any withdrawal of state
24 trust lands and shall be held prior to any revocation of withdrawal or
25 modification of withdrawal of state trust lands used for recreational
26 purposes by the department of natural resources ~~((or by other state~~
27 ~~agencies))~~.

28 (2) The department of natural resources shall cause notice of the
29 withdrawal, revocation of withdrawal or modification of withdrawal of
30 state trust lands as described in subsection (1) of this section to be
31 published by advertisement once a week for four weeks prior to the
32 public hearing in at least one newspaper published and of general
33 circulation in the county or counties in which the state trust lands
34 are situated, and by causing a copy of said notice to be posted in a
35 conspicuous place in the department's Olympia office, in the district
36 office in which the land is situated, and in the office of the county

1 auditor in the county where the land is situated thirty days prior to
2 the public hearing. The notice shall specify the time and place of the
3 public hearing and shall describe with particularity each parcel of
4 state trust lands involved in said hearing.

5 (3) The board of natural resources shall administer the hearing
6 according to its prescribed rules and regulations.

7 (4) The board of natural resources shall determine the most
8 beneficial use or combination of uses of the state trust lands. (~~Its~~
9 ~~decision will be conclusive as to the matter: PROVIDED, HOWEVER, That~~
10 ~~said decisions as to uses shall conform to applicable state plans and~~
11 ~~policy guidelines adopted by the department of community, trade, and~~
12 ~~economic development.))~~

13 **Sec. 51.** RCW 79A.15.110 and 2007 c 241 s 36 are each amended to
14 read as follows:

15 (~~A state~~) The recreation and conservation office or a local
16 agency shall review the proposed project application with the county or
17 city with jurisdiction over the project area prior to applying for
18 funds for the acquisition of property under this chapter. The
19 appropriate county or city legislative authority may, at its
20 discretion, submit a letter to the board identifying the authority's
21 position with regard to the acquisition project. The board shall make
22 the letters received under this section available to the governor and
23 the legislature when the prioritized project list is submitted under
24 RCW 79A.15.120, 79A.15.060, and 79A.15.070.

25 **Sec. 52.** RCW 78.44.280 and 1999 c 252 s 2 are each amended to read
26 as follows:

27 Surface disturbances caused by an underground metals mining and
28 milling operation are subject to the requirements of this chapter if
29 the operation is proposed after June 30, 1999. An operation is
30 proposed when an agency is presented with an application for an
31 operation or expansion of an existing operation having a probable
32 significant adverse environmental impact under chapter 43.21C RCW. The
33 department (~~of ecology~~) shall retain authority for reclamation of
34 surface disturbances caused by an underground operation operating at
35 any time prior to June 30, 1999(~~, unless the operator requests that~~

1 authority for reclamation of surface disturbances caused by such
2 operation be transferred to the department under the requirements of
3 this chapter)).

4 **Sec. 53.** RCW 78.52.125 and 1994 sp.s. c 9 s 822 are each amended
5 to read as follows:

6 Any person desiring or proposing to drill any well in search of oil
7 or gas, when such drilling would be conducted through or under any
8 surface waters of the state, shall prepare and submit an environmental
9 impact statement upon such form as the department of ((ecology))
10 natural resources shall prescribe at least one hundred and twenty days
11 prior to commencing the drilling of any such well. Within ninety days
12 after receipt of such environmental statement the department of
13 ((ecology)) natural resources shall ((prepare and submit to the
14 department of natural resources a report examining)) examine the
15 potential environmental impact of the proposed well and recommendations
16 for department action thereon. If after consideration of the report
17 the department of natural resources determines that the proposed well
18 is likely to have a substantial environmental impact the drilling
19 permit for such well may be denied.

20 The department of natural resources shall require sufficient
21 safeguards to minimize the hazards of pollution of all surface and
22 ground waters of the state. If safeguards acceptable to the department
23 of natural resources cannot be provided the drilling permit shall be
24 denied.

25 **Sec. 54.** RCW 78.56.040 and 1994 c 232 s 4 are each amended to read
26 as follows:

27 The department of ((ecology)) natural resources shall require each
28 applicant submitting a checklist pursuant to chapter 43.21C RCW for a
29 metals mining and milling operation to disclose the ownership and each
30 controlling interest in the proposed operation. The applicant shall
31 also disclose all other mining operations within the United States
32 which the applicant operates or in which the applicant has an ownership
33 or controlling interest. In addition, the applicant shall disclose and
34 may enumerate and describe the circumstances of: (1) Any past or
35 present bankruptcies involving the ownerships and their subsidiaries,
36 (2) any abandonment of sites regulated by the model toxics control act,

1 chapter 70.105D RCW, or other similar state remedial cleanup programs,
2 or the federal comprehensive environmental response, compensation, and
3 liability act, 42 U.S.C. Sec. 9601 et seq., as amended, (3) any
4 penalties in excess of ten thousand dollars assessed for violations of
5 the provisions of 33 U.S.C. Sec. 1251 et seq. or 42 U.S.C. Sec. 7401 et
6 seq., and (4) any previous forfeitures of financial assurance due to
7 noncompliance with reclamation or remediation requirements. This
8 information shall be available for public inspection and copying at the
9 department of ((ecology)) natural resources. Ownership or control of
10 less than ten percent of the stock of a corporation shall not by itself
11 constitute ownership or a controlling interest under this section.

12 **Sec. 55.** RCW 78.56.050 and 1994 c 232 s 5 are each amended to read
13 as follows:

14 (1) An environmental impact statement must be prepared for any
15 proposed metals mining and milling operation. The department of
16 ((ecology)) natural resources shall be the lead agency in coordinating
17 the environmental review process under chapter 43.21C RCW and in
18 preparing the environmental impact statement, except for uranium and
19 thorium operations regulated under Title 70 RCW.

20 (2) As part of the environmental review of metals mining and
21 milling operations regulated under this chapter, the applicant shall
22 provide baseline data adequate to document the premining conditions at
23 the proposed site of the metals mining and milling operation. The
24 baseline data shall contain information on the elements of the natural
25 environment identified in rules adopted pursuant to chapter 43.21C RCW.

26 (3) The department of ((ecology, after consultation with the
27 department of fish and wildlife,)) natural resources shall incorporate
28 measures to mitigate significant probable adverse impacts to fish and
29 wildlife as part of the ((department of ecology's)) department's permit
30 requirements for the proposed operation.

31 (4) In conducting the environmental review and preparing the
32 environmental impact statement, the department of ((ecology)) natural
33 resources shall cooperate with all affected local governments to the
34 fullest extent practicable.

35 **Sec. 56.** RCW 78.56.060 and 1994 c 232 s 6 are each amended to read
36 as follows:

1 The department of ((ecology)) natural resources will appoint a
2 metals mining coordinator. The coordinator will maintain current
3 information on the status of any metals mining and milling operation
4 regulated under this chapter from the preparation of the environmental
5 impact statement through the permitting, construction, operation, and
6 reclamation phases of the project or until the proposal is no longer
7 active. The coordinator shall also maintain current information on
8 postclosure activities. The coordinator will act as a contact person
9 for the applicant, the operator, and interested members of the public.
10 The coordinator may also assist agencies with coordination of their
11 inspection and monitoring responsibilities.

12 **Sec. 57.** RCW 78.56.080 and 1997 c 170 s 1 are each amended to read
13 as follows:

14 (1) The metals mining account is created in the state treasury.
15 Expenditures from this account are subject to appropriation.
16 Expenditures from this account may only be used for: (a) The
17 additional inspections of metals mining and milling operations required
18 by RCW 78.56.070 and (b) the metals mining coordinator established in
19 RCW 78.56.060.

20 (2)((+a)) As part of its normal budget development process and in
21 consultation with the metals mining industry, the department of
22 ((ecology)) natural resources shall estimate the costs required ((for
23 the department)) to meet its obligations for the additional inspections
24 of metals mining and milling operations required by chapter 232, Laws
25 of 1994. The department shall also estimate the cost of employing the
26 metals mining coordinator established in RCW 78.56.060.

27 ((b) As part of its normal budget development process and in
28 consultation with the metals mining industry, the department of natural
29 resources shall estimate the costs required for the department to meet
30 its obligations for the additional inspections of metals mining and
31 milling operations required by chapter 232, Laws of 1994.))

32 (3) Based on the cost estimates generated by the department of
33 ((ecology and the department of)) natural resources, the department
34 ((of ecology)) shall establish the amount of a fee to be paid by each
35 active metals mining and milling operation regulated under this
36 chapter. The fee shall be established at a level to fully recover the
37 direct and indirect costs of the ((agency)) department's

1 responsibilities identified in subsection (2) of this section. The
2 amount of the fee for each operation shall be proportional to the
3 number of visits required per site. Each applicant for a metals mining
4 and milling operation shall also be assessed the fee based on the same
5 criterion. The department (~~(of ecology)~~) may adjust the fees
6 established in this subsection if unanticipated activity in the
7 industry increases or decreases the amount of funding necessary to meet
8 (~~(agencies')~~) the agency's inspection responsibilities.

