

2 **SHB 1791 - H AMD 275 ADOPTED 3/13/95**
3 By Representatives Chandler and Mastin

4
5 Strike everything after the enacting clause and insert the
6 following:

7 **"PART I**
8 **WATER RESOURCE COMMISSIONS**

9 NEW SECTION. **Sec. 1.** The legislature finds that balanced
10 administration and management of the state water resources is of
11 paramount importance to the citizens of the state. The legislature
12 finds that regional differences in water resource conditions require
13 greater consideration in the development and administration of water
14 resource policy. The legislature finds that to effectively take
15 regional differences into consideration, the decision-making authority
16 needs to be based on water resource plans developed by local elected
17 officials and interested persons from various regions of the state.

18 It is the intent of the legislature to establish two state water
19 resources commissions. Further, it is the direction of the legislature
20 that the commissions implement programs that are balanced with the
21 interests of all sectors of the state's residents taken in account.

22 It is further the intent of the legislature that all existing water
23 rights be protected and not diminished by the actions of the state and
24 that the principles of the prior appropriation doctrine of western
25 water law remain unchanged by this enactment (chapter . . . , Laws of
26 1995).

27 NEW SECTION. **Sec. 2.** The definitions in this section apply
28 throughout this chapter.

29 (1) "Commission" means the western or eastern Washington water
30 resource commissions established pursuant to this chapter.

31 (2) "Water supply special purpose district" means a water, combined
32 water-sewer, irrigation, reclamation, or public utility district that
33 provides water to persons or other water users within the district.

34 (3) "State engineer" means the person hired by the commissions to

1 administer the state engineer's office and the water resource programs
2 and responsibilities assigned to that office.

3 (4) "WRIA" means a water resource inventory area established in WAC
4 173-500-030, as it exists on January 1, 1995.

5 NEW SECTION. **Sec. 3.** (1) There is hereby created and established
6 two state commissions to be known and designated jointly as the
7 Washington water resources commissions, hereinafter referred to as the
8 commissions. One commission, to be known as the eastern Washington
9 water resources commission, shall have jurisdiction throughout the area
10 of the state east of the crest of the Cascade mountains and including
11 all of Skamania county. One commission, to be known as the western
12 Washington water resources commission, shall have jurisdiction
13 throughout the area of the state west of the crest of the Cascade
14 mountains, exclusive of Skamania county.

15 (2) The members of a commission shall serve four-year terms. Each
16 of the commissioners shall hold office until his or her successor is
17 appointed. The commissioners shall biennially choose a chair from
18 among themselves.

19 (3) Each commission shall be composed of eight members nominated by
20 the counties and appointed by the governor as provided in this section.

21 (a) The counties within the jurisdiction of the eastern Washington
22 water resources commission are divided into two groups: (i) Benton,
23 Chelan, Douglas, Franklin, Grant, Kittitas, Klickitat, Okanogan,
24 Skamania, and Yakima counties; and (ii) the remaining counties within
25 the jurisdiction of the commission. The counties assigned to a
26 particular group shall collectively nominate six persons for
27 appointment to the eastern Washington water resources commission and
28 submit this list of nominations to the governor. The governor shall
29 appoint four members of the commission from each of the two lists
30 submitted in this manner.

31 (b) The counties within the jurisdiction of the western Washington
32 water resources commission are divided into four groups: (i) King,
33 Pierce, and Snohomish counties; (ii) Island, San Juan, Skagit, and
34 Whatcom counties; (iii) Clallam, Jefferson, Kitsap, Mason, and Grays
35 Harbor counties; and (iv) the remaining counties within the
36 jurisdiction of the commission. Nominations for appointment to the
37 western Washington water resources commission from each group shall be
38 submitted to the governor.

1 (c) Each of the counties listed in (b)(i) of this subsection shall
2 nominate two persons and each of the cities of Seattle, Tacoma, and
3 Everett shall nominate two persons for appointment to the commission
4 and the governor shall appoint five members to the western Washington
5 water resources commission from these nominations.

6 (d) The counties in (b)(ii) of this subsection shall collectively
7 nominate three persons for appointment to the commission and the
8 governor shall appoint one member to the western Washington water
9 resources commission from these nominations. The counties in (b)(iii)
10 of this subsection shall collectively nominate three persons for
11 appointment to the commission and the governor shall appoint one member
12 to the western Washington water resources commission from these
13 nominations. The counties in (b)(iv) of this subsection shall
14 collectively nominate three persons for appointment to the commission
15 and the governor shall appoint one member to the western Washington
16 water resources commission from these nominations.

