
HOUSE BILL 2767

State of Washington

53rd Legislature

1994 Regular Session

By Representatives Rust, King, Pruitt and Peery

Read first time 01/24/94. Referred to Committee on Natural Resources & Parks.

1 AN ACT Relating to water resources; amending RCW 90.03.015,
2 90.03.130, 43.21B.110, 90.03.170, 90.03.180, 90.03.210, 90.03.230,
3 90.54.020, 90.03.040, 43.21A.064, 90.03.070, 90.14.130, 90.14.140,
4 90.14.200, 90.03.330, 90.03.600, 80.28.070, 90.48.495, 90.48.285,
5 90.48.290, 35.67.030, 36.94.030, 36.94.140, 56.08.020, 90.42.020,
6 90.42.030, 90.42.040, 90.42.080, 90.14.160, 90.14.170, 90.14.180,
7 90.54.180, 90.03.340, 90.03.270, 90.03.280, 90.03.290, 90.03.320,
8 90.03.380, 90.03.390, 90.44.100, and 90.14.190; reenacting and amending
9 RCW 90.42.010; adding new sections to chapter 90.03 RCW; adding new
10 sections to chapter 90.54 RCW; adding new sections to chapter 43.27A
11 RCW; adding new sections to chapter 87.03 RCW; adding new sections to
12 chapter 54.16 RCW; adding new sections to chapter 35.92 RCW; adding new
13 sections to chapter 57.08 RCW; adding new sections to chapter 80.28
14 RCW; adding new sections to chapter 43.99E RCW; adding new sections to
15 chapter 43.21B RCW; repealing RCW 90.03.110, 90.03.120, 90.03.140,
16 90.03.160, 90.03.190, 90.03.200, 90.03.243, 90.38.005, 90.38.010,
17 90.38.020, 90.38.030, 90.38.040, 90.38.050, 90.38.900, 90.38.901, and
18 90.38.902; and prescribing penalties.

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

1 **Sec. 1.** RCW 90.03.015 and 1987 c 109 s 65 are each amended to read
2 as follows:

3 As used in this chapter:

4 (1) "Department" means the department of ecology(~~(+)~~).

5 (2) "Director" means the director of ecology(~~(+and)~~).

6 (3) "Essential domestic use" means water use within a residence for
7 drinking, cooking, cleaning, or sanitation and water used for fire
8 protection.

9 (4) "Person" means (~~(any firm, association, water users'~~
10 ~~association, corporation, irrigation district, or municipal~~
11 ~~corporation, as well as an individual.)~~) an individual, partnership,
12 association, irrigation district, public or private corporation, city
13 or other municipality, county, or a state agency, and the United States
14 of America when claiming water rights established under the laws of the
15 state of Washington.

16 (5) "Water right" or "right" means a certificate of water right
17 issued pursuant to this chapter, a valid vested right as determined by
18 adjudication under this chapter, or a permit issued after June 30,
19 1994, with a limited term as provided by RCW 90.14.200.

20 (6) "Indian tribe" or "tribe" means tribes now or hereafter
21 recognized by the federal government.

22 (7) "Board" means the pollution control hearings board created
23 under chapter 43.21B RCW.

24 (8) "Water rights examiner" is an individual duly certified by the
25 department pursuant to section 7 of this act.

26 NEW SECTION. **Sec. 2.** The department shall ensure that all rights
27 to the use of the waters of the state are efficiently and fairly
28 adjudicated and shall develop a comprehensive process for making
29 decisions on future water resource allocation and use.

30 NEW SECTION. **Sec. 3.** The department shall divide the state into
31 watersheds that shall represent one or more of the water resource
32 inventory areas designated pursuant to RCW 90.54.040, and to the extent
33 possible, shall represent separate hydrologic systems considering the
34 surface and ground water hydrology and physical characteristics of the
35 region. The department shall list the priority of the watersheds for
36 the purpose of future adjudications and shall estimate the date when
37 the department intends to commence its investigation in each of the

1 five highest priority watersheds. The department shall periodically
2 review the priority list of watersheds and update the intended date to
3 commence investigations in the five highest priority watersheds.

4 NEW SECTION. **Sec. 4.** (1) If the department determines that a
5 general water rights adjudication will be conducted in a specific
6 watershed, the department shall commence an investigation of all uses
7 of and demands for water in the basin. The department shall notify all
8 persons, federal and state agencies, and Indian tribes located in the
9 watershed of the department's intent to adjudicate the water rights in
10 the watershed and of its decision to commence an investigation. The
11 department shall provide notice as follows:

12 (a) Immediately upon the determination to commence an
13 investigation, cause a notice in writing to be placed twice a month for
14 four consecutive months in a prominent and conspicuous place in all
15 newspapers of general circulation published in the watershed;

16 (b) Cause a notice substantially the same as a notice in writing to
17 be broadcast by at least one commercial radio station operating from
18 each county of the watershed having such a station, monthly for the
19 twelve-month period for filing affidavits of water use;

20 (c) Cause a notice in writing to be placed in a prominent and
21 conspicuous location in all post offices and each county courthouse
22 located in the watershed; and

23 (d) Provide copies of the notice in writing to the press services
24 with offices located in Thurston county.

25 (2) The director may also, in the director's discretion, give
26 notice in any other manner that will carry out the purposes of this
27 section.

28 (3) The county treasurer of each county shall enclose with each
29 mailing of one or more statements of taxes due a copy of a notice in
30 writing and a declaration that it is the duty of the recipient of the
31 statement of taxes due to forward the notice to the beneficial owner of
32 the property. A sufficient number of copies of the notice and
33 declaration shall be supplied to each county treasurer by the director
34 before the fifteenth day of January. In the implementation of this
35 subsection, the department shall provide reimbursement to the county
36 treasurer for the reasonable additional costs, if any, incurred by the
37 treasurer arising from the inclusion of a notice in writing as required
38 in this subsection.

1 (4) The notice shall specify the requirements for filing an
2 affidavit of water use as provided in section 6 of this act, and shall
3 provide the estimated date of completing the investigation and filing
4 the preliminary report as provided in section 10(2) of this act. The
5 department shall hold a minimum of three public meetings in each
6 watershed to inform and assist persons wishing to file an affidavit of
7 water use.

8 NEW SECTION. **Sec. 5.** (1) Except as provided in subsection (2) of
9 this section, all persons using, or claiming the right to the
10 beneficial use of surface or ground waters of the state, shall file
11 with the department by January 1, 1996, an affidavit of water use for
12 each water use and priority date claimed. All persons in each
13 watershed for which the department has determined that a general water
14 rights adjudication will be conducted shall file the affidavit of water
15 use within twelve months of notice being completed in accordance with
16 section 4(1) of this act by the department if such notice is issued
17 before January 1, 1995.

18 (2) Any person having relinquished any right, title, or interest in
19 a water right pursuant to chapter 90.14 RCW, or by order of a court, or
20 for failure to file a statement of claim, pursuant to RCW 90.14.041 or
21 90.14.043, may not file an affidavit of water use stating any portion
22 of their relinquished right. Any affidavit of water use filed on a
23 right which was so relinquished shall have no force and effect and
24 shall not be evidence in a general adjudication.

25 (3) A person may not state in an affidavit of water use the right
26 to the use of water in amounts greater than or for a larger area of use
27 than authorized pursuant to a water right permit or certificate issued
28 under this chapter and chapter 90.44 RCW, or in amounts greater than or
29 for a larger area of use than was stated on a statement of claim filed
30 under RCW 90.14.041 and 90.14.043, or as amended under RCW 90.14.065 as
31 of the effective date of this section. Any amount of water and area of
32 use stated in the affidavit of water use that is greater than
33 authorized in a permit or certificate, or stated in the statement of
34 claim, or as amended under RCW 90.14.065 as of the effective date of
35 this section has no force and effect and is not evidence in a general
36 adjudication.

1 NEW SECTION. **Sec. 6.** (1) The affidavit of water use for each
2 right claimed shall include the following information to the extent it
3 can be determined by the exercise of reasonable diligence:

4 (a) The person's name and mailing address;

5 (b) The name of the water course or other water source from which
6 the right to divert or make use of water is claimed;

7 (c) The quantity of water used based on an instantaneous rate of
8 withdrawal in cubic feet per second or gallons per minute and on a
9 yearly quantity in acre feet per year for each year since 1967. All
10 documentation available to the person that supports the quantity of use
11 shall be provided, including but not limited to flow meter records and
12 electrical records;

13 (d) The legal description of the area where the water was first
14 used and the area where the water has been used for each of the ten
15 years before the effective date of this section. The area of use shall
16 be presented on a map drawn to scale and shall be described with
17 specificity by metes and bounds, section, township, and range, or, if
18 less than a section by section, and, if applicable, by quarter-quarter
19 parcel numbers within a platted area represented by a map drawn to
20 scale;

21 (e) The legal description of the point or points of diversion or
22 withdrawal, the method of diversion or withdrawal, the method of
23 conveying the water to the place of use, including the dimensions and
24 capacity of all ditches, pipelines, and similar structures existing at
25 the time of making the affidavit;

26 (f) The purpose or purposes of the water used or claimed for each
27 of the ten years before the effective date of this section, specifying:
28 (i) The purpose of the use when the water was first used; (ii) the
29 current purpose of the use of water; and (iii) any other purposes for
30 which the water was used for each of the ten years before the effective
31 date of this section;

32 (g) The legal basis for the water right stated, such as a water
33 right permit, water right certificate, any right that was claimed in a
34 statement of claim filed under RCW 90.14.041, riparian rights that were
35 not subject to the filing of a statement of claim under RCW 90.14.041,
36 the right to the use of ground water pursuant to the exemption under
37 RCW 90.44.050, or rights derived from federal or tribal reserved
38 rights. Copies of any relevant documents evidencing such legal right

1 to the use of water shall be provided with the affidavit of water use
2 when filed;

3 (h) The date of initiation of the right and commencement of the
4 use;

5 (i) The date of beginning and completion of construction;

6 (j) The amount of land under irrigation and the maximum quantity of
7 water used for irrigation for: (i) The year the water was first
8 appropriated; (ii) the current year; (iii) each of the ten years before
9 the effective date of this section and, if for power and other
10 purposes, the maximum quantity of water used for the ten years before
11 the effective date of this section; and

12 (k) The number of residences served by the water used or stated.

13 (2) Any person filing an affidavit of water use shall pay a filing
14 fee to the department when the affidavit of water use is filed. The
15 fee or fee schedule shall be determined by the department and shall be
16 sufficient to fund the adjudication process performed pursuant to
17 sections 3 through 13 and 15 through 18 of this act fully. The fees
18 shall be deposited in the water resources protection account created in
19 section 26 of this act.

20 (3) Any person who fails to file the affidavit of water use with
21 the filing fee within twelve months of notice and to comply with the
22 requirements of this section shall be conclusively deemed to have
23 waived and relinquished any right, title, or interest in said right.

24 (4) The affidavit of water use shall be made under oath and sworn
25 before a notary public that the matters set forth are true and correct.

26 (5) The department shall not accept for filing an affidavit of
27 water use that has not been verified and signed by a water rights
28 examiner, certified pursuant to section 7 of this act. The water
29 rights examiner shall certify that the examiner has conducted a site
30 visit of the place of use of the water, that the affidavit of water use
31 is complete, that it complies with the requirements of this section,
32 and that the information provided is true and accurate.

33 NEW SECTION. **Sec. 7.** (1) A water rights examiner shall be
34 certified by the department. Any individual may apply to the
35 department to be a water rights examiner on a form provided by the
36 department.

37 (2) The department shall develop and administer an examination for
38 certifying private water right examiners. The applicant shall be

1 tested on and show knowledge in areas of water laws and related laws
2 and regulations of the state, surface and ground water hydrology, water
3 conveyance and application systems, water efficiency and conservation
4 techniques, and legal property descriptions. In preparing the
5 examination, the department shall consult with persons in the private
6 sector known to be knowledgeable regarding these topics.

7 (3) An application fee of two hundred fifty dollars shall be paid
8 by an applicant for any individual certification as a water rights
9 examiner under this section. The certification shall be effective for
10 five years and may be renewed upon payment of a fee of two hundred
11 fifty dollars and a demonstration of knowledge of recent developments
12 in the field.

13 (4) The department shall suspend the certification or decertify a
14 water rights examiner for failure to perform properly duties and
15 obligations relating to verification of affidavit of water use.

16 (5) The department shall retain and periodically update a list of
17 certified water rights examiners as well as a record of comments,
18 recommendations, and complaints filed regarding examiners. The list
19 and the records shall be made available to the public upon request.

20 NEW SECTION. **Sec. 8.** In watersheds where the department has
21 determined to conduct a general adjudication and initiate an
22 investigation as provided in section 4 of this act:

23 (1) The department shall contact all federal agencies and Indian
24 tribes that may have any interest in the basin for the purpose of
25 obtaining information and documentation on the federal and tribal
26 current use and future need of water in the watershed. The department
27 shall recognize that the tribal and federal reserved water rights
28 include a quantity of water sufficient to satisfy the primary purposes
29 of the reservation and applicable treaties with the United States,
30 including the water necessary to fulfill any tribal treaty right to
31 fish.

32 (2) The department may enter into any available negotiation or
33 mediation process with Indian tribes and the federal government acting
34 as trustee for the tribes in an attempt to define the scope and
35 attributes of rights to the use of water claimed by the tribes under
36 their treaties with the United States. Any agreement between the
37 department, the federal government, and the Indian tribe of their
38 intent to negotiate or mediate shall be made within sixty days of the

1 department completing the notice requirements to the United States and
2 the tribes that the investigation has commenced as provided in section
3 4 of this act. The sixty days may be extended by agreement of the
4 department, the federal government, and the Indian tribe. During any
5 negotiated or mediated process the department shall obtain input from
6 any regional planning process created under RCW 90.54.045. Any
7 agreement entered into with the tribes and the federal government shall
8 be filed with the preliminary report as set forth in section 10(2) of
9 this act and, with the exception of the department, shall not be
10 binding on other persons claiming a right to use water in the basin
11 unless and until the agreement is incorporated into and made a part of
12 the final adjudication decree entered by the board.

13 NEW SECTION. **Sec. 9.** (1) In its investigation of water use and
14 demand in a basin, if determined necessary by the department, the
15 department may request additional information from water users, and
16 subpoena witnesses, compel their attendance, administer oaths, take the
17 testimony of any person under oath, enter onto property of persons
18 having filed water use affidavits for field investigations, and require
19 the production of any books or papers if the department deems these
20 measures necessary in its investigation. Failure of a water user to
21 cooperate with the department in its investigation may be a basis for
22 denying the claim in an adjudication commenced pursuant to section 4 of
23 this act.