9 (4) The department of (~~(ecology)~~) natural resources shall collect
10 the fees established in subsection (3) of this section. All moneys
11 from these fees shall be deposited into the metals mining account.

12 **Sec. 58.** RCW 78.56.090 and 1994 c 232 s 9 are each amended to read
13 as follows:

14 (1) In the processing of an application for an initial waste
15 discharge permit for a tailings facility pursuant to the requirements
16 of chapter 90.48 RCW, the department of (~~(ecology)~~) natural resources
17 shall consider site-specific criteria in determining a preferred
18 location of tailings facilities of metals mining and milling operations
19 and incorporate the requirements of all known available and reasonable
20 methods in order to maintain the highest possible standards to insure
21 the purity of all waters of the state in accordance with the public
22 policy identified by RCW 90.48.010.

23 In implementing the siting criteria, the department shall take into
24 account the objectives of the proponent's application relating to
25 mining and milling operations. These objectives shall consist of, but
26 not be limited to (a) operational feasibility, (b) compatibility with
27 optimum tailings placement methods, (c) adequate volume capacity, (d)
28 availability of construction materials, and (e) an optimized embankment
29 volume.

30 (2) To meet the mandate of subsection (1) of this section, siting
31 of tailings facilities shall be accomplished through a two-stage
32 process that consists of a primary alternatives screening phase, and a
33 secondary technical site investigation phase.

34 (3) The primary screening phase will consist of, but not be limited
35 to, siting criteria based on considerations as to location as follows:

36 (a) Proximity to the one hundred year floodplain, as indicated in
37 the most recent federal emergency management agency maps;

- 1 (b) Proximity to surface and ground water;
- 2 (c) Topographic setting;
- 3 (d) Identifiable adverse geologic conditions, such as landslides
- 4 and active faults; and
- 5 (e) Visibility impacts of the public generally and residents more
- 6 particularly.

7 (4) The department of ((ecology)) natural resources, through the
8 primary screening process, shall reduce the available tailings facility
9 sites to one or more feasible locations whereupon a technical site
10 investigation phase shall be conducted by the department for the
11 purpose of verifying the adequacy of the remaining potential sites.
12 The technical site investigations phase shall consist of, but not be
13 limited to, the following:

- 14 (a) Soil characteristics;
- 15 (b) Hydrologic characteristics;
- 16 (c) A local and structural geology evaluation, including seismic
- 17 conditions and related geotechnical investigations;
- 18 (d) A surface water control analysis; and
- 19 (e) A slope stability analysis.

20 (5) Upon completion of the two phase evaluation process set forth
21 in this section, the department of ((ecology)) natural resources shall
22 issue a site selection report on the preferred location. This report
23 shall address the above criteria as well as analyze the feasibility of
24 reclamation and stabilization of the tailings facility. The siting
25 report may recommend mitigation or engineering factors to address
26 siting concerns. The report shall be developed in conjunction with the
27 preparation of and contained in an environmental impact statement
28 prepared pursuant to chapter 43.21C RCW. The report may be utilized by
29 the department of ecology for the purpose of providing information
30 related to the suitability of the site and for ruling on an application
31 for a waste discharge permit.

32 (6) The department of ((ecology)) natural resources may, at its
33 discretion, require the applicant to provide the information required
34 in either phase one or phase two as described in subsections (3) and
35 (4) of this section.

36 **Sec. 59.** RCW 78.56.100 and 1994 c 232 s 10 are each amended to
37 read as follows:

1 (1) In order to receive a waste discharge permit from the
2 department of ((ecology)) natural resources pursuant to the
3 requirements of chapter 90.48 RCW or in order to operate a metals
4 mining and milling tailing facility, an applicant proposing a metals
5 mining and milling operation regulated under this chapter must meet the
6 following additional requirements:

7 (a) Any tailings facility shall be designed and operated to prevent
8 the release of pollution and must meet the following standards:

9 (i) Operators shall apply all known available and reasonable
10 technology to limit the concentration of potentially toxic materials in
11 the tailings facility to assure the protection of wildlife and human
12 health;

13 (ii) The tailings facility shall have a containment system that
14 includes an engineered liner system, leak detection and leak collection
15 elements, and a seepage collection impoundment to assure that a leak of
16 any regulated substance under chapter 90.48 RCW will be detected before
17 escaping from the containment system. The design and management of the
18 facility must ensure that any leaks from the tailings facility are
19 detected in a manner which allows for remediation pursuant to chapter
20 90.48 RCW. The applicant shall prepare a detailed engineering report
21 setting forth the facility design and construction. The applicant
22 shall submit the report to the department of ((ecology)) natural
23 resources for its review and approval of a design as determined by the
24 department. Natural conditions, such as depth to groundwater or net
25 rainfall, shall be taken into account in the facility design, but not
26 in lieu of the protection required by the engineered liner system;

27 (iii) The toxicity of mine or mill tailings and the potential for
28 long-term release of regulated substances from mine or mill tailings
29 shall be reduced to the greatest extent practicable through
30 stabilization, removal, or reuse of the substances; and

31 (iv) The closure of the tailings facility shall provide for
32 isolation or containment of potentially toxic materials and shall be
33 designed to prevent future release of regulated substances contained in
34 the impoundment;

35 (b) The applicant must develop a waste rock management plan
36 approved by the department of ((ecology and the department of)) natural
37 resources which emphasizes pollution prevention. At a minimum, the
38 plan must contain the following elements:

1 (i) An accurate identification of the acid generating properties of
2 the waste rock;

3 (ii) A strategy for encapsulating potentially toxic material from
4 the environment, when appropriate, in order to prevent the release of
5 heavy metals and acidic drainage; and

6 (iii) A plan for reclaiming and closing waste rock sites which
7 minimizes infiltration of precipitation and runoff into the waste rock
8 and which is designed to prevent future releases of regulated
9 substances contained within the waste rock;

10 (c) If an interested citizen or citizen group so requests of the
11 department of (~~ecology~~) natural resources, the metals mining and
12 milling operator or applicant shall work with the department (~~of~~
13 ~~ecology~~) and the interested party to make arrangements for citizen
14 observation and verification in the taking of required water samples.
15 While it is the intent of this subsection to provide for citizen
16 observation and verification of water sampling activities, it is not
17 the intent of this subsection to require additional water sampling and
18 analysis on the part of the mining and milling operation or the
19 department. The citizen observation and verification program shall be
20 incorporated into the applicant's, operator's, or department's normal
21 sampling regimen and shall occur at least once every six months. There
22 is no duty of care on the part of the state or its employees to any
23 person who participates in the citizen observation and verification of
24 water sampling under chapter 232, Laws of 1994 and the state and its
25 employees shall be immune from any civil lawsuit based on any injuries
26 to or claims made by any person as a result of that person's
27 participation in such observation and verification of water sampling
28 activities. The metals mining and milling operator or applicant shall
29 not be liable for any injuries to or claims made by any person which
30 result from that person coming onto the property of the metals mining
31 and milling operator or applicant as an observer pursuant to chapter
32 232, Laws of 1994. The results from these and all other relevant water
33 sampling activities shall be kept on file with the relevant county and
34 shall be available for public inspection during normal working hours;
35 and

36 (d) An operator or applicant for a metals mining and milling
37 operation must complete a voluntary reduction plan in accordance with
38 RCW 70.95C.200.

1 (2) Only those tailings facilities constructed after April 1, 1994,
2 must meet the requirement established in subsection (1)(a) of this
3 section. Only those waste rock holdings constructed after April 1,
4 1994, must meet the requirement established in subsection (1)(b) of
5 this section.

6 **Sec. 60.** RCW 78.56.110 and 1995 c 223 s 1 are each amended to read
7 as follows:

8 (1) The department of ((~~ecology~~)) natural resources shall not issue
9 necessary permits to an applicant for a metals mining and milling
10 operation until the applicant has deposited with the department ((~~of~~
11 ~~ecology~~)) a performance security which is acceptable to the department
12 ((~~of—ecology~~)) based on the requirements of subsection (2) of this
13 section. This performance security may be:

- 14 (a) Bank letters of credit;
- 15 (b) A cash deposit;
- 16 (c) Negotiable securities;
- 17 (d) An assignment of a savings account;
- 18 (e) A savings certificate in a Washington bank; or
- 19 (f) A corporate surety bond executed in favor of the department of
20 ecology by a corporation authorized to do business in the state of
21 Washington under Title 48 RCW.

22 The department of ((~~ecology~~)) natural resources may, for any
23 reason, refuse any performance security not deemed adequate.

24 (2) The performance security shall be conditioned on the faithful
25 performance of the applicant or operator in meeting the following
26 obligations:

27 (a) Compliance with the environmental protection laws of the state
28 of Washington administered by the department of ((~~ecology~~)) natural
29 resources, or permit conditions administered by the department ((~~of~~
30 ~~ecology~~)), associated with the construction, operation, and closure
31 pertaining to metals mining and milling operations, and with the
32 related environmental protection ordinances and permit conditions
33 established by local government when requested by local government;

34 (b) Reclamation of metals mining and milling operations that do not
35 meet the threshold of surface mining as defined by RCW 78.44.031(17);

36 (c) Postclosure environmental monitoring as determined by the
37 department of ((~~ecology~~)) natural resources; and

1 (d) Provision of sufficient funding as determined by the department
2 of ~~((ecology))~~ natural resources for cleanup of potential problems
3 revealed during or after closure.