17 (e) The members of the legislative authorities of the counties
18 assigned to a group by (a) of this subsection or assigned to a group by
19 (b) of this subsection shall convene to nominate persons for
20 appointment to the eastern or western Washington water resources
21 commission. The counties and the counties and cities in (c) of this
22 subsection shall provide their lists of nominees to the governor not
23 later than thirty days after the effective date of this section. If
24 the counties assigned to a group do not provide nominations within the
25 prescribed time, the governor may make the appointments allocated to
26 the group without nominations. Each county assigned to a group by this
27 subsection (3) for one or more collective nominations shall be entitled
28 to three votes for each nomination and shall divide the votes equally
29 among the members of the legislative authority of the county.
30 Nominations shall be made by a majority vote of all of such members
31 assigned to the group based on the votes allocated to them under this
32 section. The governor shall make all appointments to the commissions
33 within ninety days of the effective date of this section.

34 Nominations and appointments to fill vacancies on the commission
35 shall be made as provided by this section for original appointments to
36 the positions. Such nominations shall be made within sixty days of the
37 date the vacancy is created or the appointment shall be made without
38 nominations. The governor shall appoint a person to fill a vacancy
39 within thirty days of the date the vacancy is created.

1 Nominations and appointments to fill expired terms of office of the
2 members of the commission shall be made as prescribed for nominations
3 and appointments for the initial membership of the commissions. The
4 members of the county legislative authorities shall make nominations
5 sixty days before the expiration of terms of office and the governor
6 shall make appointments not later than the date of the expiration of
7 the terms of office, which appointments shall take effect upon the
8 expiration of those terms.

9 (4) Each person nominated for appointment to a commission shall be
10 knowledgeable about state water law and have at least five years'
11 experience in water resource matters.

12 (5) No elective state official, state officer, or state employee
13 shall be a member of a commission nor may a member of the commission
14 have been such an official, officer, or employee within two years of
15 being appointed to the commission. At the time of their appointment
16 and thereafter during their respective terms of office, the members of
17 the eastern commission shall reside within the eastern jurisdiction and
18 the members of the western commission shall reside within the western
19 jurisdiction. No more than two members of each commission shall reside
20 in the same county.

21 (6) The governor may remove any member of a commission for
22 malfeasance or misfeasance in office or for having at least five
23 unexcused absences during the person's term of office which constitute
24 twenty percent or more of the meetings that have been conducted by the
25 commission during the term. A person's absence from a meeting may be
26 excused: By the chair of the commission if a written request to do so
27 is received by the chair before the meeting from which the member is to
28 be absent; or by a majority vote of the members of the commission at
29 the meeting during which the member is absent.

30 (7) Each member of the commissions may receive reimbursement for
31 travel expenses incurred in the discharge of his or her duties in
32 accordance with RCW 43.03.050 and 43.03.060. Commissions shall operate
33 on a part-time basis and each member shall receive compensation
34 pursuant to RCW 43.03.250. The principal office of each commission
35 shall be located within the jurisdictional boundaries of each
36 commission.

37 NEW SECTION. **Sec. 4.** For actions taken by the commissions
38 jointly, a majority of all of the commissioners shall constitute a

1 quorum. A majority of the members of a commission shall constitute a
2 quorum of the commission for the transaction of any business, for the
3 performance of any duty, or for the exercise of any power of the
4 commission. Any investigation, inquiry, or hearing that a commission
5 has power to undertake or to hold may be undertaken or held by or
6 before any commissioner. All investigations, inquiries, and hearings
7 of a commission, and all findings, orders, or decisions, made by a
8 commissioner, when approved and confirmed by the commission and filed
9 in its office, shall be and be deemed to be the orders or decisions of
10 the commission. All actions of a commission, the commissions jointly,
11 or of a commissioner acting individually under the authority of this
12 section shall be conducted in accordance with the administrative
13 procedure act, chapter 34.05 RCW.

14 NEW SECTION. **Sec. 5.** (1) In addition to the powers, duties, and
15 functions in sections 23 and 24 of this act, the commissions have the
16 following powers and duties:

17 (a) Rule adoption for their joint operation;

18 (b) The commissions, acting jointly, shall appoint the state
19 engineer. The state engineer shall serve at the pleasure of the
20 commissions;

21 (c) The commissions, acting jointly, shall prepare and approve a
22 proposed budget for the commissions and the office of the state
23 engineer;

24 (d) Each commission shall appoint and employ staff as may be
25 necessary for the direct support of the activities of the commission;

26 (e) Pursuant to section 12 of this act, the commissions shall
27 review all water resource plans submitted from within their respective
28 jurisdictions and shall provide advice as to whether the plans are in
29 conflict with state or federal laws;

30 (f) Each commission shall approve or deny all interbasin transfers
31 within its jurisdiction with the advice of the state engineer. The
32 commissions, acting jointly, shall by rule adopt procedures for
33 interbasin transfers, consistent with state law.