24 (2) In the course of its investigation the department shall:

25 (a) Seek the initiation of a process of negotiation of tribal water
26 rights based on federal law as provided in section 8(2) of this act;

27 (b) Determine the quantity of water available under reasonable
28 predictions of annual yield or flow of water in the watershed,
29 including the safe sustaining yield of all ground water sources;

30 (c) Determine the necessary base flows in all rivers and streams in
31 the basin and the water level of other water bodies in the watershed
32 based on and in recognition of the public's inherent rights to the use,
33 enjoyment, and preservation of wildlife, fish, scenic, aesthetic, and
34 other environmental values, and navigational values;

35 (d) Field check, as determined necessary by the department, the
36 uses of water stated in the affidavits of water use and related claims,
37 permits, and certificates; and

1 (e) Make findings as to the existence, priority, quantification,
2 places of use, and points of diversion or withdrawal and any other
3 defining conditions for each water use.

4 NEW SECTION. **Sec. 10.** (1) On the basis of its investigation, the
5 department shall prepare a preliminary report setting forth the
6 determinations and findings from its investigation as required under
7 section 4 of this act. Only those uses of water that are claimed in a
8 completed and notarized affidavit of water use, and those uses claimed
9 as federal or tribal reserved water rights, shall be considered in the
10 department's preliminary report and in the general adjudication of
11 rights in the watershed. Based on its findings, the department shall
12 include in the preliminary report a process for developing and
13 recommending the elements of a comprehensive water resources plan in
14 the watershed. This report shall not conclusively establish or
15 disestablish any person's rights but is tentative in nature only.

16 (2) The department shall file the preliminary report of its
17 findings from its investigation with the board. Upon filing the
18 preliminary report, the board shall issue a summons, in the name of the
19 state of Washington as plaintiff, against all known persons claiming
20 the right to the use of water in the watershed. The summons shall be
21 served by certified mail, return receipt requested, or in the same
22 manner of service of summons in civil actions commenced in the superior
23 court of the state. The summons shall commence the general
24 adjudication of all rights to the use of water in the watershed. The
25 summons shall include a copy of the preliminary report and shall
26 contain a brief statement of the objects and purpose of the
27 proceedings. The summons shall also state that hearings before the
28 board shall be scheduled after the department files a final report.

29 (3) The summons shall require all persons mentioned in the
30 preliminary report, tribes, and the federal government to appear before
31 the board if they claim a right to the use of water in the watershed.

32 NEW SECTION. **Sec. 11.** (1) The summons shall set forth the
33 procedure and the schedule to implement the process of developing the
34 final report and the comprehensive water resource program efficiently
35 and fairly. The procedure and schedule as outlined in the summons
36 shall include, but not be limited to, identification of deadlines for
37 the closure of the departmental record. Any party objecting to any

1 portion of the preliminary report shall file with the department by the
2 date specified by the board additional evidence that party desires to
3 be considered by the department. The board may also allow for a
4 rebuttal filing by the objecting party before the record is closed.
5 Information may be filed in support of one's own claim or in opposition
6 to the department's tentative determination in relation to rights of
7 other parties.

8 (2) Any information filed after the deadlines as established in the
9 summons shall not be considered by the department. The filing deadline
10 is a mandatory deadline and can only be extended by the board for good
11 cause as established under RCW 90.03.320.

12 NEW SECTION. **Sec. 12.** Concurrent with the service of summons
13 under section 10 of this act, the department shall initiate a planning
14 process for developing a comprehensive water resource program for the
15 watershed consistent with RCW 90.54.045 that shall be the mechanism for
16 making decisions on future water resource allocations and uses in the
17 basin. All parties to the general adjudication, as well as identified
18 interest groups, shall be invited to participate. At the time of
19 filing its final report with the board, as provided in section 16 of
20 this act, the department shall propose rules establishing a water
21 resource program for decisions on future use of water in the watershed.
22 These proposed rules shall include the establishment of instream flows
23 for the watershed. The adoption of such rules shall follow the normal
24 process provided by law, and shall not await the outcome of the
25 adjudication procedure before the board.

26 NEW SECTION. **Sec. 13.** Within twenty-four months after filing the
27 preliminary report, the department shall conduct a public hearing
28 pursuant to chapter 34.05 RCW in each county any part of which is
29 located in the adjudicated basin to obtain testimony on the preliminary
30 report. The department shall obtain input and advice from any regional
31 planning process created under RCW 90.54.045 that exists and is
32 available for input before the time for filing the final report.

33 **Sec. 14.** RCW 90.03.130 and 1987 c 109 s 74 are each amended to
34 read as follows:

35 Service of said summons shall be made in the same manner and with
36 the same force and effect as service of summons in civil actions

1 commenced in the superior courts of the state: PROVIDED, That for good
2 cause, the ((court)) board, at the request of the department, as an
3 alternative to personal service, may authorize service of summons to be
4 made by certified mail, with return receipt signed by defendant, a
5 spouse of a defendant, or another person authorized to accept service.
6 If the defendants, or either of them, cannot be found within the state
7 of Washington, of which the return of the sheriff of the county in
8 which the proceeding is pending shall be prima facie evidence, upon the
9 filing of an affidavit by the department, or its attorney, in
10 conformity with the statute relative to the service of summons by
11 publication in civil actions, such service may be made by publication
12 in a newspaper of general circulation in the county in which such
13 proceeding is pending, and also publication of said summons in a
14 newspaper of general circulation in each county in which any portion of
15 the water is situated, once a week for six consecutive weeks (six
16 publications). In cases where personal service can be had, such
17 summons shall be served at least twenty days before the return day
18 thereof. The summons by publication shall state that statements of
19 claim must be filed within twenty days after the last publication or
20 before the return date, whichever is later.

21 Personal service of summons may be made by department of ecology
22 employees for actions pertaining to water rights.

23 NEW SECTION. **Sec. 15.** The department shall complete a final
24 report within twenty-four months after the date of issuance of the
25 preliminary report unless the board, for good cause, grants additional
26 time. The final report shall recommend findings relating to all uses
27 of water claimed in the basin. The findings shall set forth the basis
28 for confirming rights to the use of water and for denying any claimed
29 uses. The priority, quantity, place of use, and point of diversion, if
30 applicable, for all confirmed rights to the uses of water in the basin
31 shall be described in detail and set forth on a map of the basin.

32 In preparing the final report, the department shall apply the
33 definition of "beneficial use" in RCW 90.54.020(1). Rights may in no
34 case be recommended of greater scope than originally appropriated
35 through the exercise of the right holder's due diligence. Within that
36 scope, rights shall be based on the maximum beneficial use of water
37 under the right within the five years preceding the date the general
38 adjudication proceeding was filed, unless compelling cause is shown for

1 why a larger quantity, rate, or area should be confirmed. If no use
2 has been made within the five years, the right shall be declared
3 relinquished unless the nonuse is excused under RCW 90.14.140. The
4 final report shall recommend the instream flows necessary to satisfy
5 all beneficial uses of water as provided in RCW 90.54.020(1) and (3)
6 and 90.22.010, and to otherwise satisfy the public's paramount right to
7 the uses of the water. The final report shall recommend rules
8 establishing elements of a water resource program for the watershed for
9 decisions of future use of water.

10 NEW SECTION. **Sec. 16.** The department shall file the final report
11 and the department's record with the board. Service of the final
12 report shall be made upon all persons who filed their appearance in the
13 proceedings, and shall include a notice that a person has ninety days
14 from the date of issuance of the final report to file with the board
15 any objections or clarifications to the report. The notice shall
16 further specify the dates upon which the board will hear all objections
17 and clarifications to the final report. Service shall be made by
18 certified mail with return receipt requested or in the same manner and
19 with the same force and effect that service of summons in civil actions
20 commence in the superior court of the state.

21 NEW SECTION. **Sec. 17.** Persons who fail to file with the board
22 objections or clarifications to the final report, or who fail to appear
23 at the hearing, shall be deemed to have waived any objections to the
24 report and are subject to the findings of the report and the final
25 order of the board. The board shall conduct a de novo hearing on the
26 objections filed. If no objections are made, the determination of
27 water rights shall be made according to the department's final report.
28 The board shall grant substantial deference to any agreement entered
29 into between the department, an Indian tribe, and the federal
30 government pursuant to section 8(2) of this act.

31 NEW SECTION. **Sec. 18.** The board shall be limited to the
32 department record in hearing objections to the final report. The board
33 may not authorize additional filings unless the party requesting
34 additional time can establish one of the following causes:

35 (1) Accident or surprise that ordinary prudence could not have
36 guarded against;

1 (2) Newly discovered evidence, material for the party making the
2 application, that the party could not with reasonable diligence have
3 discovered and produced by the filing deadline; or

4 (3) A board determination that additional testimony or other
5 evidence is necessary to review and determine the objections fully and
6 fairly.

7 NEW SECTION. **Sec. 19.** The legislature recognizes that all of the
8 waters of the state are public and are held in trust by the state for
9 the benefit of the people of the state. The department shall protect
10 the public trust in administrating and regulating all the waters in the
11 state. To complete a full adjudication of water rights and complete a
12 comprehensive water resources plan, all uses of water in the state must
13 be quantified. To this end, the department and the board, in
14 conducting a general adjudication, shall recognize the public's
15 paramount right to the uses of all waters of the state and quantify the
16 amount of water necessary to protect the public's right.

17 **Sec. 20.** RCW 43.21B.110 and 1993 c 387 s 22 are each amended to
18 read as follows:

19 (1) The hearings board shall only have jurisdiction to hear and
20 decide appeals from the following decisions of the department, the
21 director, the administrator of the office of marine safety, and the air
22 pollution control boards or authorities as established pursuant to
23 chapter 70.94 RCW, or local health departments:

24 (a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431,
25 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.48.144, 90.56.310, and
26 90.56.330(~~(-)~~);

27 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
28 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,
29 90.14.130, and 90.48.120(~~(-)~~);

30 (c) The issuance, modification, or termination of any permit,
31 certificate, or license by the department or any air authority in the
32 exercise of its jurisdiction, including the issuance or termination of
33 a waste disposal permit, the denial of an application for a waste
34 disposal permit, or the modification of the conditions or the terms of
35 a waste disposal permit(~~(-)~~);

36 (d) Decisions of local health departments regarding the grant or
37 denial of solid waste permits pursuant to chapter 70.95 RCW(~~(-)~~);

1 (e) Decisions of local health departments regarding the issuance
2 and enforcement of permits to use or dispose of biosolids under RCW
3 70.95J.080(~~(-)~~); and

4 (f) Any other decision by the department, the administrator of the
5 office of marine safety, or an air authority which pursuant to law must
6 be decided as an adjudicative proceeding under chapter 34.05 RCW.

7 (2) The following hearings shall not be conducted by the hearings
8 board:

9 (a) Hearings required by law to be conducted by the shorelines
10 hearings board pursuant to chapter 90.58 RCW(~~(-)~~);

11 (b) Hearings conducted by the department pursuant to RCW 70.94.332,
12 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and
13 90.44.180(~~(-)~~); and

14 (~~(Proceedings by the department relating to general
15 adjudications of water rights pursuant to chapter 90.03 or 90.44 RCW.~~

16 ~~(d))~~ Hearings conducted by the department to adopt, modify, or
17 repeal rules.

18 (3) Review of rules (~~(and regulations)~~) adopted by the hearings
19 board shall be subject to review in accordance with the provisions of
20 the Administrative Procedure Act, chapter 34.05 RCW.

21 (4) The hearings board may conduct proceedings relating to general
22 adjudications of water rights pursuant to chapter 90.03 or 90.44 RCW.
23 At the hearing provided for in section 16 of this act, an
24 administrative appeals judge appointed pursuant to RCW 43.21B.005 shall
25 preside over the receiving testimony and evidence. The board may hear
26 the matter en banc or may make its decision on review of the verbatim
27 record. The board shall appoint technical staff to assist in the
28 hearings board review of the record and objections filed in the general
29 adjudication proceedings.

30 **Sec. 21.** RCW 90.03.170 and 1987 c 109 s 77 are each amended to
31 read as follows:

32 (~~(Thereupon the department shall fix a time and place for such
33 hearing and serve written notice thereof upon all persons who have
34 appeared in said proceeding, their agents or attorneys. Notice of such
35 hearing shall be served at least ten days before the time fixed
36 therefor. Such hearings))~~ The hearings before the board may be
37 adjourned from time to time and place to place. The ((duly authorized
38 designee)) board shall have authority to subpoena witnesses and

1 administer oaths in the same manner and with the same powers as
2 referees in civil actions. The fees and mileage of witnesses shall be
3 advanced by the party at whose instance they are called as in civil
4 actions. (~~A final decree adjudicating rights or priorities, entered~~
5 ~~in any case decided prior to June 6, 1917, shall be conclusive among~~
6 ~~the parties thereto and the extent of use so determined shall be prima~~
7 ~~facie evidence of rights to the amount of water and priorities so fixed~~
8 ~~as against any person not a party to said decree.))~~

9 **Sec. 22.** RCW 90.03.180 and 1982 c 15 s 2 are each amended to read
10 as follows:

11 At the time of filing (~~the statement as provided in RCW 90.03.140,~~
12 ~~each defendant shall pay to the clerk of the superior court a fee of~~
13 ~~twenty-five dollars~~) an objection or request for clarification with
14 the board as provided in section 17 of this act, the person objecting
15 or requesting clarification shall pay the clerk of the board a fee of
16 one hundred fifty dollars.

17 **Sec. 23.** RCW 90.03.210 and 1988 c 202 s 92 are each amended to
18 read as follows:

19 During the pendency of such adjudication proceedings prior to
20 judgment or upon review by (~~an appellate court~~) the board, the stream
21 or other water involved shall be regulated or partially regulated
22 according to the schedule of rights specified in the department's
23 report upon an order of the (~~court~~) board authorizing such
24 regulation: PROVIDED, Any interested party may file a bond and obtain
25 an order staying the regulation of said stream as to (~~him~~) that
26 party, in which case the court shall make such order regarding the
27 regulation of the stream or other water as he or she may deem just.
28 The bond shall be filed within five days following the service of
29 notice of appeal in an amount to be fixed by the (~~court~~) board and
30 with sureties satisfactory to the (~~court~~) board, conditioned to
31 perform the judgment of the (~~court~~) board.

32 **Sec. 24.** RCW 90.03.230 and 1987 c 109 s 81 are each amended to
33 read as follows:

34 The clerk of the (~~superior court~~) board, immediately upon the
35 entry of any decree by the superior court, shall transmit a certified

1 copy thereof to the director, who shall immediately enter the same upon
2 the records of the department.

3 NEW SECTION. **Sec. 25.** After an adjudication has been completed in
4 a watershed pursuant to sections 3 through 13 and 15 through 18 of this
5 act, all uses of water that the department permits and certifies
6 pursuant to RCW 90.03.290 and 90.03.330 and as provided in the
7 respective water resource program shall be conclusive as to all rights
8 to the use of water in the watershed, without requiring the permit or
9 certificate to be determined in a general adjudication in the
10 watershed. Nothing in this section relieves the water user of
11 complying with all conditions of the water right including continuous
12 beneficial use of the water as required under RCW 90.14.130.