4 (3) The department of ~~((ecology))~~ natural resources may, if it
5 deems appropriate, adopt rules for determining the amount of the
6 performance security, requirements for the performance security,
7 requirements for the issuer of the performance security, and any other
8 requirements necessary for the implementation of this section.

9 (4) The department of ~~((ecology))~~ natural resources may increase or
10 decrease the amount of the performance security at any time to
11 compensate for any alteration in the operation that affects meeting the
12 obligations in subsection (2) of this section. At a minimum, the
13 department shall review the adequacy of the performance security every
14 two years.

15 (5) Liability under the performance security shall be maintained
16 until the obligations in subsection (2) of this section are met to the
17 satisfaction of the department of ~~((ecology))~~ natural resources.
18 Liability under the performance security may be released only upon
19 written notification by the department ~~((of ecology))~~.

20 (6) Any interest or appreciation on the performance security shall
21 be held by the department of ~~((ecology))~~ natural resources until the
22 obligations in subsection (2) of this section have been met to the
23 satisfaction of the department ~~((of ecology))~~. At such time, the
24 interest shall be remitted to the applicant or operator. However, if
25 the applicant or operator fails to comply with the obligations of
26 subsection (2) of this section, the interest or appreciation may be
27 used by the department ~~((of ecology))~~ to comply with the obligations.

28 ~~((Only one agency may require a performance security to satisfy
29 the deposit requirements of RCW 78.44.087, and only one agency may
30 require a performance security to satisfy the deposit requirements of
31 this section. However,))~~ A single performance security, when
32 acceptable to ~~((both the department of ecology and))~~ the department of
33 natural resources, may be utilized ~~((by both agencies))~~ to satisfy the
34 requirements of this section and RCW 78.44.087.

35 **Sec. 61.** RCW 78.56.120 and 1995 c 223 s 2 are each amended to read
36 as follows:

37 The department of ~~((ecology))~~ natural resources may, with staff,

1 equipment, and material under its control, or by contract with others,
2 remediate or mitigate any impact of a metals mining and milling
3 operation when it finds that the operator or permit holder has failed
4 to comply with relevant statutes, rules, or permits, and the operator
5 or permit holder has failed to take adequate or timely action to
6 rectify these impacts.

7 If the department intends to remediate or mitigate such impacts,
8 the department shall issue an order to submit performance security
9 requiring the permit holder or surety to submit to the department the
10 amount of moneys posted pursuant to RCW 78.56.110. If the amount
11 specified in the order to submit performance security is not paid
12 within twenty days after issuance of the notice, the attorney general
13 upon request of the department shall bring an action on behalf of the
14 state in a superior court to recover the amount specified and
15 associated legal fees.

16 The department may proceed at any time after issuing the order to
17 submit performance security to remediate or mitigate adverse impacts.

18 The department shall keep a record of all expenses incurred in
19 carrying out any remediation or mitigation activities authorized under
20 this section, including:

- 21 (1) Remediation or mitigation;
- 22 (2) A reasonable charge for the services performed by the state's
23 personnel and the state's equipment and materials utilized; and
- 24 (3) Administrative and legal expenses related to remediation or
25 mitigation.

26 The department shall refund to the surety or permit holder all
27 amounts received in excess of the amount of expenses incurred. If the
28 amount received is less than the expenses incurred, the attorney
29 general, upon request of the department of ((ecology)) natural
30 resources, may bring an action against the permit holder on behalf of
31 the state in the superior court to recover the remaining costs listed
32 in this section.

33 **Sec. 62.** RCW 78.56.160 and 1998 c 245 s 161 are each amended to
34 read as follows:

- 35 (1) Until June 30, 1996, there shall be a moratorium on metals
36 mining and milling operations using the heap leach extraction process.
37 The department of natural resources ((and the department of ecology))

1 shall (~~jointly~~) review the existing laws and regulations pertaining
2 to the heap leach extraction process for their adequacy in safeguarding
3 the environment.

4 (2) Metals mining using the process of in situ extraction is
5 permanently prohibited in the state of Washington.

6 **Sec. 63.** RCW 78.60.070 and 2007 c 338 s 1 are each amended to read
7 as follows:

8 (1) Any person proposing to drill a well or redrill an abandoned
9 well for geothermal resources shall file with the department a written
10 application for a permit to commence such drilling or redrilling on a
11 form prescribed by the department accompanied by a permit fee of two
12 hundred dollars. (~~The department shall forward a duplicate copy to
13 the department of ecology within ten days of filing.~~)

14 (2) Upon receipt of a proper application relating to drilling or
15 redrilling the department shall set a date, time, and place for a
16 public hearing on the application, which hearing shall be in the county
17 in which the drilling or redrilling is proposed to be made, and shall
18 instruct the applicant to publish notices of such application and
19 hearing by such means and within such time as the department shall
20 prescribe. The department shall require that the notice so prescribed
21 shall be published twice in a newspaper of general circulation within
22 the county in which the drilling or redrilling is proposed to be made
23 and in such other appropriate information media as the department may
24 direct.

25 (3) Any person proposing to drill a core hole for the purpose of
26 gathering geothermal data, including but not restricted to heat flow,
27 temperature gradients, and rock conductivity, shall be required to
28 obtain a single permit for each core hole according to subsection (1)
29 of this section, including a permit fee for each core hole, but no
30 notice need be published, and no hearing need be held. Such core holes
31 that penetrate more than seven hundred and fifty feet into bedrock
32 shall be deemed geothermal test wells and subject to the payment of a
33 permit fee and to the requirement in subsection (2) of this section for
34 public notices and hearing. In the event geothermal energy is
35 discovered in a core hole, the hole shall be deemed a geothermal well
36 and subject to the permit fee, notices, and hearing. Such core holes

1 as described by this subsection are subject to all other provisions of
2 this chapter, including a bond or other security as specified in RCW
3 78.60.130.

4 (4) All moneys paid to the department under this section shall be
5 deposited with the state treasurer for credit to the general fund.

6 **Sec. 64.** RCW 78.60.080 and 1974 ex.s. c 43 s 8 are each amended to
7 read as follows:

8 A permit shall be granted only if the department is satisfied that
9 the area is suitable for the activities applied for; that the applicant
10 will be able to comply with the provisions of this chapter and the
11 rules and regulations enacted hereunder; and that a permit would be in
12 the best interests of the state.

13 The department shall not allow operation of a well under permit if
14 it finds that the operation of any well will unreasonably decrease
15 groundwater available for prior water rights in any aquifer or other
16 groundwater source for water for beneficial uses, unless such affected
17 water rights are acquired by condemnation, purchase or other means.

18 The department shall have the authority to condition the permit as
19 it deems necessary to carry out the provisions of this chapter,
20 including but not limited to conditions to reduce any environmental
21 impact.

22 ~~((The department shall forward a copy of the permit to the
23 department of ecology within five days of issuance.))~~

24 **Sec. 65.** RCW 78.60.100 and 2007 c 338 s 2 are each amended to read
25 as follows:

26 Any well or core hole drilled under authority of this chapter from
27 which:

28 (1) It is not technologically practical to derive the energy to
29 produce electricity commercially, or the owner or operator has no
30 intention of deriving energy to produce electricity commercially, and

31 (2) Usable minerals cannot be derived, or the owner or operator has
32 no intention of deriving usable minerals, shall be plugged and
33 abandoned as provided in this chapter or, upon the owner's or
34 operator's written application to the department ~~((of natural resources
35 and with the concurrence and approval of the department of ecology))~~,
36 jurisdiction over the well may be transferred to the department ~~((of~~

1 ecology)) and, in such case, the well shall no longer be subject to the
2 provisions of this chapter but shall be subject to any applicable laws
3 and rules relating to wells drilled for appropriation and use of
4 groundwaters. If an application is made to transfer jurisdiction, a
5 copy of all logs, records, histories, and descriptions shall be
6 provided to the department (~~(of ecology)~~) by the applicant.

