February 27, 2003

Representative Linville and Members of the House Agriculture and Natural Resources Committee:

We understand you intend to refer proposed substitute House Bills 1336, 1337, and 1338 out of your Committee this Friday. **We urge you *not* to do so for the following reasons**:

(1) There is no language present in any of these three bills that provides a substantive requirement for water users to protect or restore instream flows. There is no certainty that instream needs of fish and people will be adequately protected if they pass. Changes to water law must include mandates for flow protection and restoration, clear and measurable mechanisms for maintaining adequate flows for fish, recreation, and aesthetic enjoyment, and timelines to accomplish the task. These bills do not provide adequate safeguards to protect against permanent degradation to the water resources that belong to the citizens of this state. Nor do these bills provide adequate balance to counteract the increased harm and degradation to water resources that will come from giving water suppliers validation of unused water rights and other increased flexibility.

(2) We are extremely distressed by the provision in HB 1338 that provides blanket validation of all unperfected water rights for public water suppliers serving 15 or more connections. We know of no data that indicates what the impacts will be to rivers and streams if this amendment succeeds -- but we suspect there will be significant harm to many of our rivers and aquifers. We urge you to obtain statewide data and analysis on the impacts of this approach ***before*** passing this language out of your Committee so you fully understand the consequences of this action. In addition, we urge you to consider the implications of this legislation for recovering ESA-listed fish species and meeting water quality standards.

(3) The amendments in HB 1338 requiring water conservation rulemaking and the adoption and achievement of conservation objectives are a good first step to bringing Washington utilities to where they ought to be. However, increased conservation simply does not address or make up for the harm that will result from validating unperfected water rights and giving increased flexibility to water suppliers. Meaningful conservation must become a reality in Washington and it must start by statutory authority to the Department of Health to engage in rulemaking that turns planning requirements into requirements to actually conserve water. We do not believe the way to achieve efficient water use is to allow

utilities to choose their own conservation objective. The state must be required to establish these objectives and then must be given the tools to help utilities meet them.

(4) As written, HB 1338 gives water suppliers incredible flexibility immediately, yet conservation rulemaking will not be final until 2006. Without providing adequate funding to the Department of Health to do this rulemaking, we have no faith that rules will come to fruition. Any increase in flexibility must not actually occur until the state takes steps toward ensuring sustainable supplies of water.

(5) Placing reliance upon watershed plans (HB 1336) to address concerns about harm to water resources is premature. There are no final plans, the concept of these local plans is untested, and there is no way to adequately predict what planning units are going to produce. There are no statutory requirements that provide consistent standards for these plans to ensure adequate environmental protections. Why pass legislation now that makes assumptions about the content of these plans and links the plans with increased flexibility and benefits to water users? It is reasonable and appropriate to wait until plans are completed and assess their credibility before making irretrievable statutory changes. In addition, where will the money come from to adequately fund implementation of watershed plans?

(6) The proposal in HB 1337 to allow replacement wells to be drilled within 2 miles of an existing well without a permit is short-sighted. By doing this, the bill eliminates consideration of the "public interest" that Ecology normally performs when processing a change application. One way to get a more productive well is to move it next to a stream and essentially "rob" the stream of water by tapping into its subflow. There are no protections in this bill to prevent this from happening, or to address impacts to other water users from such a move. Although one can claim impairment of a water right and protest such a replacement well, the burden shifts to them to make that claim rather than more appropriately putting the burden on the well owner to prevent impairment

(7) The change of one word -- from "manner" to "purpose" in HB 1337 is an attempt to overturn a ruling from the RD Merrill decision. In Merrill, the Court held that a groundwater permit can be changed before the water is actually put to use, but only as to manner of use and place of use, not purpose. The point of this restriction was to prevent speculation in water rights. In other words, you can get a permit for a new groundwater right for irrigation, but you can't change it to a commercial use (as an example) unless you've actually put the water to use. This is an important safeguard in the law, and yet another erosion of the protection of water resources for the benefit of ***all*** citizens who own them, that will be lost if this bill is passed.

(8) Given the costs to both the Departments of Health and Ecology to implement this proposed legislation, there should be a fiscal note associated with these bills. In light of the intense budget deficit we face, we question the economic practicality of approving these bills. There is no revenue source identified in these bills, and accordingly, the bills are not economically feasible given the fiscal realities of the budget deficit.

Thank you for your consideration,

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