13 NEW SECTION. **Sec. 26.** The water resources protection account is
14 created in the state treasury. The fees collected under sections 6(2)
15 and 27 of this act shall be deposited into the account. The account
16 shall be subject to legislative appropriation and shall be used only to
17 fund the following:

18 (1) The leasing and purchase of water rights for placement in the
19 trust water program under chapter 90.42 RCW;

20 (2) The development of appropriate fee structures pursuant to
21 section 27 of this act; and

22 (3) The adjudication process performed pursuant to sections 3
23 through 13 and 15 through 18 of this act.

24 NEW SECTION. **Sec. 27.** Beginning January 1, 1996, the department
25 shall impose a water use fee on all water users that have been
26 identified pursuant to section 5(1) of this act. The fee may vary by
27 type of water user and shall be:

28 (1) Based on water use; and

29 (2) Designed to promote water conservation and prevent waste and
30 misuse as defined in RCW 90.54.020(1).

31 **Sec. 28.** RCW 90.54.020 and 1989 c 348 s 1 are each amended to read
32 as follows:

33 Utilization and management of the waters of the state shall be
34 guided by the following general declaration of fundamentals:

1 (1) As used in this section, "beneficial use" includes both the
2 type of use and the manner of use as follows:

3 (a) As to the type of use, uses of water for domestic, stock
4 watering, industrial, commercial, agricultural, irrigation,
5 hydroelectric power production, mining, fish and wildlife maintenance
6 and enhancement, recreational, and thermal power production purposes,
7 and preservation of environmental and aesthetic values, and all other
8 uses compatible with the enjoyment of the public waters of the state,
9 are declared to be beneficial.

10 (b) The manner of use means the reasonably efficient use of water
11 by methods that involve neither waste nor misuse.

12 (c) Waste is the use of water in excess of that rate and amount
13 that will provide the duty of water for the type of use involved plus
14 a reasonable transportation loss. In the case of existing rights, what
15 constitutes waste shall be adjusted to take into account any beneficial
16 effects of return flows, where alternate means of achieving such
17 effects are not readily available.

18 (d) Misuse is the degradation of water quality contrary to
19 subsection (3)(b) of this section.

20 (2) Allocation of waters among potential uses and users shall be
21 based generally on the securing of the maximum net benefits for the
22 people of the state. Maximum net benefits shall constitute total
23 benefits less costs including opportunities lost.

24 (3) The quality of the natural environment shall be protected and,
25 where possible, enhanced as follows:

26 (a) Perennial rivers and streams of the state shall be retained
27 with base flows necessary to provide for preservation of wildlife,
28 fish, scenic, aesthetic and other environmental values, and
29 navigational values. Lakes and ponds shall be retained substantially
30 in their natural condition. Withdrawals of water which would conflict
31 therewith shall be authorized only in those situations where it is
32 clear that overriding considerations of the public interest will be
33 served.

34 (b) Waters of the state shall be of high quality. Regardless of
35 the quality of the waters of the state, all wastes and other materials
36 and substances proposed for entry into said waters shall be provided
37 with all known, available, and reasonable methods of treatment prior to
38 entry. Notwithstanding that standards of quality established for the
39 waters of the state would not be violated, wastes and other materials

1 and substances shall not be allowed to enter such waters which will
2 reduce the existing quality thereof, except in those situations where
3 it is clear that overriding considerations of the public interest will
4 be served. Technology-based effluent limitations or standards for
5 discharges for municipal water treatment plants located on the
6 Chehalis, Columbia, Cowlitz, Lewis, or Skagit river shall be adjusted
7 to reflect credit for substances removed from the plant intake water
8 if:

9 (i) The municipality demonstrates that the intake water is drawn
10 from the same body of water into which the discharge is made; and

11 (ii) The municipality demonstrates that no violation of receiving
12 water quality standards or appreciable environmental degradation will
13 result.

14 (4) Adequate and safe supplies of water shall be preserved and
15 protected in potable condition to satisfy human domestic needs.

16 (5) Multiple-purpose impoundment structures are to be preferred
17 over single-purpose structures. Due regard shall be given to means and
18 methods for protection of fishery resources in the planning for and
19 construction of water impoundment structures and other artificial
20 obstructions.

21 (6) Federal, state, and local governments, individuals,
22 corporations, groups and other entities shall be encouraged to carry
23 out practices of conservation as they relate to the use of the waters
24 of the state. In addition to traditional development approaches,
25 improved water use efficiency and conservation shall be emphasized in
26 the management of the state's water resources and in some cases will be
27 a potential new source of water with which to meet future needs
28 throughout the state.

29 (7) Development of water supply systems, whether publicly or
30 privately owned, which provide water to the public generally in
31 regional areas within the state shall be encouraged. Development of
32 water supply systems for multiple domestic use which will not serve the
33 public generally shall be discouraged where water supplies are
34 available from water systems serving the public.

35 (8) Full recognition shall be given in the administration of water
36 allocation and use programs to the natural interrelationships of
37 surface and ground waters.

38 (9) Expressions of the public interest will be sought at all stages
39 of water planning and allocation discussions.

1 (10) Water management programs, including but not limited to, water
2 quality, flood control, drainage, erosion control and storm runoff are
3 deemed to be in the public interest.

4 NEW SECTION. **Sec. 29.** (1) The department shall adopt rules
5 regarding the reasonably efficient use of water. The rules shall take
6 effect on or before January 1, 1995, and be based on the following:

7 (a) The method by which the duty of water for any locality shall be
8 determined, having due regard for local differences in soil, climate,
9 topography, and other relevant factors;

10 (b) The method by which reasonable transportation losses for any
11 locality shall be determined, having due regard for the customary
12 practices in the area, available current technology, and reasonable
13 economy;

14 (c) Guidelines for identification of the beneficial effects of
15 return flows and for the determination on a case-by-case basis of the
16 rates and amounts of water to be allocated to the maintenance of such
17 effects in adjusting what would otherwise constitute waste. These
18 guidelines shall also include criteria for whether alternative means of
19 achieving such effects are readily available;

20 (d) In adopting rules under subsections (a) through (c) of this
21 section, the department may rely upon and incorporate technical
22 publications generally regarded as authoritative.

23 (2) For the purposes of this section, "duty of water" means a
24 quantity of water, which when efficiently applied or conducted without
25 waste, is reasonably required to carry out its intended purpose.

26 NEW SECTION. **Sec. 30.** A new section is added to chapter 90.54 RCW
27 to read as follows:

28 (1) The department shall require the reasonably efficient use of
29 water in all determinations regarding the use of and management of
30 water.

31 (2) Commencing January 1, 1995, in the granting or amendment of a
32 permit or authorizing a change or transfer, the rate and quantity that
33 constitutes reasonable efficiency for the use proposed shall be
34 specified.

35 (3) Commencing January 1, 1995, if the department determines that
36 waste or misuse is occurring the department shall issue regulatory
37 orders pursuant to RCW 43.27A.190 to the holders of existing permits

1 and certificates requiring that reasonably efficient use of water be
2 achieved. Such orders shall include a reasonable time for compliance.

3 NEW SECTION. **Sec. 31.** (1) If a water right holder achieves water
4 savings of that water that has been beneficially used, the holder may
5 be authorized by the department, subject to subsection (2) of this
6 section, to expand the scope of the initial right, or transfer the
7 savings to another person without change of priority date, by
8 application of the water saved, consistent with reasonable efficiency,
9 if expansion does not impair existing water rights. The department
10 shall verify such savings and upon verification shall issue any
11 amendment to the water right increasing the place of use or otherwise
12 altering the relevant permit or certificates as may be necessary to
13 reflect the expanded application of water.

14 (2) In approving an expansion in place of use, the department shall
15 require that fifty percent of the water savings be returned to the
16 state for use in the trust water rights program, as provided in chapter
17 90.42 RCW, however trust water rights acquired in this manner may only
18 be exercised for instream purposes.

19 **Sec. 32.** RCW 90.03.040 and 1917 c 117 s 4 are each amended to read
20 as follows:

21 The beneficial use of water, as defined in RCW 90.54.020(1) is
22 hereby declared to be a public use, and any person may exercise the
23 right of eminent domain to acquire any property or rights now or
24 hereafter existing when found necessary for the storage of water for,
25 or the application of water to, any beneficial use, including the right
26 to enlarge existing structures employed for the public purposes
27 mentioned in this chapter and use the same in common with the former
28 owner, and including the right and power to condemn an inferior use of
29 water for a superior use. In condemnation proceedings the court shall
30 determine what use will be for the greatest public benefit, and that
31 use shall be deemed a superior one: PROVIDED, That no property right
32 in water or the use of water shall be acquired (~~((hereunder))~~) under this
33 section by condemnation for irrigation purposes, which shall deprive
34 any person of such quantity of water as may be reasonably necessary for
35 the irrigation of (~~((his))~~) the person's land then under irrigation to
36 the full extent of the soil, (~~((by the most economical method of~~
37 ~~artificial irrigation applicable to such land according to the usual~~

1 ~~methods of artificial irrigation employed in the vicinity where such~~
2 ~~land is situated. In any case, the court shall determine what is the~~
3 ~~most economical method of irrigation))~~ through reasonably efficient
4 means. Such property or rights shall be acquired in the manner
5 provided by law for the taking of private property for public use by
6 private corporations.

7 **Sec. 33.** RCW 43.21A.064 and 1977 c 75 s 46 are each amended to
8 read as follows:

9 The director of the department of ecology shall have the following
10 powers and duties:

11 (1) The supervision of public waters within the state and their
12 appropriation, diversion, and use, and of the various officers
13 connected therewith;

14 (2) Insofar as may be necessary to assure safety to life or
15 property, ~~((he shall))~~ to inspect the construction of all dams, canals,
16 ditches, irrigation systems, hydraulic power plants, and all other
17 works, systems, and plants pertaining to the use of water, and ~~((he))~~
18 may require such necessary changes in the construction or maintenance
19 of said works, to be made from time to time, as will reasonably secure
20 safety to life and property;

21 (3) ~~((He shall))~~ To regulate and control the diversion of water in
22 accordance with the rights thereto. Such regulation and control shall
23 be exercised on the basis of the director's determination of the
24 various rights involved, based on a review of the department's records
25 and investigation of relevant facts as provided in RCW 90.03.070;

26 (4) ~~((He shall))~~ To determine the discharge of streams and springs
27 and other sources of water supply, and the capacities of lakes and of
28 reservoirs whose waters are being or may be utilized for beneficial
29 purposes;

30 (5) ~~((He shall))~~ To keep such records as may be necessary for the
31 recording of the financial transactions and statistical data thereof,
32 and shall procure all necessary documents, forms, and blanks. ~~((He))~~
33 The director shall keep a seal of the office, and all certificates by
34 him or her covering any of his or her acts or the acts of his or her
35 office, or the records and files of his or her office, under such seal,
36 shall be taken as evidence thereof in all courts;

37 (6) ~~((He shall))~~ To render when required by the governor, a full
38 written report of the work of his or her office with such

1 recommendations for legislation as he or she may deem advisable for the
2 better control and development of the water resources of the state;

3 (7) ~~((The director and))~~ To, in addition to duly authorized
4 deputies ~~((may))~~, administer oaths;

5 (8) ~~((He shall))~~ To establish and ~~((promulgate))~~ adopt rules
6 governing the administration of chapter 90.03 RCW;

7 (9) ~~((He shall))~~ To perform such other duties as may be prescribed
8 by law.

9 **Sec. 34.** RCW 90.03.070 and 1987 c 109 s 70 are each amended to
10 read as follows:

11 It shall be the duty of the water master, acting under the
12 direction of the department, to divide in whole or in part, the water
13 supply of ~~((his))~~ the water master's district among the several water
14 conduits and reservoirs using said supply, according to the right and
15 priority of each, respectively. ~~((He))~~ The water master shall divide,
16 regulate, and control the use of water within ~~((his))~~ the district by
17 such regulation of headgates, conduits, and reservoirs as shall be
18 necessary to prevent the use of water in excess of the amount to which
19 the owner of the right is lawfully entitled. Whenever, in the
20 pursuance of ~~((his))~~ duties, the water master regulates a headgate of
21 a water conduit or the controlling works of a reservoir, ~~((he))~~ the
22 water master shall attach to such headgate or controlling works a
23 written notice, properly dated and signed, stating that such headgate
24 or controlling works has been properly regulated and is wholly under
25 ~~((his))~~ the water master's control and such notice shall be a legal
26 notice to all parties. In addition to dividing the available waters
27 and supervising the stream ~~((patrolmen))~~ patrol in ~~((his))~~ the
28 district, ~~((he))~~ the water master shall enforce such rules ~~((and~~
29 ~~regulations))~~ as the department shall from time to time prescribe.

30 The county or counties in which water master districts are created
31 shall deputize the water masters appointed ~~((hereunder))~~ under this
32 chapter, and may without charge provide to each water master suitable
33 office space, supplies, equipment and clerical assistance as are
34 necessary to the water master in the performance of ~~((his))~~ duties.

35 Regulation under this section shall be exercised on the basis of
36 the water master's tentative determination of the various rights
37 involved, based on a review of the department's records and
38 investigation of relevant facts.

1 NEW SECTION. **Sec. 35.** A new section is added to chapter 43.27A
2 RCW to read as follows:

3 In issuing orders pursuant to RCW 43.27A.190 for the purpose of
4 regulating between or among the users of water, the department shall
5 determine whether any use of water is based on a valid existing water
6 right. In making such determination, the department shall investigate
7 and make a tentative determination as to the priority, quantity, place
8 of use, and point of diversion of any water right necessary for proper
9 administration and regulation. Unless exigent circumstances exist, the
10 department shall notify the person whose use of water will be regulated
11 before issuing an order of regulation. The notice shall state that the
12 order of regulation shall be issued within ten days after receipt by
13 the person of the notice, unless the person can show cause in writing
14 to the department why the department's decision is in error. The order
15 of regulation is effective immediately upon issuance unless otherwise
16 stated in the order. The department's determination of the validity of
17 a water right is not binding in any subsequent general adjudication,
18 but shall be admissible as prima facie evidence of the existence and
19 conditions of the right.

20 NEW SECTION. **Sec. 36.** A new section is added to chapter 43.27A
21 RCW to read as follows:

22 In any appeal of a regulatory order issued pursuant to RCW
23 43.27A.190 it is not a defense that any of the rights recognized have
24 not been confirmed in a general water rights adjudication.