7 **Sec. 66.** RCW 90.03.247 and 2003 c 39 s 48 are each amended to read
8 as follows:

9 Whenever an application for a permit to make beneficial use of
10 public waters is approved relating to a stream or other water body for
11 which minimum flows or levels have been adopted and are in effect at
12 the time of approval, the permit shall be conditioned to protect the
13 levels or flows. No agency may establish minimum flows and levels or
14 similar water flow or level restrictions for any stream or lake of the
15 state other than the department of ecology whose authority to establish
16 is exclusive, as provided in chapter 90.03 RCW and RCW 90.22.010 and
17 90.54.040. The provisions of other statutes, including but not limited
18 to RCW (~~(77.55.100)~~) 77.55.021 and chapter 43.21C RCW, may not be
19 interpreted in a manner that is inconsistent with this section. In
20 establishing such minimum flows, levels, or similar restrictions, the
21 department shall, during all stages of development (~~(by the department~~
22 ~~of ecology)~~) of minimum flow proposals, consult with, and carefully
23 consider the recommendations of (~~(, the department of fish and wildlife,~~
24 ~~the department of community, trade, and economic development, the~~
25 ~~department of agriculture, and representatives of the)~~) affected Indian
26 tribes. (~~(Nothing herein shall preclude the department of fish and~~
27 ~~wildlife, the department of community, trade, and economic development,~~
28 ~~or the department of agriculture from presenting its views on minimum~~
29 ~~flow needs at any public hearing or to any person or agency, and the~~
30 ~~department of fish and wildlife, the department of community, trade,~~
31 ~~and economic development, and the department of agriculture are each~~
32 ~~empowered to participate in proceedings of the federal energy~~
33 ~~regulatory commission and other agencies to present its views on~~
34 ~~minimum flow needs.)~~)

35 **Sec. 67.** RCW 90.03.280 and 1994 c 264 s 83 are each amended to
36 read as follows:

1 Upon receipt of a proper application, the department shall instruct
2 the applicant to publish notice thereof in a form and within a time
3 prescribed by the department in a newspaper of general circulation
4 published in the county or counties in which the storage, diversion,
5 and use is to be made, and in such other newspapers as the department
6 may direct, once a week for two consecutive weeks. (~~Upon receipt by
7 the department of an application it shall send notice thereof
8 containing pertinent information to the director of fish and
9 wildlife.~~)

10 **Sec. 68.** RCW 90.03.290 and 2001 c 239 s 1 are each amended to read
11 as follows:

12 (1) When an application complying with the provisions of this
13 chapter and with the rules of the department has been filed, the same
14 shall be placed on record with the department, and it shall be its duty
15 to investigate the application, and determine what water, if any, is
16 available for appropriation, and find and determine to what beneficial
17 use or uses it can be applied. If it is proposed to appropriate water
18 for irrigation purposes, the department shall investigate, determine
19 and find what lands are capable of irrigation by means of water found
20 available for appropriation. If it is proposed to appropriate water
21 for the purpose of power development, the department shall investigate,
22 determine and find whether the proposed development is likely to prove
23 detrimental to the public interest, having in mind the highest feasible
24 use of the waters belonging to the public.

25 (2)(a) If the application does not contain, and the applicant does
26 not promptly furnish sufficient information on which to base such
27 findings, the department may issue a preliminary permit, for a period
28 of not to exceed three years, requiring the applicant to make such
29 surveys, investigations, studies, and progress reports, as in the
30 opinion of the department may be necessary. If the applicant fails to
31 comply with the conditions of the preliminary permit, it and the
32 application or applications on which it is based shall be automatically
33 canceled and the applicant so notified. If the holder of a preliminary
34 permit shall, before its expiration, file with the department a
35 verified report of expenditures made and work done under the
36 preliminary permit, which, in the opinion of the department,
37 establishes the good faith, intent, and ability of the applicant to

1 carry on the proposed development, the preliminary permit may, with the
2 approval of the governor, be extended, but not to exceed a maximum
3 period of five years from the date of the issuance of the preliminary
4 permit.

5 (b) For any application for which a preliminary permit was issued
6 and for which the availability of water was directly affected by a
7 moratorium on further diversions from the Columbia river during the
8 years from 1990 to 1998, the preliminary permit is extended through
9 June 30, 2002. If such an application and preliminary permit were
10 canceled during the moratorium, the application and preliminary permit
11 shall be reinstated until June 30, 2002, if the application and permit:

12 (i) Are for providing regional water supplies in more than one urban
13 growth area designated under chapter 36.70A RCW and in one or more
14 areas near such urban growth areas, or the application and permit are
15 modified for providing such supplies, and (ii) provide or are modified
16 to provide such regional supplies through the use of existing intake or
17 diversion structures. The authority to modify such a canceled
18 application and permit to accomplish the objectives of (b)(i) and (ii)
19 of this subsection is hereby granted.

20 (3) The department shall make and file as part of the record in the
21 matter, written findings of fact concerning all things investigated,
22 and if it shall find that there is water available for appropriation
23 for a beneficial use, and the appropriation thereof as proposed in the
24 application will not impair existing rights or be detrimental to the
25 public welfare, it shall issue a permit stating the amount of water to
26 which the applicant shall be entitled and the beneficial use or uses to
27 which it may be applied: PROVIDED, That where the water applied for is
28 to be used for irrigation purposes, it shall become appurtenant only to
29 such land as may be reclaimed thereby to the full extent of the soil
30 for agricultural purposes. But where there is no unappropriated water
31 in the proposed source of supply, or where the proposed use conflicts
32 with existing rights, or threatens to prove detrimental to the public
33 interest, having due regard to the highest feasible development of the
34 use of the waters belonging to the public, it shall be duty of the
35 department to reject such application and to refuse to issue the permit
36 asked for.

37 (4) If the permit is refused because of conflict with existing
38 rights and such applicant shall acquire same by purchase or

1 condemnation under RCW 90.03.040, the department may thereupon grant
2 such permit. Any application may be approved for a less amount of
3 water than that applied for, if there exists substantial reason
4 therefor, and in any event shall not be approved for more water than
5 can be applied to beneficial use for the purposes named in the
6 application. In determining whether or not a permit shall issue upon
7 any application, it shall be the duty of the department to investigate
8 all facts relevant and material to the application. After the
9 department approves said application in whole or in part and before any
10 permit shall be issued thereon to the applicant, such applicant shall
11 pay the fee provided in RCW 90.03.470(~~(: PROVIDED FURTHER, That in the~~
12 ~~event a permit is issued by the department upon any application, it~~
13 ~~shall be its duty to notify the director of fish and wildlife of such~~
14 ~~issuance))~~).

15 **Sec. 69.** RCW 90.03.360 and 1994 c 264 s 85 are each amended to
16 read as follows:

17 (1) The owner or owners of any water diversion shall maintain, to
18 the satisfaction of the department of ecology, substantial controlling
19 works and a measuring device constructed and maintained to permit
20 accurate measurement and practical regulation of the flow of water
21 diverted. Every owner or manager of a reservoir for the storage of
22 water shall construct and maintain, when required by the department,
23 any measuring device necessary to ascertain the natural flow into and
24 out of said reservoir.

25 Metering of diversions or measurement by other approved methods
26 shall be required as a condition for all new surface water right
27 permits, and except as provided in subsection (2) of this section, may
28 be required as a condition for all previously existing surface water
29 rights. The department may also require, as a condition for all water
30 rights, metering of diversions, and reports regarding such metered
31 diversions as to the amount of water being diverted. Such reports
32 shall be in a form prescribed by the department.

33 (2) Where water diversions are from waters in which the salmonid
34 stock status is depressed or critical, as determined by the department
35 of fish and wildlife, or where the volume of water being diverted
36 exceeds one cubic foot per second, the department shall require
37 metering or measurement by other approved methods as a condition for

1 all new and previously existing water rights or claims. The department
2 shall attempt to integrate the requirements of this subsection into its
3 existing compliance workload priorities, but shall prioritize the
4 requirements of this subsection ahead of the existing compliance
5 workload where a delay may cause the decline of wild salmonids. (~~The~~
6 ~~department shall notify the department of fish and wildlife of the~~
7 ~~status of fish screens associated with these diversions.~~) This
8 subsection (2) shall not apply to diversions for public or private
9 hatcheries or fish rearing facilities if the diverted water is returned
10 directly to the waters from which it was diverted.

11 **Sec. 70.** RCW 90.03.590 and 2003 1st sp.s. c 5 s 16 are each
12 amended to read as follows:

13 (1) On a pilot project basis, the department may enter into a
14 watershed agreement with one or more municipal water suppliers in water
15 resource inventory area number one to meet the objectives established
16 in a water resource management program approved or being developed
17 under chapter 90.82 RCW with the consent of the initiating governments
18 of the water resource inventory area. The term of an agreement may not
19 exceed ten years, but the agreement may be renewed or amended upon
20 agreement of the parties.

21 (2) A watershed agreement must be consistent with:

22 (a) Growth management plans developed under chapter 36.70A RCW
23 where these plans are adopted and in effect;

24 (b) Water supply plans and small water system management programs
25 approved under chapter 43.20 or 70.116 RCW;

26 (c) Coordinated water supply plans approved under chapter 70.116
27 RCW; and

28 (d) Water use efficiency and conservation requirements and
29 standards established by the state department of health or such
30 requirements and standards as are provided in an approved watershed
31 plan, whichever are the more stringent.

32 (3) A watershed agreement must:

33 (a) Require the public water system operated by the participating
34 municipal water supplier to meet obligations under the watershed plan;

35 (b) Establish performance measures and timelines for measures to be
36 completed;

1 (c) Provide for monitoring of stream flows and metering of water
2 use as needed to ensure that the terms of the agreement are met; and

3 (d) Require annual reports from the water users regarding
4 performance under the agreement.

5 (4) As needed to implement watershed agreement activities, the
6 department may provide or receive funding, or both, under its existing
7 authorities.

8 (5) The department must provide opportunity for public review of a
9 proposed agreement before it is executed. The department must make
10 proposed and executed watershed agreements and annual reports available
11 on the department's internet web site.