34 (2) The commissions, jointly or severally, may adopt rules only:
35 To the extent specifically required by federal law or a court order; to
36 the extent explicitly authorized by state law; or to implement a
37 specific objective of a state statute.

38 (3) The state engineer shall administer the state's water quantity

1 programs on behalf of the commissions through an office of the state
2 engineer which is hereby created. The state engineer shall be the
3 administrator of the office and the supervisor of the employees of the
4 office.

5 NEW SECTION. **Sec. 6.** All proceedings of a commission or of the
6 commissions acting jointly are subject to the open public meetings act,
7 chapter 42.30 RCW. All public records in possession of the commissions
8 and the state engineer shall be subject to chapter 42.17 RCW regarding
9 public records. The commissions shall jointly make and submit to the
10 governor and the legislature a biennial report beginning January 1997
11 containing a statement of the transactions and proceedings of its
12 office, together with the information gathered by the commissions and
13 the state engineer and such other facts, suggestions, and
14 recommendations as the governor may require or the legislature request.

15 NEW SECTION. **Sec. 7.** In exercising the powers, duties, and
16 functions transferred to the state engineer in sections 23 and 24 of
17 this act, the state engineer is encouraged to collect data from
18 available sources, conduct analyses and studies by contract, and
19 conduct field investigations by means of memoranda of understanding
20 with units of local government.

21 Notwithstanding any provision of law transferred to the
22 jurisdiction of the state engineer by chapter . . . , Laws of 1995 (this
23 act), the commissions, a commission, or the state engineer may not:
24 Initiate or conduct WRIA management planning activities except as
25 expressly authorized under section 12 of this act; or establish an
26 instream flow except as required by a WRIA plan adopted under section
27 12 of this act.

28 NEW SECTION. **Sec. 8.** (1) It is the intent of the legislature that
29 water resource planning be done locally, at the watershed level.

30 Of the counties located in whole or in part in a WRIA, the county
31 with the largest population residing within the boundaries of the WRIA
32 is the lead agency for any WRIA planning conducted for that WRIA under
33 this chapter, except as provided in section 9 of this act. Such a
34 county may convene a meeting of the members of the legislative
35 authorities of the counties with territory within a WRIA for the
36 appointment of a WRIA planning unit. The county shall also notify the

1 cities, water supply special purpose districts, and conservation
2 districts with territory within the WRIA that these groups are to meet
3 to appoint their members of the WRIA planning unit. For the purposes
4 of this section and sections 9 and 12 of this act, a county is
5 considered to have territory within a WRIA only if the territory of the
6 county located in the WRIA constitutes at least fifteen percent of the
7 area of the WRIA.

8 (2)(a) One WRIA planning unit shall be appointed for the WRIA as
9 provided by this section or by section 9 of this act for joint WRIA
10 planning. The planning unit shall be composed of: One member from
11 each county with territory in the WRIA representing the county and
12 appointed by the county; one member for each county with territory in
13 the WRIA, but not less than two members, representing cities with
14 territory in the WRIA and appointed jointly by those cities; two
15 members representing all water supply special purpose districts with
16 territory within the WRIA and appointed jointly by those districts; one
17 member representing all conservation districts with territory within
18 the WRIA and appointed jointly by those districts; four members
19 representing the general citizenry, of which at least two shall be
20 holders of water rights, appointed jointly by the counties with
21 territory within the WRIA; and six members representing various special
22 interest groups appointed jointly by the counties with territory within
23 the WRIA.

24 (b) In addition, for a WRIA located within Pierce, King, or
25 Snohomish county, a representative of the largest water purveyor using
26 water from the WRIA shall be an ex officio member of the planning unit
27 whether the principal offices of the purveyor are or are not located
28 within the WRIA.

29 (3) Except for a person who is an ex officio member of the planning
30 unit under subsection (2)(b) of this section, each person appointed to
31 a WRIA planning unit shall have been a resident of the WRIA for at
32 least five years. No state employee or state official may be appointed
33 to the planning unit. In appointing persons to the WRIA planning unit
34 representing special interest groups, the counties shall consider
35 industrial water users, general businesses, hydroelectric and thermal
36 power producers, and irrigated agriculture, nonirrigated agriculture,
37 forestry, recreation, environmental, and fisheries interest groups and
38 other groups with interests in the WRIA, including tribal
39 representatives.