25 NEW SECTION. **Sec. 37.** A new section is added to chapter 43.27A
26 RCW to read as follows:

27 No regulatory order, based in whole or part on a conclusion that
28 all or any portion of any water right has been relinquished for nonuse
29 shall be issued, unless the department initiates proceedings under RCW
30 90.14.130 with regard to the asserted relinquishment. Appeals of the
31 regulatory order and of the relinquishment order may be consolidated
32 for hearing before the pollution control hearings board.
33 Notwithstanding the provisions of RCW 43.27A.190, such a regulatory
34 order shall not become effective unless or until the relinquishment
35 order becomes final.

1 **Sec. 38.** RCW 90.14.130 and 1987 c 109 s 13 are each amended to
2 read as follows:

3 When it appears to the department of ecology that a person entitled
4 to the use of water has not beneficially used his or her water right or
5 some portion thereof, and it appears that said right has or may have
6 reverted to the state because of such (~~nonuse~~) failure, as provided
7 by RCW 90.14.160, 90.14.170, or 90.14.180, the department of ecology
8 shall notify such person by order: PROVIDED, That where a company,
9 association, district, or the United States has filed a blanket claim
10 under the provisions of RCW 90.14.060 for the total benefits of those
11 served by it, the notice shall be served on such company, association,
12 district or the United States and not upon any of its individual water
13 users who may not have used the water or some portion thereof which
14 they were entitled to use. The order shall contain: (1) A description
15 of the water right, including the approximate location of the point of
16 diversion, the general description of the lands or places where such
17 waters were used, the water source, the amount involved, the purpose of
18 use, and the apparent authority upon which the right is based; (2) a
19 statement that unless sufficient cause be shown on appeal the water
20 right will be declared relinquished; and (3) a statement that such
21 order may be appealed to the pollution control hearings board. Any
22 person aggrieved by such an order may appeal it to the pollution
23 control hearings board pursuant to RCW 43.21B.310. The order shall be
24 served by registered or certified mail to the last known address of the
25 person and be posted at the point of diversion or withdrawal. The order
26 by itself shall not alter the recipient's right to use water, if any.

27 **Sec. 39.** RCW 90.14.140 and 1987 c 125 s 1 are each amended to read
28 as follows:

29 (1) For the purposes of RCW 90.14.130 through 90.14.180 "failure to
30 beneficially use" includes both nonuse of water and misappropriation of
31 water. Misappropriation means use that is contrary to the definition
32 of beneficial use in RCW 90.54.020.

33 (2) For the purposes of RCW 90.14.130 through 90.14.180,
34 "sufficient cause" shall be defined as the (~~nonuse of~~) failure to use
35 beneficially all or a portion of the water by the owner of a water
36 right for a period of five or more consecutive years where such
37 (~~nonuse~~) failure occurs as a result of:

38 (a) Drought, or other unavailability of water;

1 (b) Active service in the armed forces of the United States during
2 military crisis;

3 (c) Nonvoluntary service in the armed forces of the United States;

4 (d) ~~((The operation of legal proceedings))~~ An administrative order
5 or court order that temporarily prevents the use of the right;

6 (e) Federal laws imposing land or water use restrictions either
7 directly or through the voluntary enrollment of a landowner in a
8 federal program implementing those laws, or acreage limitations, or
9 production quotas; or

10 (f) Compliance with a permit issued under chapter 90.48 RCW to
11 discharge wastes.

12 ~~((+2+))~~ (3) Notwithstanding any other provisions of RCW 90.14.130
13 through 90.14.180, there shall be no relinquishment of any water right:

14 (a) If such right is claimed for power development purposes under
15 chapter 90.16 RCW and annual license fees are paid in accordance with
16 chapter 90.16 RCW, or

17 (b) If such right is used for a standby or reserve water supply to
18 be used in time of drought or other low flow period so long as
19 withdrawal or diversion facilities are maintained in good operating
20 condition for the use of such reserve or standby water supply, or

21 ~~(c) ((If such right is claimed for a determined future development~~
22 ~~to take place either within fifteen years of July 1, 1967, or the most~~
23 ~~recent beneficial use of the water right, whichever date is later, or~~

24 ~~(d))~~ If such right is claimed for municipal water supply purposes
25 under chapter 90.03 RCW, or

26 ~~((+e))~~ (d) If such waters are not subject to appropriation under
27 the applicable provisions of RCW 90.40.030 as now or hereafter amended.

28 **Sec. 40.** RCW 90.14.200 and 1989 c 175 s 180 are each amended to
29 read as follows:

30 (1) All matters relating to the implementation and enforcement of
31 this chapter by the department of ecology shall be carried out in
32 accordance with chapter 34.05 RCW, the Administrative Procedure Act,
33 except where the provisions of this chapter expressly conflict with
34 chapter 34.05 RCW. Proceedings held pursuant to RCW 90.14.130 are
35 adjudicative proceedings within the meaning of chapter 34.05 RCW.
36 Final decisions of the department of ecology in these proceedings are
37 subject to review in accordance with chapter 43.21B RCW.

1 (2) (~~RCW 90.14.130 provides nonexclusive procedures for~~
2 ~~determining a relinquishment of water rights under RCW 90.14.160,~~
3 ~~90.14.170, and 90.14.180.~~) No ruling on a request for an amendment to
4 a permit or certificate pursuant to RCW 90.03.380 or 90.44.100 based in
5 whole or in part on a conclusion that all or any portion of any water
6 right has been relinquished for nonuse may be issued until the
7 department initiates proceedings under RCW 90.14.130 with regard to the
8 asserted relinquishment. Appeals of the relinquishment order and of
9 the ruling on the amendment may be consolidated for hearing before the
10 pollution control hearings board, however no amended certificate or
11 permit may be issued until the relinquishment order becomes final.

12 (3) The relinquishment of water rights on the basis of RCW
13 90.14.160, 90.14.170, and 90.14.180 may (~~be applied~~) occur in(~~7~~
14 among other proceedings,) general adjudication proceedings initiated
15 under RCW 90.03.110 or 90.44.220: PROVIDED, That nothing herein shall
16 apply to litigation involving determinations of the department of
17 ecology under RCW 90.03.290 relating to the impairment of existing
18 rights.

19 NEW SECTION. Sec. 41. In evaluating whether a water appropriation
20 or amendment of a water right would be detrimental to the public
21 interest and in evaluating the public interest regarding allocation of
22 water for future use, the department shall consider at a minimum the
23 following public interest factors:

24 (1) Local and state economic net benefits, including the
25 consideration of the opportunity costs of alternative foregone uses of
26 the water;

27 (2) Cost-effectiveness of the proposed use in comparison to
28 alternative sources of water, including the consideration of external
29 costs and benefits;

30 (3) Effects on public uses of water including the instream uses
31 listed in RCW 90.22.010 and 90.54.020(3)(a);

32 (4) Effects on public land and facilities and on other water-
33 related public resources;

34 (5) Effects on local communities in the area of origin from
35 proposals to transfer water to another location;

36 (6) Effects on water quality, public health, or safety;

37 (7) Discouragement of waste and encouragement of conservation and
38 efficient use;

1 (8) Long-term public costs to regulate the use to protect other
2 water rights and instream flows; and

3 (9) The water resource fundamentals listed in RCW 90.54.020.

4 NEW SECTION. Sec. 42. (1) After June 30, 1994, all permits issued
5 under this chapter, except those issued for essential domestic use,
6 shall be in the form of a term permit that shall ordinarily specify a
7 period of allowable use of thirty years after the initial beneficial
8 use of water. A shorter period may be specified for uses of water
9 intended to be shorter in duration. A shorter term may also be
10 specified if a regional public water system capable of providing water
11 to the user is planned for implementation in the area within less than
12 thirty years.

13 (2) Upon the transfer of ownership of property to which a term
14 permit is appurtenant, if ten years or fewer remain in the term of the
15 permit, the buyer may request renewal of the permit for a term of
16 thirty years. The department shall respond to the request within
17 ninety days of the date of last publication of the notice required by
18 RCW 90.03.280 with its decision to grant or deny renewal.

19 (3) Within two years of the expiration of a term permit, the
20 permittee may request renewal of the permit for a term of thirty years.
21 The department shall respond within ninety days of the date of last
22 publication of the notice required by RCW 90.03.280 with its decision
23 to grant or deny renewal.

24 (4) In determining whether to renew a permit, the department shall
25 investigate and take into consideration the factors listed in RCW
26 90.03.290, 90.54.020, and section 41 of this act.

27 **Sec. 43.** RCW 90.03.330 and 1987 c 109 s 89 are each amended to
28 read as follows:

29 (1) Upon a showing satisfactory to the department that ~~((any))~~ an
30 appropriation for essential domestic use has been perfected in
31 accordance with the provisions of this chapter, ~~((it shall be the duty~~
32 ~~of))~~ the department ~~((to))~~ shall issue to the applicant a certificate
33 stating ~~((such))~~ the pertinent facts ~~((in a form to be prescribed by~~
34 ~~him, and such certificate shall thereupon be recorded with the~~
35 ~~department))~~, parameters, and conditions affecting the use.

36 (2) For purposes of this section, an appropriation for essential
37 domestic use is perfected only when the water system has been fully

1 developed, is capable of pumping the quantity intended for essential
2 domestic use, and is delivering water to all intended households. A
3 certificate of water right shall be issued only for the amount put to
4 beneficial use as defined in RCW 90.54.020(1). The certificate shall
5 continue to exist as issued unless amended, condemned, abandoned,
6 forfeited for nonuse, or regulated or rescinded to meet the public
7 trust responsibilities of the state. The use of water under a permit
8 or certificate issued by the state after June 30, 1994, for a new use
9 shall be subject to periodic review by the department and may be
10 further conditioned or limited to prevent any impairment the use is
11 shown to cause to other rights, the natural environment, including
12 water quality, or the public interest.

13 (3) Any original ((water)) right certificate issued, as provided by
14 this chapter, shall be recorded with the department and thereafter((
15 at the expense of the party receiving the same, be by the department))
16 transmitted to the county auditor of the county or counties where the
17 distributing system or any part thereof is located, ((and be)) recorded
18 in the office of such county auditor at the expense of the recipient,
19 and thereafter ((be)) transmitted to the ((owner thereof)) recipient.

20 NEW SECTION. Sec. 44. When considering whether to issue a new
21 permit for use of water, the department shall identify potential
22 sources of reclaimed water and shall deny an application for
23 development of a new water supply if a cost-effective source of
24 reclaimed water is available to the applicant. In making its
25 determination, the department shall consult with the department of
26 labor and industries, the department of health, and the local health
27 authority, as appropriate, to determine whether reclaimed water can be
28 used for the purpose proposed without impairment of public health or
29 safety.

30 NEW SECTION. Sec. 45. A new section is added to chapter 90.54 RCW
31 to read as follows:

32 The legislature finds that the recovery of endangered and
33 threatened anadromous fish stocks and prevention of further listings
34 under the federal endangered species act require an unprecedented level
35 of interstate cooperation regarding management of waters shared by the
36 states of the Pacific Northwest. Waters acquired in upstream states or
37 within the state of Washington for purposes of improvement in habitat

1 and passage conditions for anadromous fish stocks shall be fully
2 protected from appropriation by new and existing diversions as those
3 waters flow through the state of Washington. The department shall, as
4 a matter of highest priority, cooperate with other states, the federal
5 government, the Northwest power planning council, and water users to
6 assure the full protection of water acquired for these purposes.

7 **Sec. 46.** RCW 90.03.600 and 1987 c 109 s 157 are each amended to
8 read as follows:

9 (1) The ~~((power is granted to the))~~ department ~~((of ecology to))~~
10 may levy civil penalties ~~((of up to one hundred dollars per day))~~ for
11 violation of any of the provisions of this chapter and chapters 43.83B,
12 90.22, and 90.44 RCW, and rules, permits, and similar documents and
13 regulatory orders of the department ~~((of ecology))~~ adopted or issued
14 pursuant to such chapters. The procedures of RCW 90.48.144 shall be
15 applicable to all phases of the levying of a penalty as well as review
16 and appeal of the same.

17 (2) There are established two categories of violations punishable
18 under this section: Minor and major.

19 (a) A minor violation is an action contrary to law, rule, permit
20 condition, or order that does not seriously threaten public health,
21 safety, senior water rights, or the environment. The penalty for a
22 minor violation is not less than one hundred dollars and not more than
23 five hundred dollars.

24 (b) A major violation is an action contrary to law, rule, permit
25 condition, or order that poses a potential serious threat to public
26 health, safety, or the environment, or that has already resulted in
27 damage to public health, safety, senior water rights, or the
28 environment. Repeated minor violations also constitute a major
29 violation. The penalty for a major violation is not less than five
30 hundred dollars and not more than ten thousand dollars.

31 (3) In determining the appropriate penalty under subsection (2) of
32 this section, the department shall consider whether the person:

33 (a) Has demonstrated a general disregard for public health, safety,
34 senior water rights, or the environment through the number and
35 magnitude of violations;

36 (b) Had demonstrated a disregard for the laws, rules, permit
37 conditions, or regulatory orders governing the user's appropriation of
38 state waters; or

1 (c) Knew or reasonably should have known of circumstances that
2 resulted in the violation.

3 (4) Penalties provided for in this section shall be imposed
4 pursuant to RCW 43.21B.300.

5 (5) Penalties collected under this section shall be deposited in
6 the state reclamation revolving account established by chapter 89.16
7 RCW. Subject to legislative appropriation, the revenues from penalties
8 collected under this section may be spent only for purposes related to
9 the restoration and enhancement of the water resources of the state,
10 including, but not limited to the acquisition of trust water rights in
11 accordance with chapter 90.42 RCW.

12 NEW SECTION. Sec. 47. A new section is added to chapter 87.03 RCW
13 to read as follows:

14 Irrigation districts shall establish or amend the rates and charges
15 levied against water users to provide an incentive to conserve water.
16 This shall be accomplished by use of inverted block rates in which the
17 greater the quantity of water used, the more a unit of water costs.

18 NEW SECTION. Sec. 48. A new section is added to chapter 87.03 RCW
19 to read as follows:

20 By January 1, 2000, each irrigation district serving more than
21 fifteen water users shall install measuring devices at the points of
22 delivery of water to each land parcel receiving water from the
23 district. The district shall take and maintain records of water
24 deliveries at each delivery point and shall make those records publicly
25 available. The district shall also provide for continuous measurement
26 of water and records of same at points of diversion or withdrawal and
27 at appropriate points in the conveyance system and on wasteways.

28 NEW SECTION. Sec. 49. A new section is added to chapter 54.16 RCW
29 to read as follows:

30 Public utility districts shall establish or amend the rates and
31 charges levied against users to provide an incentive to conserve water.
32 This shall be accomplished by use of inverted block rates in which the
33 greater the quantity of water used, the more a unit of water costs.