12 (6) The department must consult with affected local governments
13 (~~((and the state departments of health and fish and wildlife))~~) before
14 executing an agreement.

15 (7) Before executing a watershed agreement, the department must
16 conduct a government-to-government consultation with affected tribal
17 governments. The municipal water suppliers operating the public water
18 systems that are proposing to enter into the agreements must be invited
19 to participate in the consultations. During these consultations, the
20 department and the municipal water suppliers shall explore the
21 potential interest of the tribal governments or governments in
22 participating in the agreement.

23 (8) Any person aggrieved by the department's failure to satisfy the
24 requirements in subsection (3) of this section as embodied in the
25 department's decision to enter into a watershed agreement under this
26 section may, within thirty days of the execution of such an agreement,
27 appeal the department's decision to the pollution control hearings
28 board under chapter 43.21B RCW.

29 (9) Any projects implemented by a municipal water system under the
30 terms of an agreement reached under this section may be continued and
31 maintained by the municipal water system after the agreement expires or
32 is terminated as long as the conditions of the agreement under which
33 they were implemented continue to be met.

34 (10) Before December 31, 2003, and December 31, 2004, the
35 department must report to the appropriate committees of the legislature
36 the results of the pilot project provided for in this section. Based
37 on the experience of the pilot project, the department must offer any

1 suggested changes in law that would improve, facilitate, and maximize
2 the implementation of watershed plans adopted under this chapter.

3 **Sec. 71.** RCW 90.16.050 and 2007 c 286 s 1 are each amended to read
4 as follows:

5 (1) Every person, firm, private or municipal corporation, or
6 association hereinafter called "claimant", claiming the right to the
7 use of water within or bordering upon the state of Washington for power
8 development, shall on or before the first day of January of each year
9 pay to the state of Washington in advance an annual license fee, based
10 upon the theoretical water power claimed under each and every separate
11 claim to water according to the following schedule:

12 (a) For projects in operation: For each and every theoretical
13 horsepower claimed up to and including one thousand horsepower, at the
14 rate of eighteen cents per horsepower; for each and every theoretical
15 horsepower in excess of one thousand horsepower, up to and including
16 ten thousand horsepower, at the rate of three and six-tenths cents per
17 horsepower; for each and every theoretical horsepower in excess of ten
18 thousand horsepower, at the rate of one and eight-tenths cents per
19 horsepower.

20 (b) For federal energy regulatory commission projects in operation,
21 the following fee schedule applies in addition to the fees in (a) of
22 this subsection: For each theoretical horsepower of capacity up to and
23 including one thousand horsepower, at the rate of thirty-two cents per
24 horsepower; for each theoretical horsepower in excess of one thousand
25 horsepower, up to and including ten thousand horsepower, at the rate of
26 six and four-tenths cents per horsepower; for each theoretical
27 horsepower in excess of ten thousand horsepower, at the rate of three
28 and two-tenths cents per horsepower.

29 (c) To justify the appropriate use of fees collected under (b) of
30 this subsection, the department of ecology shall submit a progress
31 report to the appropriate committees of the legislature prior to
32 December 31, 2009, and biennially thereafter until December 31, 2017.

33 (i) The progress report will: (A) Describe how license fees were
34 expended in the federal energy regulatory commission licensing process
35 during the current biennium, and expected workload and full-time
36 equivalent employees for federal energy regulatory commission licensing
37 in the next biennium; (B) include any recommendations based on

1 consultation with (~~the departments of ecology and fish and wildlife,~~)
2 hydropower project operators(~~(7)~~) and other interested parties; and (C)
3 recognize hydropower operators that exceed their environmental
4 regulatory requirements.

5 (ii) The fees required in (b) of this subsection expire June 30,
6 2017. The biennial progress reports submitted by the department of
7 ecology will serve as a record for considering the extension of the fee
8 structure in (b) of this subsection.

9 (2) The following are exceptions to the fee schedule in subsection
10 (1) of this section:

11 (a) For undeveloped projects, the fee shall be at one-half the
12 rates specified for projects in operation; for projects partly
13 developed and in operation the fees paid on that portion of any project
14 that shall have been developed and in operation shall be the full
15 annual license fee specified in subsection (1) of this section for
16 projects in operation, and for the remainder of the power claimed under
17 such project the fees shall be the same as for undeveloped projects.

18 (b) The fees required in subsection (1) of this section do not
19 apply to any hydropower project owned by the United States.

20 (c) The fees required in subsection (1) of this section do not
21 apply to the use of water for the generation of fifty horsepower or
22 less.

23 (d) The fees required in subsection (1) of this section for
24 projects developed by an irrigation district in conjunction with the
25 irrigation district's water conveyance system shall be reduced by fifty
26 percent to reflect the portion of the year when the project is not
27 operable.

28 (e) Any irrigation district or other municipal subdivision of the
29 state, developing power chiefly for use in pumping of water for
30 irrigation, upon the filing of a statement showing the amount of power
31 used for irrigation pumping, is exempt from the fees in subsection (1)
32 of this section to the extent of the power used for irrigation pumping.

33 **Sec. 72.** RCW 90.16.090 and 2007 c 286 s 2 are each amended to read
34 as follows:

35 (1) All fees paid under provisions of this chapter, shall be
36 credited by the state treasurer to the reclamation account created in

1 RCW 89.16.020 and subject to legislative appropriation, be allocated
2 and expended by the director of ecology for:

3 (a) Investigations and surveys of natural resources in cooperation
4 with the federal government, or independently thereof, including stream
5 gaging, hydrographic, topographic, river, underground water, mineral
6 and geological surveys; and

7 (b) Expenses associated with staff at the department(~~(s)~~) of
8 ecology (~~(and fish and wildlife)~~) working on federal energy regulatory
9 commission relicensing and license implementation.

10 (2) Unless otherwise required by the omnibus biennial
11 appropriations acts, the expenditures for these purposes must be
12 proportional to the revenues collected under RCW 90.16.050(1).

13 **Sec. 73.** RCW 90.22.010 and 1997 c 32 s 4 are each amended to read
14 as follows:

15 The department of ecology may establish minimum water flows or
16 levels for streams, lakes or other public waters for the purposes of
17 protecting fish, game, birds or other wildlife resources, or
18 recreational or aesthetic values of said public waters whenever it
19 appears to be in the public interest to establish the same. In
20 addition, the department of ecology shall(~~(, when requested by the~~
21 ~~department of fish and wildlife to)~~) protect fish, game, or other
22 wildlife resources (~~(under the jurisdiction of the requesting state~~
23 ~~agency)~~), or if the department of ecology finds it necessary to
24 preserve water quality, establish such minimum flows or levels as are
25 required to protect the resource or preserve the water quality
26 (~~(described in the request or determination)~~). (~~(Any request submitted~~
27 ~~by the department of fish and wildlife shall include a statement~~
28 ~~setting forth the need for establishing a minimum flow or level.)~~)
29 When the department acts to preserve water quality, it shall include a
30 (~~(similar)~~) statement setting forth the need for establishing a minimum
31 flow or level with the proposed rule filed with the code reviser. This
32 section shall not apply to waters artificially stored in reservoirs,
33 provided that in the granting of storage permits by the department of
34 ecology in the future, full recognition shall be given to downstream
35 minimum flows, if any there may be, which have theretofore been
36 established hereunder.

1 **Sec. 74.** RCW 90.22.020 and 1994 c 264 s 87 are each amended to
2 read as follows:

3 Flows or levels authorized for establishment under RCW 90.22.010,
4 or subsequent modification thereof by the department shall be provided
5 for through the adoption of rules. Before the establishment or
6 modification of a water flow or level for any stream or lake or other
7 public water, the department shall hold a public hearing in the county
8 in which the stream, lake, or other public water is located. If it is
9 located in more than one county the department shall determine the
10 location or locations therein and the number of hearings to be
11 conducted. Notice of the hearings shall be given by publication in a
12 newspaper of general circulation in the county or counties in which the
13 stream, lake, or other public waters is located, once a week for two
14 consecutive weeks before the hearing. The notice shall include the
15 following:

16 (1) The name of each stream, lake, or other water source under
17 consideration;

18 (2) The place and time of the hearing;

19 (3) A statement that any person, including any private citizen or
20 public official, may present his or her views either orally or in
21 writing.

22 (~~Notice of the hearing shall also be served upon the~~
23 ~~administrators of the departments of social and health services,~~
24 ~~natural resources, fish and wildlife, and transportation.))~~

25 **Sec. 75.** RCW 90.22.060 and 1998 c 245 s 172 are each amended to
26 read as follows:

27 By December 31, 1993, the department of ecology shall, in
28 cooperation with the Indian tribes, (~~and the department of fish and~~
29 ~~wildlife,~~) establish a statewide list of priorities for evaluation of
30 instream flows. In establishing these priorities, the department shall
31 consider the achievement of wild salmonid production as its primary
32 goal.