34 NEW SECTION. Sec. 50. A new section is added to chapter 54.16 RCW
35 to read as follows:

1 By January 1, 2000, each public utility district serving more than
2 fifteen water users shall install measuring devices at the points of
3 use of water supplied by the district. The district shall take and
4 maintain records of water use at each point of use and shall make those
5 records publicly available. The district shall also provide for
6 continuous measurement of water and records of same at points of
7 diversion or withdrawal and at appropriate points in the conveyance
8 system.

9 NEW SECTION. **Sec. 51.** A new section is added to chapter 35.92 RCW
10 to read as follows:

11 Municipal water utilities shall establish or amend the rates and
12 charges levied against water users to provide an incentive to conserve
13 water. This shall be accomplished by use of inverted block rates in
14 which the greater the quantity of water used, the more a unit of water
15 costs.

16 NEW SECTION. **Sec. 52.** A new section is added to chapter 35.92 RCW
17 to read as follows:

18 By January 1, 2000, each municipal water utility serving more than
19 fifteen water users shall install measuring devices at the points of
20 use of water supplied by the district. The utility shall take and
21 maintain records of water use at each point of use and shall make those
22 records publicly available. The utility shall also provide for
23 continuous measurement of water and records of same at points of
24 diversion or withdrawal and at appropriate points in the conveyance
25 system.

26 NEW SECTION. **Sec. 53.** A new section is added to chapter 57.08 RCW
27 to read as follows:

28 Water districts shall establish or amend the rates and charges
29 levied against water users to provide an incentive to conserve water.
30 This shall be accomplished by use of inverted block rates in which the
31 greater the quantity of water used, the more a unit of water costs.

32 NEW SECTION. **Sec. 54.** A new section is added to chapter 57.08 RCW
33 to read as follows:

34 By January 1, 2000, each water district serving more than fifteen
35 water users shall install measuring devices at the points of use of

1 water supplied by the district. The district shall take and maintain
2 records of water use at each point of use and shall make those records
3 publicly available. The district shall also provide for continuous
4 measurement of water and records of same at points of diversion or
5 withdrawal and at appropriate points in the conveyance system.

6 **Sec. 55.** RCW 80.28.070 and 1961 c 14 s 80.28.070 are each amended
7 to read as follows:

8 Nothing in this chapter shall be taken to prohibit a gas
9 company(~~()~~) or electrical company (~~(or water company)~~) from
10 establishing a sliding scale of charges, whereby a greater charge is
11 made per unit for a lesser than a greater quantity for gas(~~()~~) or
12 electricity (~~(or water)~~), or any service rendered or to be rendered.

13 NEW SECTION. **Sec. 56.** A new section is added to chapter 80.28 RCW
14 to read as follows:

15 The commission shall establish or amend the rates and charges
16 levied against water users by a water company to provide an incentive
17 to conserve water. This shall be accomplished by requiring use of
18 inverted block rates in which the greater the quantity of water used,
19 the more a unit of water costs.

20 NEW SECTION. **Sec. 57.** A new section is added to chapter 80.28 RCW
21 to read as follows:

22 Each water company under the commission's jurisdiction serving more
23 than fifteen water users shall be required to install, by January 1,
24 2000, measuring devices at the points of use of water supplied by the
25 company. The company shall be required to take and maintain records of
26 water use at each point of use and shall make those records publicly
27 available. The company shall also provide for continuous measurement
28 of water and records of same at points of diversion or withdrawal and
29 at appropriate points in the conveyance system.

30 **Sec. 58.** RCW 90.48.495 and 1989 c 348 s 10 are each amended to
31 read as follows:

32 The department of ecology shall require sewer plans to include a
33 discussion of water conservation measures considered or underway,
34 including the installation of water service meters, use of water
35 conserving rate structures by the water supplier, and adoption of

1 wastewater rate structures that incorporate consideration of the
2 quantity of water used, and their anticipated impact on public sewer
3 service. The department shall require that sewer plans evaluate the
4 cost-effectiveness of water conservation measures that could be
5 implemented in conjunction with water suppliers in reducing the
6 quantity of sewage generated in comparison to the development of
7 additional treatment capacity. The department shall require that
8 sewage plans select the most cost-effective means of pollution
9 prevention or treatment. If a plan fails to meet this requirement, it
10 shall not be approved by the department as provided by RCW 90.48.110,
11 nor shall a waste discharge permit be granted for a new or expanded
12 sewage treatment system if a more cost-effective means of preventing
13 pollution, including water conservation, is available.

14 **Sec. 59.** RCW 90.48.285 and 1987 c 109 s 144 are each amended to
15 read as follows:

16 The department is authorized to enter into contracts with any
17 municipal or public corporation or political subdivision within the
18 state for the purpose of assisting such agencies to finance the
19 construction of water pollution control projects necessary to prevent
20 the discharge of untreated or inadequately treated sewage or other
21 waste into the waters of the state, including but not limited to, cost-
22 effective water conservation projects that will minimize the quantity
23 of sewerage created and systems for the control of storm or surface
24 waters which will provide for the removal of waste or polluting
25 materials in a manner conforming to the comprehensive plan of water
26 pollution control and abatement proposed by the agencies and approved
27 by the department. Any such contract may provide for:

28 The payment by the department to a municipal or public corporation
29 or political subdivision on a monthly, quarterly, or annual basis of
30 varying amounts of moneys as advances which shall be repayable by said
31 municipal or public corporation, or political subdivision under
32 conditions determined by the department.

33 Contracts made by the department shall be subject to the following
34 limitations:

35 (1) No contract shall be made unless the department shall find that
36 the project cannot be financed at reasonable cost or within statutory
37 limitations by the borrower without the making of such contract.

1 (2) No contract shall be made with any public or municipal
2 corporation or political subdivision to assist in the financing of any
3 project located within a sewage drainage basin for which the department
4 shall have previously adopted a comprehensive water pollution control
5 and abatement plan unless the project is found by the department to
6 conform with the basin comprehensive plan.

7 (3) The department shall determine the interest rate, not to exceed
8 ten percent per annum, which such advances shall bear.

9 (4) The department shall provide such reasonable terms and
10 conditions of repayment of advances as it may determine.

11 (5) The total outstanding amount which the department may at any
12 time be obligated to pay under all outstanding contracts made pursuant
13 to this section shall not exceed the moneys available for such payment.

14 (6) Municipal or public corporations or political subdivisions
15 shall meet such qualifications and follow such procedures in applying
16 for contract assistance as shall be established by the department.

17 In making such contracts the department shall give priority to
18 projects which will provide relief from actual or potential public
19 health hazards or water pollution conditions and which provide
20 substantial capacity beyond present requirements to meet anticipated
21 future demand.

22 **Sec. 60.** RCW 90.48.290 and 1987 c 109 s 145 are each amended to
23 read as follows:

24 The department is authorized to make and administer grants within
25 appropriations authorized by the legislature to any municipal or public
26 corporation, or political subdivision within the state for the purpose
27 of aiding in the construction of water pollution control projects
28 necessary to prevent the discharge of untreated or inadequately treated
29 sewage or other waste into the waters of the state including, but not
30 limited to, projects for the control of storm or surface waters which
31 will provide for the removal of waste or polluting materials therefrom
32 and cost-effective water conservation projects that will minimize the
33 quantity of sewage created.

34 Grants so made by the department shall be subject to the following
35 limitations:

36 (1) No grant shall be made in an amount which exceeds the
37 recipient's contribution to the estimated cost of the project:

1 PROVIDED, That the following shall be considered a part of the
2 recipient's contribution:

3 (a) Any grant received by the recipient from the federal government
4 pursuant to section 8(f) of the Federal Water Pollution Control Act (33
5 U.S.C. 466) for the project;

6 (b) Any expenditure which is made by any municipal or public
7 corporation, or political subdivision within the state as a part of a
8 joint effort with the recipient to carry out the project and which has
9 not been used as a matching contribution for another grant made
10 pursuant to this chapter, and

11 (c) Any expenditure for the project made by the recipient out of
12 moneys advanced by the department from a revolving fund and repayable
13 to said fund.

14 (2) No grant shall be made for any project which does not qualify
15 for and receive a grant of federal funds under the provisions of the
16 Federal Water Pollution Control Act as now or hereafter amended:
17 PROVIDED, That this restriction shall not apply to state grants made in
18 any biennium over and above the amount of such grants required to match
19 all federal funds allocated to the state for such biennium.

20 (3) No grant shall be made to any municipal or public corporation,
21 or political subdivision for any project located within a drainage
22 basin unless the department shall have previously adopted a
23 comprehensive water pollution control and abatement plan and unless the
24 project is found by the department to conform with such basin
25 comprehensive plan: PROVIDED, That the requirement for a project to
26 conform to a comprehensive water pollution control and abatement plan
27 may be waived by the department for any grant application filed with
28 the department prior to July 1, 1974, in those situations where the
29 department finds the public interest would be served better by approval
30 of any grant application made prior to adoption of such plan than by
31 its denial.

32 (4) Recipients of grants shall meet such qualifications and follow
33 such procedures in applying for grants as shall be established by the
34 department.

35 (5) Grants may be made to reimburse recipients for expenditures
36 made after July 1, 1967 for projects which meet the requirements of
37 this section and were commenced after the recipient had filed a grant
38 application with the department.

1 **Sec. 61.** RCW 35.67.030 and 1985 c 445 s 1 are each amended to read
2 as follows:

3 Whenever the legislative body of any city or town, shall deem it
4 advisable that such city or town shall purchase, acquire or construct
5 any public utility mentioned in RCW 35.67.020, or make any additions,
6 betterments, or alterations thereto, or extensions thereof, such
7 legislative body shall provide therefor by ordinance, which shall
8 specify and adopt the system or plan proposed, and declare the
9 estimated cost thereof as near as may be.

10 In selecting projects for sewer system improvements, a city or town
11 shall evaluate the cost-effectiveness of implementing water
12 conservation measures that would minimize the quantity of sewage
13 requiring treatment and shall implement such water conservation
14 measures as are cost-effective in comparison to the increased sewage
15 treatment capacity required without water conservation.

16 **Sec. 62.** RCW 36.94.030 and 1981 c 313 s 15 are each amended to
17 read as follows:

18 Whenever the county legislative authority deems it advisable and
19 necessary for the public health and welfare of the inhabitants of the
20 county to establish, purchase, acquire, and construct a system of
21 sewerage and/or water, or make any additions and betterments thereto,
22 or extensions thereof, the board shall adopt a sewerage and/or water
23 general plan for a system of sewerage and/or water for all or a portion
24 of the county as deemed necessary by the board. If the county has
25 adopted a comprehensive plan for a physical development of the county
26 pursuant to chapter 36.70 RCW and/or chapter 35.63 RCW, then the
27 sewerage and/or water general plan shall be adopted as an element of
28 that comprehensive plan pursuant to the applicable statute.

29 Every sewerage and water general plan developed under this section
30 shall include an evaluation of the cost-effectiveness of implementing
31 water conservation measures that would minimize the need for additional
32 water supply and the quantity of sewage requiring treatment and shall
33 propose for implementation such water conservation measures as are
34 cost-effective in comparison to the increased water supply development
35 and sewage treatment capacity required without water conservation.

36 **Sec. 63.** RCW 36.94.140 and 1990 c 133 s 2 are each amended to read
37 as follows:

1 Every county, in the operation of a system of sewerage and/or
2 water, shall have full jurisdiction and authority to manage, regulate
3 and control it and to fix, alter, regulate and control the rates and
4 charges for the service to those to whom such county service is
5 available, and to levy charges for connection to such system. The
6 rates for availability of service and connection charges so charged
7 must be uniform for the same class of customers or service.

8 In classifying customers served, service furnished or made
9 available by such system of sewerage and/or water, or the connection
10 charges, the board may consider any or all of the following factors:

11 (1) The difference in cost of service to the various customers
12 within or without the area;

13 (2) The difference in cost of maintenance, operation, repair and
14 replacement of the various parts of the systems;

15 (3) The different character of the service furnished various
16 customers;

17 (4) The quantity and quality of the sewage and/or water delivered
18 and the time of its delivery;

19 (5) Capital contributions made to the system or systems, including,
20 but not limited to, assessments;

21 (6) The cost of acquiring the system or portions of the system in
22 making system improvements necessary for the public health and safety;
23 ((and))

24 (7) For both sewage and water systems, the achievement of water
25 conservation goals and the discouragement of wasteful water use
26 practices; and

27 (8) Any other matters which present a reasonable difference as a
28 ground for distinction.

29 Such rates shall produce revenues sufficient to take care of the
30 costs of maintenance and operation, revenue bond and warrant interest
31 and principal amortization requirements, and all other charges
32 necessary for the efficient and proper operation of the system.

33 **Sec. 64.** RCW 56.08.020 and 1990 1st ex.s. c 17 s 34 are each
34 amended to read as follows:

35 The sewer commissioners before ordering any improvements hereunder
36 or submitting to vote any proposition for incurring indebtedness shall
37 adopt a general comprehensive plan for a system of sewers for the
38 district. They shall investigate all portions and sections of the

1 district and select a general comprehensive plan for a system of sewers
2 for the district suitable and adequate for present and reasonably
3 foreseeable future needs thereof. The general comprehensive plan shall
4 provide for treatment plants and other methods for the disposal of
5 sewage and industrial and other liquid wastes now produced or which may
6 reasonably be expected to be produced within the district and shall,
7 for such portions of the district as may then reasonably be served,
8 provide for the acquisition or construction and installation of
9 laterals, trunk sewers, intercepting sewers, syphons, pumping stations,
10 or other sewage collection facilities. Every general comprehensive
11 plan for sewerage developed under this section shall include an
12 evaluation of the cost-effectiveness of implementing water conservation
13 measures that would minimize the quantity of sewage requiring treatment
14 and shall propose for implementation such water conservation measures
15 as are cost-effective in comparison to the increased sewage treatment
16 capacity required without water conservation. The general
17 comprehensive plan shall provide the method of distributing the cost
18 and expense of the sewer system provided therein against the district
19 and against utility local improvement districts within the district,
20 including any utility local improvement district lying wholly or
21 partially within any other political subdivision included in the
22 district; and provide whether the whole or some part of the cost and
23 expenses shall be paid from sewer revenue bonds. The commissioners may
24 employ such engineering and legal services as they deem necessary in
25 carrying out the purposes hereof.

26 The general comprehensive plan shall be adopted by resolution and
27 submitted to an engineer designated by the legislative authority of the
28 county in which fifty-one percent or more of the area of the district
29 is located, and to the director of health of the county in which the
30 district or any portion thereof is located, and must be approved in
31 writing by the engineer and director of health. The general
32 comprehensive plan shall be approved, conditionally approved, or
33 rejected by the director of health within sixty days of the plan's
34 receipt and by the designated engineer within sixty days of the plan's
35 receipt. However, this sixty-day time limitation may be extended by
36 the director of health or engineer for up to an additional sixty days
37 if sufficient time is not available to review adequately the general
38 comprehensive plans.

1 Before becoming effective, the general comprehensive plan shall
2 also be submitted to, and approved by resolution of, the legislative
3 authority of every county within whose boundaries all or a portion of
4 the sewer district lies. The general comprehensive plan shall be
5 approved, conditionally approved, or rejected by each of these county
6 legislative authorities pursuant to the criteria in RCW 56.02.060 for
7 approving the formation, reorganization, annexation, consolidation, or
8 merger of sewer districts, and the resolution, ordinance, or motion of
9 the legislative body which rejects the comprehensive plan or a part
10 thereof shall specifically state in what particular the comprehensive
11 plan or part thereof rejected fails to meet these criteria. The
12 general comprehensive plan shall not provide for the extension or
13 location of facilities that are inconsistent with the requirements of
14 RCW 36.70A.110. Nothing in this chapter shall preclude a county from
15 rejecting a proposed plan because it is in conflict with the criteria
16 in RCW 56.02.060. Each general comprehensive plan shall be deemed
17 approved if the county legislative authority fails to reject or
18 conditionally approve the plan within ninety days of submission to the
19 county legislative authority or within thirty days of a hearing on the
20 plan when the hearing is held within ninety days of the plan's
21 submission to the county legislative authority. However, a county
22 legislative authority may extend this ninety-day time limitation by up
23 to an additional ninety days where a finding is made that ninety days
24 is insufficient to review adequately the general comprehensive plan.
25 In addition, the sewer commissioners and the county legislative
26 authority may mutually agree to an extension of the deadlines in this
27 section.

28 If the district includes portions or all of one or more cities or
29 towns, the general comprehensive plan shall be submitted also to, and
30 approved by resolution of, the governing body of such cities and towns
31 before becoming effective. The general comprehensive plan shall be
32 deemed approved by the city or town governing body if the city or town
33 governing body fails to reject or conditionally approve the plan within
34 ninety days of the plan's submission to the city or town or within
35 thirty days of a hearing on the plan when the hearing is held within
36 ninety days of submission to the county legislative authority.
37 However, a city or town governing body may extend this time limitation
38 by up to an additional ninety days where a finding is made that
39 insufficient time exists to adequately review the general comprehensive

1 plan within these time limitations. In addition, the sewer
2 commissioners and the city or town governing body may mutually agree to
3 an extension of the deadlines in this section.

4 Before becoming effective, any amendment to, alteration of, or
5 addition to, a general comprehensive plan shall also be subject to such
6 approval as if it were a new general comprehensive plan: PROVIDED,
7 That only if the amendment, alteration, or addition, affects a
8 particular city or town, shall the amendment, alteration, or addition
9 be subject to approval by such particular city or town governing body.

10 NEW SECTION. **Sec. 65.** A new section is added to chapter 43.99E
11 RCW to read as follows:

12 The department of ecology shall provide a priority for funding
13 assistance under this chapter for projects that result in creation of
14 trust water rights pursuant to chapter 90.42 RCW through water
15 conservation or improved water use efficiency.

16 NEW SECTION. **Sec. 66.** A new section is added to chapter 43.99E
17 RCW to read as follows:

18 The department of ecology may, in the administration of the
19 agricultural water supply bond funds authorized in RCW 43.99E.025,
20 expend such funds by grants or loans directly or through a public body
21 for purposes of financing on-farm water system improvements, if the
22 land owner agrees in advance in writing that the net water savings, as
23 defined in RCW 90.42.020(2), from such improvements will return to the
24 state as a trust water right as provided in chapter 90.42 RCW. Trust
25 water rights acquired in this manner shall be dedicated to public
26 purposes, including but not limited to instream flow restoration.

27 NEW SECTION. **Sec. 67.** A new section is added to chapter 43.99E
28 RCW to read as follows:

29 The department of ecology shall not provide a grant or loan for any
30 water conserving project unless the recipient agrees in advance in
31 writing that a reasonable proportion of the net water savings, as
32 defined in RCW 90.42.020(2), will return to the state as a trust water
33 right to benefit the public. The department may make direct
34 expenditures of appropriated funds authorized under this chapter for
35 purposes of purchasing or leasing water to be managed in the trust
36 water rights program established in chapter 90.42 RCW.

1 **Sec. 68.** RCW 90.42.010 and 1993 sp.s. c 4 s 14 and 1993 c 98 s 1
2 are each reenacted and amended to read as follows:

3 (1) The legislature finds that a need exists to develop and test a
4 means to facilitate the voluntary transfer of water and water rights,
5 including conserved water, to provide water for presently unmet needs
6 and emerging needs. (~~Further, the legislature finds that water~~
7 ~~conservation activities have the potential of affecting the quantity of~~
8 ~~return flow waters to which existing water right holders have a right~~
9 ~~to and rely upon.)) It is the intent of the legislature that persons
10 holding rights to water, including return flows, not be adversely
11 affected in the implementation of the provisions of this chapter.~~

12 (2) The department shall provide to the appropriate legislative
13 committees by December 31, 1993, a written evaluation of the
14 implementation of RCW 90.42.010 through 90.42.090 and recommendations
15 for future application. Recommendations shall include methods of
16 applying RCW 90.42.010 through 90.42.090 to the rivers that are
17 designated as high priority by the department of ecology under RCW
18 90.22.060 in order to use net water savings to enhance stream flows.

19 **Sec. 69.** RCW 90.42.020 and 1991 c 347 s 6 are each amended to read
20 as follows:

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

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

24 (2) "Net water savings" means the amount of water that is
25 determined to be conserved and usable within a specified stream reach
26 or reaches for other purposes without impairment (~~or detriment to~~) of
27 water rights existing at the time that a water conservation project is
28 undertaken, reducing the ability to deliver water, or reducing the
29 supply of water that otherwise would have been available to other
30 existing water uses.

31 (3) "Trust water right" means any water right acquired by the state
32 under this chapter for management in the state's trust water rights
33 program.

34 (4) (~~"Pilot planning areas" means the geographic areas designated~~
35 ~~under RCW 90.54.045(2).~~

36 ~~(5))~~ "Water conservation project" means any project or program
37 that achieves physical or operational improvements that provide for
38 increased water use efficiency in existing systems of diversion,

1 conveyance, application, or use of water under existing water rights
2 (~~existing on July 28, 1991~~)).

3 **Sec. 70.** RCW 90.42.030 and 1993 c 98 s 2 are each amended to read
4 as follows:

5 (1) For purposes of this chapter, the state may enter into
6 contracts to provide moneys to assist in the financing of water
7 conservation projects. In consideration for the financial assistance
8 provided, the state shall obtain public benefits defined in guidelines
9 developed under RCW 90.42.050.

10 (2) If the public benefits to be obtained require conveyance to the
11 state of all or a portion of a water right or modification of a water
12 right, the recipient of funds shall convey to the state the recipient's
13 interest in that part of the water right or claim constituting all or
14 a portion of the resulting net water savings for deposit in the trust
15 water rights program. The amount to be conveyed shall be finitely
16 determined by the parties, in accordance with the guidelines developed
17 under RCW 90.42.050, before the expenditure of state funds. Conveyance
18 may consist of complete transfer, lease contracts, or other legally
19 binding agreements. When negotiating for the acquisition of conserved
20 water or net water savings, or a portion thereof, the state may require
21 evidence of a valid water right.

22 (3) As part of the contract, the water right holder and the state
23 shall specify the process to determine the amount of water the water
24 right holder would continue to be entitled to once the water
25 conservation project is in place. Any water right or portion thereof
26 that the department determines has been relinquished due to nonuse or
27 that will not be required by the water user in the future and that is
28 not conveyed to the state as a trust water right shall be relinquished
29 in accordance with RCW 90.14.130.

30 (4) The state shall cooperate fully with the United States in the
31 implementation of this chapter. Trust water rights may be acquired
32 through expenditure of funds provided by the United States and shall be
33 treated in the same manner as trust water rights resulting from the
34 expenditure of state funds. A contract with the United States may
35 determine and limit the specific purpose or purposes of use of a trust
36 water right acquired in whole or in part as a result of efforts by the
37 United States.

1 (5) If water is proposed to be acquired by or conveyed to the state
2 as a trust water right by an irrigation district, evidence of the
3 district's authority to represent the water right holders shall be
4 submitted to and for the satisfaction of the department.

5 (6) The state shall not contract with any person to acquire a water
6 right served by an irrigation district without the approval of the
7 board of directors of the irrigation district. Disapproval by a board
8 shall be factually based on probable adverse effects on the ability of
9 the district to deliver water to other members or on maintenance of the
10 financial integrity of the district.

11 **Sec. 71.** RCW 90.42.040 and 1993 c 98 s 3 are each amended to read
12 as follows:

13 (1) All trust water rights acquired by the state shall be placed in
14 the state trust water rights program to be managed by the department.
15 Trust water rights acquired by the state shall be held or authorized
16 for use by the department for instream flows, irrigation, municipal, or
17 other beneficial uses consistent with applicable regional or basin
18 water resource plans (~~((for pilot planning areas))~~), or to resolve
19 critical water supply problems.

20 (2) If the department authorizes use of a trust water right for
21 irrigation, municipal, or industrial purposes, or other offstream
22 purposes, the means of putting the trust water right to use shall be
23 through highly efficient practices and such use shall be metered or
24 otherwise measured. For trust water rights acquired through the
25 investment of state funds, the following shall apply:

26 (a) The department may authorize use of the trust water right for
27 offstream purposes if the water is in excess of or not practically
28 available for meeting instream flow needs;

29 (b) If the department determines that it has a trust water right
30 available for an offstream use, it shall publish a notice regarding the
31 availability that requests submission of proposals for use of the water
32 in a newspaper of general circulation in the county in which the trust
33 water right is located;

34 (c) Use of the trust water right for offstream purposes shall occur
35 through a leasehold arrangement between the department and the user.
36 The terms of such lease shall be based on the market value of water in
37 the region in which the trust water right exists; and

1 (d) The proceeds of such leases shall be deposited in the state
2 reclamation revolving account established by chapter 89.16 RCW.
3 Subject to legislative appropriation, the revenues from proceeds of
4 such leases shall be used to acquire trust water rights in accordance
5 with this chapter.

6 (3) The department shall issue a water right certificate in the
7 name of the state of Washington for each permanent trust water right
8 conveyed to the state indicating the reach or reaches of the stream,
9 the quantity, and the use or uses to which it may be applied. A
10 superseding certificate shall be issued that specifies the amount of
11 water the water right holder would continue to be entitled to as a
12 result of the water conservation project. The superseding certificate
13 shall retain the same priority date as the original right. For
14 nonpermanent conveyances, the department shall issue certificates or
15 such other instruments as are necessary to reflect the changes in
16 purpose or place of use or point of diversion or withdrawal. Water
17 rights for which such nonpermanent conveyances are arranged shall not
18 be subject to relinquishment for nonuse.

19 (~~(3)~~) (4) A trust water right retains the same priority date as
20 the water right from which it originated, but as between them the trust
21 right shall be deemed to be inferior in priority unless otherwise
22 specified by an agreement between the state and the party holding the
23 original right.

24 (~~(4)~~) (5) Exercise of a trust water right may be authorized only
25 if the department first determines that neither water rights existing
26 at the time the trust water right is established, nor the public
27 interest will be impaired. If impairment becomes apparent during the
28 time a trust water right is being exercised, the department shall cease
29 or modify the use of the trust water right to eliminate the impairment.
30 If the department chooses to continue exercising a trust water right
31 after impairment of another right becomes evident, the department shall
32 at its own expense provide an alternate source of water for the
33 affected right holder.

34 (~~(5)~~) (6) Before any trust water right is created or modified,
35 the department shall, at a minimum, require that a notice be published
36 in a newspaper of general circulation published in the county or
37 counties in which the storage, diversion, and use are to be made, and
38 in other newspapers as the department determines is necessary, once a
39 week for two consecutive weeks. At the same time the department shall

1 send a notice containing pertinent information to all appropriate state
2 agencies, potentially affected local governments and federally
3 recognized tribal governments, and other interested parties.

4 ~~((+6))~~ (7) RCW 90.14.140 through 90.14.230 have no applicability
5 to trust water rights held by the department under this chapter or
6 exercised under this section.

7 ~~((+7))~~ (8) RCW 90.03.380 has no applicability to trust water
8 rights acquired by the state ~~((through the funding of water
9 conservation projects))~~ under this chapter.

10 **Sec. 72.** RCW 90.42.080 and 1993 c 98 s 4 are each amended to read
11 as follows:

12 (1) The state may acquire all or portions of existing water rights,
13 by purchase, gift, or other appropriate means other than by
14 condemnation, from any person or entity or combination of persons or
15 entities. Once acquired, such rights are trust water rights.

16 (2) The department may enter into leases, contracts, or such other
17 arrangements with other persons or entities as appropriate, to ensure
18 that trust water rights acquired in accordance with this chapter may be
19 exercised to the fullest possible extent. The purpose of use of a
20 trust water right donated by any person to the state may be specified
21 or limited in accordance with the deed of gift, contract, or other
22 document conveying the water right to the state. The department may
23 refuse to accept a donation if the donor's intended purpose of use
24 would be detrimental to the public interest.

25 (3) Trust water rights may be acquired by the state on a temporary
26 or permanent basis.

27 (4) ~~((The provisions of RCW 90.03.380 and 90.03.390 apply to~~
28 ~~transfers of water rights under this section.~~

29 ~~+5))~~ No funds may be expended for the purchase of water rights by
30 the state pursuant to this section unless specifically appropriated for
31 this purpose by the legislature.

32 **Sec. 73.** RCW 90.14.160 and 1981 c 291 s 1 are each amended to read
33 as follows:

34 Any person entitled to divert or withdraw waters of the state
35 through any appropriation authorized by enactments of the legislature
36 prior to enactment of chapter 117, Laws of 1917, or by custom, or by
37 general adjudication, who abandons the same, or who voluntarily fails,

1 without sufficient cause, to beneficially use all or any part of said
2 right to divert or withdraw for any period of five successive years
3 after the effective date of this act, shall relinquish such right or
4 portion thereof, and said right or portion thereof shall revert to the
5 state, and the waters affected by said right shall become available for
6 appropriation in accordance with RCW 90.03.250. After June 30, 1994,
7 any water rights relinquished under this section as a result of failure
8 to use water beneficially shall be dedicated to and managed in
9 accordance with the trust water rights program established under
10 chapter 90.42 RCW if the relinquished water right is needed and can be
11 used to protect or restore instream flows.