33 **Sec. 76.** RCW 90.24.010 and 1999 c 162 s 1 are each amended to read
34 as follows:

35 Ten or more owners of real property abutting on a lake may petition
36 the superior court of the county in which the lake is situated, for an

1 order to provide for the regulation of the outflow of the lake in order
2 to maintain a certain water level therein. If there are fewer than ten
3 owners, a majority of the owners abutting on a lake may petition the
4 superior court for such an order. The court, after (~~notice to the~~
5 ~~department of fish and wildlife and~~) a hearing, is authorized to make
6 an order fixing the water level thereof and directing the department of
7 ecology to regulate the outflow therefrom in accordance with the
8 purposes described in the petition. This section shall not apply to
9 any lake or reservoir used for the storage of water for irrigation or
10 other beneficial purposes, or to lakes navigable from the sea.

11 **Sec. 77.** RCW 90.24.030 and 1994 c 264 s 88 are each amended to
12 read as follows:

13 The petition shall be entitled "In the matter of fixing the level
14 of Lake in county, Washington", and shall be
15 filed with the clerk of the court and a copy thereof, together with a
16 copy of the order fixing the time for hearing the petition, shall be
17 served on each owner of property abutting on the lake, not less than
18 ten days before the hearing. Like copies shall also be served upon
19 (~~the director of fish and wildlife and~~) the director of ecology. The
20 copy of the petition and of the order fixing time for hearing shall be
21 served in the manner provided by law for the service of summons in
22 civil actions, or in such other manner as may be prescribed by order of
23 the court. For the benefit of every riparian owner abutting on a
24 stream or river flowing from such lake, a copy of the notice of hearing
25 shall be published at least once a week for two consecutive weeks
26 before the time set for hearing in a newspaper in each county or
27 counties wherein located, said notice to contain a brief statement of
28 the reasons and necessity for such application.

29 **Sec. 78.** RCW 90.24.060 and 1994 c 264 s 89 are each amended to
30 read as follows:

31 Such improvement or device in said lake for the protection of the
32 fish and game fish therein shall be installed by and under the
33 direction of the board of county commissioners of said county with the
34 approval of the (~~respective directors of the department of fish and~~
35 ~~wildlife and~~) director of the department of ecology of the state of

1 Washington and paid for out of the special fund provided for in RCW
2 90.24.050.

3 **Sec. 79.** RCW 90.38.040 and 2001 c 237 s 29 are each amended to
4 read as follows:

5 (1) All trust water rights acquired by the department shall be
6 placed in the Yakima river basin trust water rights program to be
7 managed by the department. The department shall issue a water right
8 certificate in the name of the state of Washington for each trust water
9 right it acquires.

10 (2) Trust water rights shall retain the same priority date as the
11 water right from which they originated. Trust water rights may be
12 modified as to purpose or place of use or point of diversion, including
13 modification from a diversionary use to a nondiversionary instream use.

14 (3) Trust water rights may be held by the department for instream
15 flows, irrigation use, or other beneficial use. Trust water rights may
16 be acquired on a temporary or permanent basis. To the extent
17 practicable and subject to legislative appropriation, trust water
18 rights acquired in an area with an approved watershed plan developed
19 under chapter 90.82 RCW shall be consistent with that plan if the plan
20 calls for such acquisition.

21 (4) A schedule of the amount of net water saved as a result of
22 water conservation projects carried out in accordance with this
23 chapter, shall be developed annually to reflect the predicted
24 hydrologic and water supply conditions, as well as anticipated water
25 demands, for the upcoming irrigation season. This schedule shall serve
26 as the basis for the distribution and management of trust water rights
27 each year.

28 (5)(a) No exercise of a trust water right may be authorized unless
29 the department first determines that no existing water rights, junior
30 or senior in priority, will be impaired as to their exercise or injured
31 in any manner whatever by such authorization.

32 (b) Before any trust water right is exercised, the department shall
33 publish notice thereof in a newspaper of general circulation published
34 in the county or counties in which the storage, diversion, and use are
35 to be made, and in such other newspapers as the department determines
36 are necessary, once a week for two consecutive weeks. (~~At the same~~

1 ~~time the department may also send notice thereof containing pertinent~~
2 ~~information to the director of fish and wildlife.)~~)

3 (c) Subsections (4) and (5)(b) of this section do not apply to a
4 trust water right resulting from a donation for instream flows
5 described in RCW 90.38.020(1)(b) or from the lease of a water right
6 under RCW 90.38.020(6) if the period of the lease does not exceed five
7 years. However, the department shall provide the notice described in
8 (b) of this subsection the first time the trust water right resulting
9 from the donation is exercised.

10 (6) RCW 90.03.380 and 90.14.140 through 90.14.910 shall have no
11 applicability to trust water rights held by the department under this
12 chapter or exercised under this section.

13 **Sec. 80.** RCW 90.48.170 and 1994 c 264 s 91 are each amended to
14 read as follows:

15 Applications for permits shall be made on forms prescribed by the
16 department and shall contain the name and address of the applicant, a
17 description of the applicant's operations, the quantity and type of
18 waste material sought to be disposed of, the proposed method of
19 disposal, and any other relevant information deemed necessary by the
20 department. Application for permits shall be made at least sixty days
21 prior to commencement of any proposed discharge or permit expiration
22 date, whichever is applicable. Upon receipt of a proper application
23 relating to a new operation, or an operation previously under permit
24 for which an increase in volume of wastes or change in character of
25 effluent is requested over that previously authorized, the department
26 shall instruct the applicant to publish notices thereof by such means
27 and within such time as the department shall prescribe. The department
28 shall require that the notice so prescribed shall be published twice in
29 a newspaper of general circulation within the county in which the
30 disposal of waste material is proposed to be made and in such other
31 appropriate information media as the department may direct. Said
32 notice shall include a statement that any person desiring to present
33 his or her views to the department with regard to said application may
34 do so in writing to the department, or any person interested in the
35 department's action on an application for a permit, may submit his or
36 her views or notify the department of his or her interest within thirty
37 days of the last date of publication of notice. Such notification or

1 submission of views to the department shall entitle said persons to a
2 copy of the action taken on the application. (~~Upon receipt by the~~
3 ~~department of an application, it shall immediately send notice thereof~~
4 ~~containing pertinent information to the director of fish and wildlife~~
5 ~~and to the secretary of social and health services.)) When an
6 application complying with the provisions of this chapter and the rules
7 and regulations of the department has been filed with the department,
8 it shall be its duty to investigate the application, and determine
9 whether the use of public waters for waste disposal as proposed will
10 pollute the same in violation of the public policy of the state.~~

11 **Sec. 81.** RCW 90.48.366 and 2007 c 347 s 1 are each amended to read
12 as follows:

13 The department(~~(, in consultation with the departments of fish and~~
14 ~~wildlife and natural resources, and the parks and recreation~~
15 ~~commission,)) shall adopt rules establishing a compensation schedule
16 for the discharge of oil in violation of this chapter and chapter 90.56
17 RCW. The amount of compensation assessed under this schedule shall be
18 no less than one dollar per gallon of oil spilled and no greater than
19 one hundred dollars per gallon of oil spilled. The compensation
20 schedule shall reflect adequate compensation for unquantifiable damages
21 or for damages not quantifiable at reasonable cost for any adverse
22 environmental, recreational, aesthetic, or other effects caused by the
23 spill and shall take into account:~~

24 (1) Characteristics of any oil spilled, such as toxicity,
25 dispersibility, solubility, and persistence, that may affect the
26 severity of the effects on the receiving environment, living organisms,
27 and recreational and aesthetic resources;

28 (2) The sensitivity of the affected area as determined by such
29 factors as: (a) The location of the spill; (b) habitat and living
30 resource sensitivity; (c) seasonal distribution or sensitivity of
31 living resources; (d) areas of recreational use or aesthetic
32 importance; (e) the proximity of the spill to important habitats for
33 birds, aquatic mammals, fish, or to species listed as threatened or
34 endangered under state or federal law; (f) significant archaeological
35 resources as determined by the department of archaeology and historic
36 preservation; and (g) other areas of special ecological or recreational
37 importance, as determined by the department; and

1 (3) Actions taken by the party who spilled oil or any party liable
2 for the spill that: (a) Demonstrate a recognition and affirmative
3 acceptance of responsibility for the spill, such as the immediate
4 removal of oil and the amount of oil removed from the environment; or
5 (b) enhance or impede the detection of the spill, the determination of
6 the quantity of oil spilled, or the extent of damage, including the
7 unauthorized removal of evidence such as injured fish or wildlife.