12 **Sec. 74.** RCW 90.14.170 and 1967 c 233 s 17 are each amended to
13 read as follows:

14 Any person entitled to divert or withdraw waters of the state by
15 virtue of his or her ownership of land abutting a stream, lake, or
16 watercourse, who abandons the same, or who voluntarily fails, without
17 sufficient cause, to beneficially use all or any part of said right to
18 withdraw or divert said water for any period of five successive years
19 after (~~the effective date of this act~~) July 1, 1967, shall relinquish
20 such right or portion thereof, and such right or portion thereof shall
21 revert to the state, and the waters affected by said right shall become
22 available for appropriation in accordance with the provisions of RCW
23 90.03.250. After June 30, 1994, any water rights relinquished under
24 this section as a result of failure to use water beneficially shall be
25 dedicated to and managed in accordance with the trust water rights
26 program established under chapter 90.42 RCW if the relinquished water
27 right is needed and can be used to protect or restore instream flows.

28 **Sec. 75.** RCW 90.14.180 and 1987 c 109 s 101 are each amended to
29 read as follows:

30 Any person hereafter entitled to divert or withdraw waters of the
31 state through an appropriation authorized under RCW 90.03.330,
32 90.44.080, or 90.44.090 who abandons the same, or who voluntarily
33 fails, without sufficient cause, to beneficially use all or any part of
34 said right to withdraw for any period of five successive years shall
35 relinquish such right or portion thereof, and such right or portion
36 thereof shall revert to the state, and the waters affected by said
37 right shall become available for appropriation in accordance with RCW

1 90.03.250. After June 30, 1994, any water rights relinquished under
2 this section as a result of failure to use water beneficially shall be
3 dedicated to and managed in accordance with the trust water rights
4 program established under chapter 90.42 RCW if the relinquished water
5 right is needed and can be used to protect or restore instream flows.
6 All certificates hereafter issued by the department of ecology pursuant
7 to RCW 90.03.330 shall expressly incorporate this section by reference.

8 **Sec. 76.** RCW 90.54.180 and 1989 c 348 s 5 are each amended to read
9 as follows:

10 Consistent with the fundamentals of water resource policy set forth
11 in this chapter, state and local governments, individuals,
12 corporations, groups and other entities shall ~~((be encouraged to))~~
13 carry out water use efficiency and conservation programs and practices
14 consistent with the following:

15 (1) Water efficiency and conservation programs ~~((should utilize))~~
16 shall use an appropriate mix of economic incentives, cost share
17 programs, regulatory programs, and technical and public information
18 efforts. Programs which encourage voluntary participation are
19 preferred.

20 (2) Increased water use efficiency ~~((should))~~ shall receive
21 consideration as a potential source of water in state and local water
22 resource planning and water supply planning processes. In determining
23 the cost-effectiveness of alternative water sources, consideration
24 ~~((should))~~ shall be given to the benefits of conservation~~((,))~~ and
25 waste water recycling~~((, and impoundment of waters))~~.

26 (3) In determining the cost-effectiveness of alternative water
27 sources, full consideration ~~((should))~~ shall be given to ~~((the benefits~~
28 ~~of))~~ storage of water which can reduce the damage to stream banks and
29 property, increase the utilization of land, provide water for
30 municipal, industrial, agricultural, and other beneficial uses, provide
31 for the generation of electric power from renewable resources, and
32 improve stream flow regimes for fishery and other instream uses.

33 (4) Entities receiving state financial assistance for construction
34 of water source expansion or acquisition of new sources shall develop,
35 and implement if cost-effective, a water use efficiency and
36 conservation element of a water supply plan pursuant to RCW
37 43.20.230(1).

1 (5) State programs to improve water use efficiency (~~should~~) shall
2 focus on those areas of the state in which water is overappropriated;
3 areas that experience diminished streamflows or aquifer levels; and
4 areas where projected water needs, including those for instream flows,
5 exceed available supplies.

6 (6) Existing and future generations of citizens of the state of
7 Washington (~~should~~) shall be made aware of the importance of the
8 state's water resources and the need for wise and efficient use and
9 development of this vital resource. In order to increase this
10 awareness, state agencies (~~should~~) shall integrate public education
11 on increasing water use efficiency into existing public information
12 efforts. This effort shall be coordinated with other levels of
13 government, including local governments and Indian tribes.

14 **Sec. 77.** RCW 90.03.340 and 1987 c 109 s 90 are each amended to
15 read as follows:

16 After January 1, 1995, the priority date of a water right acquired
17 by appropriation (~~shall relate back to~~) is the date (~~of filing of~~
18 the original)) the completed application form for the water right is
19 filed with the department. For the purposes of this section and RCW
20 90.03.270, a completed application form is one that contains all the
21 information requested on the form and is accompanied by the application
22 fee.

23 **Sec. 78.** RCW 90.03.270 and 1987 c 109 s 85 are each amended to
24 read as follows:

25 Upon receipt of (~~an~~) a completed water right application form it
26 shall be the duty of the department to (~~make an endorsement thereon of~~
27 ~~the~~) date (~~of its receipt, and to~~) stamp and keep a record of
28 (~~same~~) it. If (~~upon examination,~~) an application form is filed
29 with the department but the information requested on the application
30 form is (~~found to be defective,~~) not complete or the form is not
31 accompanied by the proper application fee, the form and any application
32 fee filed with it shall be returned to the applicant (~~for correction~~
33 or completion,) and the date and the reasons for the return thereof
34 shall be (~~endorsed thereon and made a record in his office. No~~
35 ~~application shall lose its priority of filing on account of such~~
36 ~~defects, provided acceptable maps, drawings and such data as is~~
37 ~~required by the department shall be filed with the department within~~

1 ~~such reasonable time as it shall require~~) noted in the department's
2 records and in a letter returning the form. The department may not
3 require an applicant to provide information in support of an
4 application for a water right permit that is not directly necessary for
5 the department's investigations, determinations, or findings regarding
6 that particular application.

7 **Sec. 79.** RCW 90.03.280 and 1988 c 36 s 65 are each amended to read
8 as follows:

9 (~~Upon receipt of a proper application,~~) The department shall
10 instruct the applicant to publish notice (~~thereof~~) in a form and
11 within a time prescribed by (~~him~~) the department in a newspaper of
12 general circulation published in the county or counties in which the
13 storage, diversion or withdrawal, and use is to be made, and in such
14 other newspapers as (~~he~~) the department may direct, once a week for
15 two consecutive weeks. The notice shall include information pertinent
16 to the proposed appropriation, including the location, the source, the
17 purpose or purposes of use, and the quantity proposed to be diverted or
18 withdrawn. The notice shall state that persons wishing to protest the
19 proposed appropriation must do so in writing to the department within
20 thirty days of the last date of publication of the notice. In order to
21 be considered by the department, a protest must be received by the
22 department within thirty days of the last date of publication of the
23 notice. Upon receipt by the department of (~~an~~) a complete
24 application it shall send notice thereof containing pertinent
25 information to the director of (~~fisheries and the director of~~) fish
26 and wildlife.

27 NEW SECTION. **Sec. 80.** A new section is added to chapter 43.21B
28 RCW to read as follows:

29 In any proceeding before the pollution control hearings board
30 challenging a decision of the department relating to the issuance,
31 conditioning, transfer, amendment, extension, or denial of a water
32 right permit or certificate under Title 90 RCW, the burden of proof is
33 on the person filing the appeal.

34 NEW SECTION. **Sec. 81.** A new section is added to chapter 43.21B
35 RCW to read as follows:

1 Only a person with standing as defined in RCW 34.05.530 may appeal
2 to the pollution control hearings board a decision of the department
3 relating to the issuance, conditioning, transfer, amendment, or denial
4 of a water right permit or certificate under Title 90 RCW.

5 NEW SECTION. **Sec. 82.** (1) The department shall develop a general
6 permit system for appropriating water for nonconsumptive, nonbypass
7 uses and a general permit system for appropriating marine waters for
8 use on upland sites. These systems shall be designed and used to
9 streamline the consideration of applications for nonconsumptive,
10 nonbypass water uses and marine water uses that by their nature do not
11 raise issues regarding water availability or the impairment of other
12 water rights. The evaluation and report required for an application by
13 RCW 90.03.290 are not required for applications processed under such a
14 general permit system.

15 (2) The department shall establish the general permit systems by
16 rules adopted in accordance with chapter 34.05 RCW. Before the
17 adoption of rules for such a system, no fewer than four public hearings
18 shall be held at various locations around the state. The hearings on
19 the marine water general permit shall be held in appropriate coastal
20 communities. The rules shall identify criteria for proposed uses of
21 water for which applications may be processed under each system and
22 shall establish procedures for filing and processing applications under
23 the general permit systems.

24 (3) Unless the context clearly requires otherwise, the following
25 definitions apply throughout this section.

26 (a) A "nonconsumptive, nonbypass use" means a use of water in which
27 water is diverted from a stream or withdrawn from an aquifer and
28 following its use is discharged back to or very near the point of
29 diversion or withdrawal without diminishing quantity or quality.

30 (b) "Without diminishing quality" means that, before being
31 discharged back to its source, the water being discharged meets state
32 water quality standards adopted under chapter 90.48 RCW.

33 (c) "Marine waters" means the coastal saline waters under the
34 jurisdiction of the state of Washington.

35 NEW SECTION. **Sec. 83.** (1) An application for appropriating water
36 under a general permit system established under section 80 of this act
37 shall be made on a form provided by the department.

1 (2) Within sixty days of the publication of a notice for such an
2 application in accordance with RCW 90.03.280, the department shall
3 determine whether the proposed use is eligible to be processed under
4 the general permit system.

5 (3) If the department determines the proposed use is eligible to be
6 processed under the system, the application shall be so processed.

7 (4) If the department determines that the proposed use is not
8 eligible for such processing, the department shall explain to the
9 applicant in writing the reasons for its determination.

10 (5) If the proposed use is not eligible for processing under
11 subsection (2) of this section and the department finds that the
12 information contained in the application form substantially satisfies
13 the information requirements for an application for a use that would
14 normally be filed for processing an application outside the general
15 permit system, the department shall notify the applicant of its finding
16 and shall process the application as if it were filed for processing
17 outside the general permit system.

18 (6) If the department finds that the information does not
19 substantially satisfy the requirements for processing an application
20 outside the general permit system, the application shall be considered
21 to be incomplete for such processing and the applicant shall be so
22 notified.

23 **Sec. 84.** RCW 90.03.290 and 1988 c 36 s 66 are each amended to read
24 as follows:

25 (1) When an application complying with the provisions of this
26 chapter and with the rules (~~and regulations~~) of the department has
27 been filed, the (~~same~~) application shall be placed on record with the
28 department, and it shall be (~~its~~) the department's duty to
29 (~~investigate the application, and~~) determine (a) what water, if any,
30 is available for appropriation, (and find and determine) (b) to what
31 beneficial use or uses it can be applied, (c) whether any other water
32 right would be impaired, and (d) whether the public interest would be
33 impaired by the proposed appropriation.

34 (2) The department shall investigate the application. The
35 applicant shall provide a completed application form. In addition to
36 providing the information requested on the form, the applicant shall
37 provide such information as may be required for the department's
38 investigation, determination, and findings regarding the application

1 and may provide additional information. Any such information provided
2 by the applicant shall satisfy the protocols, including study plans and
3 criteria, established by the department for obtaining and providing the
4 information. If an applicant provides the information and the
5 protocols set by the department for obtaining and providing the
6 information have been satisfied, the department shall review the
7 information and may take actions to verify that the information is
8 accurate. The department shall not, except to replace inaccurate
9 information, take actions that would constitute obtaining major
10 portions of the information.

11 (3) With regard to an application:

12 (a) If it is proposed to appropriate water for irrigation purposes,
13 the department shall investigate, determine, and find what lands are
14 capable of irrigation by means of water found available for
15 appropriation((-))i

16 (b) If it is proposed to appropriate water for the purpose of power
17 development, the department shall investigate, determine, and find
18 whether the proposed development is likely to prove detrimental to the
19 public interest, having in mind the highest feasible use of the waters
20 belonging to the public. The department shall also determine whether
21 the application is consistent with the state comprehensive hydropower
22 plan developed under RCW 90.54.800.

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

1 (5) The department shall make and file as part of the record in the
2 matter, written findings of fact concerning all things investigated,
3 and if it ~~((shall))~~ finds that there is water available for
4 appropriation for a beneficial use, and the appropriation ~~((thereof))~~
5 as proposed in the application will not impair existing rights or be
6 detrimental to the public welfare, it shall issue a permit stating the
7 amount of water to which the applicant ~~((shall-be))~~ is entitled and the
8 beneficial use or uses to which it may be applied~~((:—PROVIDED, That~~
9 ~~where))~~. If the water applied for is to be used for irrigation
10 purposes, it shall become appurtenant only to such land as may be
11 reclaimed ~~((thereby))~~ to the full extent of the soil for agricultural
12 purposes. ~~((But where))~~

13 (6) If the department determines that the proposed use would not be
14 a beneficial use of water as defined in RCW 90.54.020(1); there is no
15 unappropriated water in the proposed source of supply~~((r))~~; or
16 ~~((where))~~ the proposed use conflicts with existing rights, or threatens
17 to prove detrimental to the public interest, having due regard to the
18 highest feasible development of the use of the waters belonging to the
19 public, ~~((it shall be duty of))~~ the department ~~((to))~~ shall reject
20 ~~((such))~~ the application and ~~((to))~~ refuse to issue the permit ~~((asked~~
21 ~~for))~~.

22 (7) If the permit is refused only because of conflict with existing
23 water rights or permits and ~~((such))~~ the applicant ~~((shall))~~ acquires
24 ~~((same))~~ those rights or permits by purchase or condemnation under RCW
25 90.03.040, the department may ~~((thereupon))~~ grant ~~((such))~~ the permit.
26 Any application may be approved for a less amount of water than that
27 applied for, if there exists substantial reason ~~((therefor))~~, and in
28 any event shall not be approved for more water than can be applied to
29 beneficial use for the purposes named in the application.

30 (8) In determining whether or not a permit shall issue ~~((upon any~~
31 ~~application, it shall be the duty of))~~, the department ~~((to))~~ shall
32 investigate all facts relevant and material to the application. After
33 the department approves ~~((said))~~ an application in whole or in part and
34 before any permit ~~((shall-be))~~ is issued ~~((thereon))~~ to the applicant,
35 ~~((such))~~ the applicant shall pay the fee provided in RCW 90.03.470~~((:—~~
36 ~~PROVIDED-FURTHER, That))~~.

37 (9) In the event a permit is issued by the department upon any
38 application in which the department of fish and wildlife has expressed
39 an interest, ~~((it shall be its duty to))~~ the department shall notify

1 ((both)) the ((director of fisheries and the director of)) department
2 of fish and wildlife ((of such issuance)).