8 **Sec. 82.** RCW 90.48.445 and 1999 sp.s. c 11 s 1 are each amended to
9 read as follows:

10 (1) The director shall issue or approve water quality permits for
11 use by federal, state, or local governmental agencies and licensed
12 applicators for the purpose of using, for aquatic noxious weed control,
13 herbicides and surfactants registered under state or federal pesticide
14 control laws, and for the purpose of experimental use of herbicides on
15 aquatic sites, as defined in 40 C.F.R. Sec. 172.3. The issuance of the
16 permits shall be subject only to compliance with: Federal and state
17 pesticide label requirements, the requirements of the federal
18 insecticide, fungicide, and rodenticide act, the Washington pesticide
19 control act, the Washington pesticide application act, and the state
20 environmental policy act, except that:

21 (a) When the director issues water quality permits for the purpose
22 of using glyphosate and surfactants registered by the department of
23 agriculture to control spartina, as defined by RCW 17.26.020, the water
24 quality permits shall contain the following criteria:

25 (i) Spartina treatment shall occur between June 1st and October
26 31st of each year unless the department(~~(, the department of~~
27 ~~agriculture, and the department of fish and wildlife agree to add))~~
28 authorizes additional dates beyond this period, except that no aerial
29 application shall be allowed on July 4th or Labor Day and for ground
30 application on those days the applicator shall post signs at each
31 corner of the treatment area;

32 (ii) The applicator shall take all reasonable precautions to
33 prevent the spraying of nontarget vegetation and nonvegetated areas;

34 (iii) A period of fourteen days between treatments is required
35 prior to re-treating the previously treated areas;

36 (iv) Aerial or ground broadcast application shall not be made when
37 the wind speed exceeds ten miles per hour; and

1 (v) An application shall not be made when a tidal regime leaves the
2 plants dry for less than four hours.

3 (b) The director shall issue water quality permits for the purpose
4 of using herbicides or surfactants registered by the department of
5 agriculture to control aquatic noxious weeds, other than spartina, and
6 the permit shall state that aerial and ground broadcast applications
7 may not be made when the wind speed exceeds ten miles per hour.

8 (c) The director shall issue water quality permits for the
9 experimental use of herbicides on aquatic sites, as defined in 40
10 C.F.R. Sec. 172.3, when the department of agriculture has issued an
11 experimental use permit, under the authority of RCW 15.58.405(3).
12 Because of the small geographic areas involved and the short duration
13 of herbicide application, water quality permits issued under this
14 subsection are not subject to state environmental policy act review.

15 (2) Applicable requirements established in an option or options
16 recommended for controlling the noxious weed by a final environmental
17 impact statement published under chapter 43.21C RCW by the department
18 prior to May 5, 1995, by the department of agriculture, or by the
19 department of agriculture jointly with other state agencies shall be
20 considered guidelines for the purpose of granting the permits issued
21 under this chapter. This section may not be construed as requiring the
22 preparation of a new environmental impact statement to replace a final
23 environmental impact statement published before May 5, 1995, but
24 instead shall authorize the department of agriculture, as lead agency
25 for the control of spartina under RCW 17.26.015, to supplement, amend,
26 or issue addenda to the final environmental impact statement published
27 before May 5, 1995, which may assess the environmental impact of the
28 application of stronger concentrations of active ingredients, altered
29 application patterns, or other changes as the department of agriculture
30 deems appropriate.

31 (3) The director of ecology may not utilize this permit authority
32 to otherwise condition or burden weed control efforts. Except for
33 permits issued by the director under subsection (1)(c) of this section,
34 permits issued under this section are effective for five years, unless
35 a shorter duration is requested by the applicant. The director's
36 authority to issue water quality modification permits for activities
37 other than the application of surfactants and approved herbicides, to

1 control aquatic noxious weeds or the experimental use of herbicides
2 used on aquatic sites, as defined in 40 C.F.R. Sec. 172.3, is
3 unaffected by this section.

4 (4) As used in this section, "aquatic noxious weed" means an
5 aquatic weed on the state noxious weed list adopted under RCW
6 17.10.080.

7 **Sec. 83.** RCW 90.48.448 and 1999 c 255 s 3 are each amended to read
8 as follows:

9 (1) Subject to restrictions in this section, a government entity
10 seeking to control a limited infestation of Eurasian water milfoil may
11 use the pesticide 2,4-D to treat the milfoil infestation, without
12 obtaining a permit under RCW 90.48.445, if the milfoil infestation is
13 either recently documented or remaining after the application of other
14 control measures, and is limited to twenty percent or less of the
15 littoral zone of the lake. Any pesticide application made under this
16 section must be made according to all label requirements for the
17 product and must meet the public notice requirements of subsection (2)
18 of this section.

19 (2) Before applying 2,4-D, the government entity shall: (a)
20 Provide at least twenty-one days' notice to the department of
21 ecology(~~(, the department of fish and wildlife, the department of~~
22 ~~agriculture, the department of health,)) and all lake residents; (b)
23 post notices of the intent to apply 2,4-D at all public access points;
24 and (c) place informational buoys around the treatment area.~~

25 (3) The department (~~(of fish and wildlife))~~) may impose timing
26 restrictions on the use of 2,4-D to protect salmon and other fish and
27 wildlife.

28 (4) The department may prohibit the use of 2,4-D if the department
29 finds the product contains dioxin in excess of the standard allowed by
30 the United States environmental protection agency. Sampling protocols
31 and analysis used by the department under this section must be
32 consistent with those used by the United States environmental
33 protection agency for testing this product.

34 (5) Government entities using this section to apply 2,4-D may apply
35 for funds from the freshwater aquatic weeds account consistent with the
36 freshwater aquatic weeds management program as provided in RCW
37 43.21A.660.

1 (6) Government entities using this section shall consider
2 development of long-term control strategies for eradication and control
3 of the Eurasian water milfoil.

4 (7) For the purpose of this section, "government entities" includes
5 cities, counties, state agencies, tribes, special purpose districts,
6 and county weed boards.

7 **Sec. 84.** RCW 90.74.020 and 1997 c 424 s 3 are each amended to read
8 as follows:

9 (1) Project proponents may use a mitigation plan to propose
10 compensatory mitigation within a watershed. A mitigation plan shall:

11 (a) Contain provisions that guarantee the long-term viability of
12 the created, restored, enhanced, or preserved habitat, including
13 assurances for protecting any essential biological functions and values
14 defined in the mitigation plan;

15 (b) Contain provisions for long-term monitoring of any created,
16 restored, or enhanced mitigation site; and

17 (c) Be consistent with the local comprehensive land use plan and
18 any other applicable planning process in effect for the development
19 area, such as an adopted subbasin or watershed plan.

20 (2) The department(~~(s)~~) of ecology (~~(and fish and wildlife)~~) may
21 not limit the scope of options in a mitigation plan to areas on or near
22 the project site, or to habitat types of the same type as contained on
23 the project site. The department(~~(s)~~) of ecology (~~(and fish and~~
24 ~~wildlife)~~) shall fully review and give due consideration to
25 compensatory mitigation proposals that improve the overall biological
26 functions and values of the watershed or bay and accommodate the
27 mitigation needs of infrastructure development.

28 The department(~~(s)~~) of ecology (~~(and fish and wildlife are)~~) is not
29 required to grant approval to a mitigation plan that the
30 department(~~(s)~~) finds does not provide equal or better biological
31 functions and values within the watershed or bay.

32 (3) When making a permit or other regulatory decision under the
33 guidance of this chapter, the department(~~(s of ecology and fish and~~
34 ~~wildlife)~~) shall consider whether the mitigation plan provides equal or
35 better biological functions and values, compared to the existing
36 conditions, for the target resources or species identified in the

1 mitigation plan. This consideration shall be based upon the following
2 factors:

3 (a) The relative value of the mitigation for the target resources,
4 in terms of the quality and quantity of biological functions and values
5 provided;

6 (b) The compatibility of the proposal with the intent of broader
7 resource management and habitat management objectives and plans, such
8 as existing resource management plans, watershed plans, critical areas
9 ordinances, and shoreline master programs;

10 (c) The ability of the mitigation to address scarce functions or
11 values within a watershed;

12 (d) The benefits of the proposal to broader watershed landscape,
13 including the benefits of connecting various habitat units or providing
14 population-limiting habitats or functions for target species;

15 (e) The benefits of early implementation of habitat mitigation for
16 projects that provide compensatory mitigation in advance of the
17 project's planned impacts; and

18 (f) The significance of any negative impacts to nontarget species
19 or resources.

20 (4) A mitigation plan may be approved through a memorandum of
21 agreement between the project proponent and ~~((either))~~ the department
22 of ecology ~~((or the department of fish and wildlife, or both))~~.

23 **Sec. 85.** RCW 90.74.030 and 1997 c 424 s 4 are each amended to read
24 as follows:

25 (1) In making regulatory decisions relating to wetland or aquatic
26 resource mitigation, the department ~~((s of ecology and fish and
27 wildlife))~~ shall, at the request of the project proponent, follow the
28 guidance of RCW 90.74.005 through 90.74.020.

29 (2) If the department of ecology ~~((or the department of fish and
30 wildlife))~~ receives multiple requests for review of mitigation plans,
31 ~~((each))~~ the department may schedule its review of these proposals to
32 conform to available budgetary resources.

33 **Sec. 86.** RCW 90.82.048 and 2003 1st sp.s. c 5 s 9 are each amended
34 to read as follows:

35 (1) The timelines and interim milestones in a detailed
36 implementation plan required by RCW 90.82.043 must address the planned

1 future use of existing water rights for municipal water supply
2 purposes, as defined in RCW 90.03.015, that are inchoate, including how
3 these rights will be used to meet the projected future needs identified
4 in the watershed plan, and how the use of these rights will be
5 addressed when implementing instream flow strategies identified in the
6 watershed plan.