3 **Sec. 85.** RCW 90.03.320 and 1987 c 109 s 67 are each amended to
4 read as follows:

5 (1) Actual construction work shall be commenced on any project for
6 which permit has been granted within such reasonable time as shall be
7 prescribed by the department, and shall thereafter be prosecuted with
8 diligence and completed within the time prescribed by the department.
9 The department, in fixing the time for the commencement of the work, or
10 for the completion thereof and the application of the water to the
11 beneficial use prescribed in the permit, shall take into consideration
12 the cost and magnitude of the project and the engineering and physical
13 features to be encountered, and shall allow such time as shall be
14 reasonable and just under the conditions then existing, having due
15 regard for the public welfare and public interests affected: and, for
16 good cause shown, it shall extend the time or times fixed as aforesaid,
17 and shall grant such further period or periods as may be reasonably
18 necessary, having due regard to the good faith of the applicant and the
19 public interests affected.

20 (2) For purposes of this section, good cause includes but is not
21 limited to the following:

22 (a) Active service in the armed forces of the United States during
23 military crisis;

24 (b) Nonvoluntary service in the armed forces of the United States;

25 (c) The operation of legal proceedings;

26 (d) Delays in securing other permits necessary to proceed with the
27 development;

28 (e) A single transfer in ownership of the property; or

29 (f) Encountering unanticipated physical impediments to
30 construction.

31 (3) If the terms of the permit, transfer, or change authorization
32 or extension thereof, are not complied with the department shall give
33 notice by ((registered)) certified mail that ((such)) the permit will
34 be canceled unless the ((holders thereof shall)) permittee shows cause
35 within sixty days why the ((same)) permit should not be ((so))
36 canceled. If cause ((be)) is not shown, ((said)) the permit shall be
37 canceled.

1 **Sec. 86.** RCW 90.03.380 and 1991 c 347 s 15 are each amended to
2 read as follows:

3 (1) The right to the use of water which has been applied to a
4 beneficial use in the state shall be and remain appurtenant to the land
5 or place upon which the same is used(~~(:—PROVIDED, HOWEVER, That~~
6 ~~said))~~). However, all or a portion of a water right may be transferred
7 to another ((~~or to others~~)) person or persons and become appurtenant to
8 any other land or place of use without loss of priority of right
9 ((~~theretofore established~~)) if ((~~such change~~)) the transfer can be made
10 without detriment or injury to existing rights, the natural
11 environment, or the public interest. Any part of a water right permit
12 that has been perfected may also be transferred to a different place of
13 use in this manner, however, a change in ownership of a permit or
14 portion thereof must be recorded through an assignment in accordance
15 with RCW 90.03.310.

16 (2) The point of diversion or withdrawal of water for beneficial
17 use ((~~or~~)), the purpose of use, or the season of use under an existing
18 water right or permit may be changed, if ((~~such~~)) the change can be
19 made without detriment or injury to existing water rights, the natural
20 environment, or the public interest.

21 (3) The source of water for an existing water right or permit may
22 be changed from a surface water diversion to a ground water withdrawal
23 or vice versa if the two sources are in direct hydraulic continuity and
24 if the change can be made without detriment or injury to existing water
25 rights or the public interest.

26 (4) The perfected portions of a permit may be transferred or
27 changed. For a certificate, only the amount of water that has been
28 beneficially used in accordance with the laws of the state may be
29 transferred or changed. Any excess quantities shall be relinquished as
30 provided by chapter 90.14 RCW. When a water right is transferred or
31 changed, the amount diverted or withdrawn for beneficial use may not be
32 enlarged as to annual quantity.

33 (5) A water right claim filed in accordance with chapter 90.14 RCW
34 may be transferred or changed in the same manner authorized under this
35 section for a certificated water right. For a claim, only the amount
36 of water that has been beneficially used in accordance with state law
37 may be transferred or changed. In evaluating a transfer or change
38 request on a claim, the department shall determine the probable
39 existence and legal extent of the right claimed. If the applicant does

1 not accept the department's determination as to quantity or other
2 limiting parameters of the right, the department may refuse to
3 authorize the change or transfer. The department's determination is
4 not binding on any adjudication proceeding under this chapter, but may
5 be entered as prima facie evidence in such a proceeding.

6 (6) A riparian stockwater use in which stock drink directly from
7 the watercourse may be changed at the request of the applicant to a
8 diversionary appropriation to facilitate efforts to protect and restore
9 stream banks and riparian vegetation. Because of the overriding public
10 interest in stream bank and riparian zone protection and restoration,
11 the fees normally required for amendment of a water right are waived
12 for such changes.

13 (7) Before any transfer or change of ((such)) a water right ((to
14 use water or change of the point of diversion of water or change of
15 purpose of use)) or permit can be made, any person having an interest
16 in the transfer or change((,)) shall file a written application
17 ((therefor)) with the department((, and said application)) on a form
18 provided by the department.

19 (8) A person proposing to replace a point of diversion of surface
20 water shall not be required to file an application if the diversion
21 point is moved no more than one-quarter mile from its original location
22 and no other water rights will be impaired. At least fifteen days
23 prior to construction of a replacement diversion point, the water right
24 holder shall inform the department in writing of the intention to move
25 the diversion point. If the department determines that the change may
26 impair an existing water right or the public interest, the department
27 has fifteen days from the date it receives notice of the intention of
28 the water right holder to replace a point of diversion under this
29 subsection to order that the transfer shall occur only upon the
30 department's approval of an application to change the point of
31 diversion.

32 (9) Authorization for the requested transfer or change shall not be
33 granted until notice of ((said)) the application ((shall be)) has been
34 published as provided in RCW 90.03.280.

35 (10) If it ((shall)) appears that ((such)) the transfer or ((such))
36 change may be made without injury or detriment to existing rights, the
37 natural environment, or the public interest, the department shall issue
38 to the applicant an authorization to proceed with the transfer or
39 change. The department may include in its authorization any necessary

1 conditions or limitations under which the transfer or change may be
2 made, including a reasonable time for completion. The time may be
3 extended upon request and a showing of good cause in accordance with
4 RCW 90.03.320 and 90.03.470. If the person authorized to make a
5 transfer or change of right fails to do so within the time allowed,
6 including extensions granted for good cause, the department shall
7 cancel the authorization and the water right or permit shall revert to
8 its original form and substance.

9 (11) If the department determines that the proposed transfer or
10 change may periodically operate to impair an existing right, the
11 department's authorization may be made contingent on the proponent's
12 willingness to subordinate the use to the potentially impaired right or
13 rights and the authorization shall be so conditioned.

14 (12) The person authorized to make the transfer or change shall
15 notify the department upon completion of the transfer or change. After
16 verifying that the transfer or change has been completed in accordance
17 with its authorization, the department shall issue to those persons
18 having an interest in the resulting water right or rights a
19 certificate, certificate of change, or superseding certificate as
20 appropriate in duplicate ((granting)) that reflects the nature of the
21 water right ((for such transfer or for such change of point of
22 diversion or of use)) or rights as transferred or changed. The
23 certificate or certificates so issued shall be filed and be made a
24 record with the department and the duplicate certificate issued to the
25 applicant ((may)) shall be filed with the county auditor in like manner
26 and with the same effect as provided in the original certificate or
27 permit to divert water.

28 If an application for change proposes to transfer water rights from
29 one irrigation district to another, the department shall, before
30 publication of notice, receive concurrence from each of the irrigation
31 districts that such transfer or change will not adversely affect the
32 ability to deliver water to other landowners or impair the financial
33 integrity of either of the districts.

34 A change in place of use by an individual water user or users of
35 water provided by an irrigation district need only receive approval for
36 the change from the board of directors of the district if the use of
37 water continues within the irrigation district.

1 This section shall not apply to trust water rights acquired by the
2 state through the funding of water conservation projects under chapter
3 90.38 RCW or RCW 90.42.010 through 90.42.070.

4 **Sec. 87.** RCW 90.03.390 and 1991 c 350 s 3 are each amended to read
5 as follows:

6 ~~((RCW 90.03.380 shall not be construed to prevent))~~ (1) A water
7 ~~((users from making))~~ right holder may make a seasonal or temporary
8 change of ~~((point of diversion or place of use of water when such))~~ a
9 water right if the change can be made without detriment to existing
10 rights, but in no case shall such change be made without the permission
11 of ~~((the water master of the district in which such proposed change is~~
12 ~~located, or of))~~ the department. ~~((Nor shall RCW 90.03.380 be~~
13 ~~construed to prevent construction of emergency interties between public~~
14 ~~water systems to permit exchange of water during short term emergency~~
15 ~~situations, or rotation in the use of water for bringing))~~

16 (2) To bring about a more economical use of the available supply,
17 ~~((provided however, that the department of health in consultation with~~
18 ~~the department of ecology shall adopt rules or develop written~~
19 ~~guidelines setting forth standards for determining when a short term~~
20 ~~emergency exists and the circumstances in which emergency interties are~~
21 ~~permitted. The rules or guidelines shall be consistent with the~~
22 ~~procedures established in RCW 43.83B.400 through 43.83B.420.))~~ water
23 users owning lands to which water rights are attached may rotate in the
24 use of water to which they are collectively entitled, or an individual
25 water user having lands to which are attached water rights of a
26 different priority, may in like manner rotate in use when ((such))
27 rotation can be made without detriment to other existing water rights,
28 and has the approval of the ((water master or)) department.

29 (3) A person or persons wishing to make a seasonal or temporary
30 change or to rotate use in the manner provided in this section shall
31 file an application with the department on a form provided by the
32 department. The department shall waive the notice provisions of RCW
33 90.03.280 unless it has reason to believe that the water rights of
34 other persons are likely to be affected by the proposed change. The
35 department shall respond to the request in writing setting forth its
36 approval or denial, including the reason for denial. The department
37 shall retain a record of its decision as part of the records of the
38 water right or rights being changed. To the extent practicable, the

1 department shall expedite its consideration of requests under this
2 section.

3 **Sec. 88.** RCW 90.44.100 and 1987 c 109 s 113 are each amended to
4 read as follows:

5 ~~((After an application to, and upon the issuance by the department~~
6 ~~of an amendment to the appropriate permit or certificate of ground~~
7 ~~water right, the holder of a valid right to withdraw public ground~~
8 ~~waters may, without losing his priority of right, construct wells or~~
9 ~~other means of withdrawal at a new location in substitution for or in~~
10 ~~addition to those at the original location, or he may change the manner~~
11 ~~or the place of use of the water:— PROVIDED, HOWEVER, That such~~
12 ~~amendment shall be issued only after publication of notice of the~~
13 ~~application and findings as prescribed in the case of an original~~
14 ~~application.— Such amendment shall be issued by the department only on~~
15 ~~the conditions that:)) (1) ((The)) A ground water permit or certificate
16 may be transferred or changed in the manner provided in RCW 90.03.380
17 if:~~

18 (a) Any additional or substitute well or wells shall tap the same
19 body of public ground water as the original well or wells;

20 ~~((+2))~~ (b) Use of the original well or wells shall be discontinued
21 upon construction of the substitute well or wells;

22 ~~((+3))~~ (c) The construction of an additional well or wells shall
23 not enlarge the right conveyed by the original permit or certificate;
24 and

25 ~~((+4))~~ (d) Other existing rights shall not be impaired.

26 (2) The department may specify an approved manner of construction
27 and shall require a showing of compliance with the terms of the
28 amendment, as provided in RCW 90.44.080 in the case of an original
29 permit.

30 (3) No authorization from the department is required for
31 construction of a substitute well of the same size, depth, and capacity
32 that will tap the same aquifer as the original well if the new well is
33 within one-quarter mile of the original well and if the well being
34 replaced is properly decommissioned in accordance with chapter 18.104
35 RCW. At least fifteen days before the construction of a substitute
36 well, the well owner shall notify the department in writing of the
37 intent to replace the original well and to describe the change in
38 location. If the department determines that the change may impair an

1 existing water right or the public interest, the department has fifteen
2 days from the date it receives notice of the intention of the water
3 right holder to replace a well under this subsection to order that the
4 change shall occur only upon the department's approval of an
5 application to change the point of withdrawal.

6 **Sec. 89.** RCW 90.14.190 and 1987 c 109 s 14 are each amended to
7 read as follows:

8 Any person feeling aggrieved by any decision of the department of
9 ecology may have the same reviewed pursuant to RCW 43.21B.310. In any
10 such review, the findings of fact as set forth in the report of the
11 department of ecology shall be prima facie evidence of the fact of any
12 waiver or relinquishment of a water right or portion thereof. If the
13 hearings board affirms the decision of the department, a party seeks
14 review in superior court of that hearings board decision pursuant to
15 chapter 34.05 RCW, and the court determines that the party was injured
16 by an arbitrary(~~(7)~~) or capricious(~~(7, or, erroneous)~~) order of the
17 department, the court may award reasonable attorneys' fees.

18 NEW SECTION. **Sec. 90.** Upon transfer of the ownership of a water
19 right, the new owner shall inform the department of the transfer in
20 writing. The department shall update its records regarding current
21 ownership of the water right and shall acknowledge the ownership
22 transfer in writing to the new owner.

23 NEW SECTION. **Sec. 91.** Sections 2 through 13, 15 through 19, 25
24 through 27, 29, 31, 41, 42, 44, 82, 83, and 90 of this act are each
25 added to chapter 90.03 RCW.

26 NEW SECTION. **Sec. 92.** The following acts or parts of acts are
27 each repealed:

- 28 (1) RCW 90.03.110 and 1987 c 109 s 72 & 1917 c 117 s 14;
- 29 (2) RCW 90.03.120 and 1987 c 109 s 73, 1977 ex.s. c 357 s 1, & 1917
30 c 117 s 15;
- 31 (3) RCW 90.03.140 and 1987 c 109 s 75, 1929 c 122 s 2, & 1917 c 117
32 s 17;
- 33 (4) RCW 90.03.160 and 1989 c 80 s 1, 1987 c 109 s 76, & 1917 c 117
34 s 19;
- 35 (5) RCW 90.03.190 and 1987 c 109 s 78 & 1917 c 117 s 22;

- 1 (6) RCW 90.03.200 and 1988 c 202 s 91, 1987 c 109 s 79, 1971 c 81
2 s 176, & 1917 c 117 s 23;
- 3 (7) RCW 90.03.243 and 1982 c 15 s 1;
- 4 (8) RCW 90.38.005 and 1989 c 429 s 1;
- 5 (9) RCW 90.38.010 and 1989 c 429 s 2;
- 6 (10) RCW 90.38.020 and 1989 c 429 s 3;
- 7 (11) RCW 90.38.030 and 1989 c 429 s 4;
- 8 (12) RCW 90.38.040 and 1989 c 429 s 5;
- 9 (13) RCW 90.38.050 and 1989 c 429 s 6;
- 10 (14) RCW 90.38.900 and 1989 c 429 s 7;
- 11 (15) RCW 90.38.901 and 1989 c 429 s 8; and
- 12 (16) RCW 90.38.902 and 1989 c 429 s 9.

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