7 (2) The watershed planning unit or other authorized lead agency
8 shall ensure that holders of water rights for municipal water supply
9 purposes not currently in use are asked to participate in defining the
10 timelines and interim milestones to be included in the detailed
11 implementation plan.

12 (3) The department of health shall annually compile a list of water
13 system plans and plan updates to be reviewed by the department during
14 the coming year and shall ~~((consult with the departments of community,~~
15 ~~trade, and economic development, ecology, and fish and wildlife to))~~:
16 (a) Identify watersheds where further coordination is needed between
17 water system planning and local watershed planning under this chapter;
18 and (b) develop a work plan for conducting the necessary coordination.

19 **Sec. 87.** RCW 90.90.020 and 2006 c 6 s 3 are each amended to read
20 as follows:

21 (1)(a) Water supplies secured through the development of new
22 storage facilities made possible with funding from the Columbia river
23 basin water supply development account shall be allocated as follows:

24 (i) Two-thirds of active storage shall be available for
25 appropriation for out-of-stream uses; and

26 (ii) One-third of active storage shall be available to augment
27 instream flows and shall be managed by the department of ecology. The
28 timing of releases of this water shall be determined by the department
29 of ecology, in cooperation with the ~~((department of fish and wildlife~~
30 ~~and))~~ fisheries comanagers, to maximize benefits to salmon and
31 steelhead populations.

32 (b) Water available for appropriation under (a)(i) of this
33 subsection but not yet appropriated shall be temporarily available to
34 augment instream flows to the extent that it does not impair existing
35 water rights.

36 (2) Water developed under the provisions of this section to offset
37 out-of-stream uses and for instream flows is deemed adequate mitigation

1 for the issuance of new water rights provided for in subsection (1)(a)
2 of this section and satisfies all consultation requirements under state
3 law related to the issuance of new water rights.

4 (3) The department of ecology shall focus its efforts to develop
5 water supplies for the Columbia river basin on the following needs:

6 (a) Alternatives to groundwater for agricultural users in the
7 Odessa subarea aquifer;

8 (b) Sources of water supply for pending water right applications;

9 (c) A new uninterruptible supply of water for the holders of
10 interruptible water rights on the Columbia river mainstem that are
11 subject to instream flows or other mitigation conditions to protect
12 stream flows; and

13 (d) New municipal, domestic, industrial, and irrigation water needs
14 within the Columbia river basin.

15 (4) The one-third/two-thirds allocation of water resources between
16 instream and out-of-stream uses established in this section does not
17 apply to applications for changes or transfers of existing water rights
18 in the Columbia river basin.

19 **Sec. 88.** RCW 90.90.030 and 2006 c 6 s 4 are each amended to read
20 as follows:

21 (1) The department of ecology may enter into voluntary regional
22 agreements for the purpose of providing new water for out-of-stream
23 use, streamlining the application process, and protecting instream
24 flow.

25 (2) Such agreements shall ensure that:

26 (a) For water rights issued from the Columbia river mainstem, there
27 is no negative impact on Columbia river mainstem instream flows in the
28 months of July and August as a result of the new appropriations issued
29 under the agreement;

30 (b) For water rights issued from the lower Snake river mainstem,
31 there is no negative impact on Snake river mainstem instream flows from
32 April through August as a result of the new appropriations issued under
33 the agreement; and

34 (c) Efforts are made to harmonize such agreements with watershed
35 plans adopted under the authority of chapter 90.82 RCW that are
36 applicable to the area covered by the agreement.

1 (3) The protection of instream flow as set forth in subsection (2)
2 of this section is adequate for purposes of mitigating instream flow
3 impacts resulting from any appropriations for out-of-stream use made
4 under a voluntary regional agreement, and the only applicable
5 consultation provisions under state law regarding instream flow impacts
6 shall be those set forth in subsection (4) of this section.

7 (4) Before executing a voluntary agreement under this section, the
8 department of ecology shall:

9 (a) Provide a sixty-day period for consultation with county
10 legislative authorities and watershed planning groups with jurisdiction
11 over the area where the water rights included in the agreement are
12 located, (~~the department of fish and wildlife,~~) and affected tribal
13 governments, and federal agencies. (~~The department of fish and
14 wildlife shall provide written comments within that time period.~~) The
15 consultation process for voluntary regional agreements developed under
16 the provisions of this section is deemed adequate for the issuance of
17 new water rights provided for in this section and satisfies all
18 consultation requirements under state law related to the issuance of
19 new water rights; and

20 (b) Provide a thirty-day public review and comment period for a
21 draft agreement, and publish a summary of any public comments received.
22 The thirty-day review period shall not begin until after the department
23 of ecology has concluded its consultation under (a) of this subsection
24 and the comments that have been received by the department are made
25 available to the public.

26 (5) The provisions of subsection (4) of this section satisfy all
27 applicable consultation requirements under state law.

28 (6) The provisions of this section and any voluntary regional
29 agreements developed under such provisions may not be relied upon by
30 the department of ecology as a precedent, standard, or model that must
31 be followed in any other voluntary regional agreements.

32 (7) Nothing in this section may be interpreted or administered in
33 a manner that precludes the processing of water right applications
34 under chapter 90.03 or 90.44 RCW that are not included in a voluntary
35 regional agreement.

36 (8) Nothing in this section may be interpreted or administered in
37 a manner that impairs or diminishes a valid water right or a habitat

1 conservation plan approved for purposes of compliance with the federal
2 endangered species act.

3 (9) The department of ecology shall monitor and evaluate the water
4 allocated to instream and out-of-stream uses under this section,
5 evaluate the program, and provide an interim report to the appropriate
6 committees of the legislature by June 30, 2008. A final report shall
7 be provided to the appropriate committees of the legislature by June
8 30, 2011.

9 (10) If the department of ecology executes a voluntary agreement
10 under this section that includes water rights appropriated from the
11 lower Snake river mainstem, the department shall develop aggregate data
12 in accordance with the provisions of RCW 90.90.050 for the lower Snake
13 river mainstem.

14 (11) Any agreement entered into under this section shall remain in
15 full force and effect through the term of the agreement regardless of
16 the expiration of this section.

17 (12) The definitions in this subsection apply to this section and
18 RCW 90.90.050, and may only be used for purposes of implementing these
19 sections.

20 (a) "Columbia river mainstem" means all water in the Columbia river
21 within the ordinary high water mark of the main channel of the Columbia
22 river between the border of the United States and Canada and the
23 Bonneville dam, and all groundwater within one mile of the high water
24 mark.

25 (b) "Lower Snake river mainstem" means all water in the lower Snake
26 river within the ordinary high water mark of the main channel of the
27 lower Snake river from the head of Ice Harbor pool to the confluence of
28 the Snake and Columbia rivers, and all groundwater within one mile of
29 the high water mark.

30 (13) This section expires June 30, 2012.

31 NEW SECTION. **Sec. 89.** RCW 77.55.121 is recodified as a section in
32 chapter 76.09 RCW.

33 NEW SECTION. **Sec. 90.** The following acts or parts of acts are
34 each repealed:

35 (1) RCW 79.13.610 (Grazing lands--Fish and wildlife goals--

1 Technical advisory committee--Implementation) and 1998 c 245 s 162 &
2 1993 sp.s. c 4 s 5;
3 (2) RCW 79.105.220 (Lease of tidelands in front of public parks)
4 and 2005 c 155 s 145, 2002 c 152 s 2, & 1984 c 221 s 5;
5 (3) RCW 79.135.230 (Intensive management plan for geoducks) and
6 2005 c 155 s 718, 1994 c 264 s 74, & 1984 c 221 s 26;
7 (4) RCW 79.135.310 (Inspection by director of fish and wildlife)
8 and 2005 c 155 s 711, 1994 c 264 s 71, & 1982 1st ex.s. c 21 s 143;
9 (5) RCW 79.135.430 (Seaweed--Enforcement) and 2005 c 155 s 717,
10 2003 c 334 s 444, 1994 c 286 s 3, & 1993 c 283 s 5;
11 (6) RCW 79.145.030 (Coordinating implementation--Rules) and 2005 c
12 155 s 903, 1994 c 264 s 65, & 1989 c 23 s 3;
13 (7) RCW 79A.05.670 (Consultation with government agencies required)
14 and 1999 c 249 s 1102 & 1988 c 75 s 8;
15 (8) RCW 79A.05.735 (Mt. Si conservation area--Management) and 2000
16 c 11 s 60, 1994 c 264 s 23, 1988 c 36 s 17, & 1977 ex.s. c 306 s 3;
17 (9) RCW 79A.50.070 (State lands used for state parks--Certain funds
18 appropriated for rental to be deposited without deduction for
19 management purposes) and 1969 ex.s. c 189 s 3;
20 (10) RCW 76.09.160 (Right of entry by department of ecology) and
21 1974 ex.s. c 137 s 16; and
22 (11) RCW 77.12.360 (Withdrawal of state land from lease--
23 Compensation) and 1980 c 78 s 54, 1969 ex.s. c 129 s 3, & 1955 c 36 s
24 77.12.360.

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