1 (4) In voting to appoint the members of a WRIA planning unit, to
2 approve a WRIA plan under section 12 of this act, or to elect to
3 conduct multi-WRIA planning under section 9 of this act, each county
4 with territory within the WRIA shall have three votes, divided equally
5 among the members of the county's legislative authority and
6 appointments shall be made by majority vote based on the votes
7 allocated under this section. In voting to appoint members of a WRIA
8 planning unit: Each city with territory within the WRIA shall have one
9 vote and appointments shall be made by majority vote of such cities;
10 each water supply special purpose district with territory within the
11 WRIA shall have one vote and appointments shall be made by majority
12 vote of such districts; and each conservation district with territory
13 within the WRIA shall have one vote and appointments shall be made by
14 majority vote of such districts. All appointments shall be made within
15 sixty days of the date the county acting as lead agency in the WRIA
16 notifies the other appointing authorities to convene to make
17 appointments or the appointments shall be made by the counties with
18 territory in the WRIA in the same manner the counties make other
19 appointments. A vacancy on the planning unit shall be filled by
20 appointment in the same manner prescribed for appointing the position
21 that has become vacant.

22 NEW SECTION. **Sec. 9.** (1) Counties convened to make appointments
23 to a WRIA planning unit under section 8 of this act may elect to
24 conduct multi-WRIA planning with the counties with territory in one or
25 more other WRIAs. If the counties with territory in these other WRIAs
26 convene and also elect to conduct such multi-WRIA planning, one
27 planning unit shall be appointed for the multi-WRIA area.

28 (a) The planning unit shall be composed of: Up to one member, as
29 that number is determined by the counties jointly, for each county with
30 territory in the multi-WRIA area representing the counties and
31 appointed by the counties jointly; up to one member, as that number is
32 determined by the cities jointly, for each county with territory in the
33 multi-WRIA area, representing cities with territory in the multi-WRIA
34 area and appointed jointly by those cities; up to three members, as
35 that number is determined by the districts, representing all water
36 supply special purpose districts with territory within the multi-WRIA
37 area and appointed jointly by those districts; up to two members, as
38 that number is determined by the districts, representing all

1 conservation districts with territory within the multi-WRIA area and
2 appointed jointly by those districts; four members representing the
3 general citizenry, of which at least two shall be holders of water
4 rights, appointed jointly by the counties with territory within the
5 multi-WRIA area; and six members representing various special interest
6 groups appointed jointly by the counties with territory within the
7 multi-WRIA area.

8 (b) In addition, for a WRIA located within Pierce, King, or
9 Snohomish county, a representative of the largest water purveyor using
10 water from the multi-WRIA area shall be an ex officio member of the
11 planning unit whether the principal offices of the purveyor are or are
12 not located within the multi-WRIA area.

13 (c) Except for a person who is an ex officio member of the planning
14 unit under subsection (1)(b) of this section, each person appointed to
15 a multi-WRIA planning unit shall have been a resident of the multi-WRIA
16 area for at least five years. No state employee or state official may
17 be appointed to the planning unit. In appointing persons to the multi-
18 WRIA planning unit representing special interest groups the counties
19 shall consider industrial water users, general businesses,
20 hydroelectric and thermal power producers, and irrigated agriculture,
21 nonirrigated agriculture, forestry, recreation, environmental, and
22 fisheries interest groups and other groups with interests in the multi-
23 WRIA area, including tribal representatives.

24 (2) The counties in the multi-WRIA area shall select a county as a
25 lead agency from among those that would qualify as a lead agency in
26 each WRIA. All appointments shall be made within sixty days of the
27 date the county acting as lead agency in the multi-WRIA area notifies
28 the other appointing authorities to convene to make appointments or the
29 appointments shall be made by the counties with territory in the multi-
30 WRIA area in the same manner the counties make other appointments. A
31 vacancy on the planning unit shall be filled by appointment in the same
32 manner prescribed for appointing the position that has become vacant.

33 (3) A planning unit for a multi-WRIA area shall perform all of the
34 functions assigned by this chapter to a WRIA planning unit and is
35 subject to all of the provisions of this chapter that apply to a WRIA
36 planning unit.

37 NEW SECTION. **Sec. 10.** The lead agency shall provide staff support
38 for the work of the WRIA planning unit. Each WRIA planning unit may

1 establish its own methods of operation that are consistent with this
2 chapter and may establish methods for reviewing the operations of its
3 lead agency. Each WRIA planning unit is encouraged to: Consider
4 information and plans that may have been previously developed by other
5 entities in establishing water resource management plans for the WRIA;
6 consider existing data regarding water resources in the WRIA; and, for
7 a WRIA that borders another state, cooperate with local government
8 counterparts in the adjacent state regarding water resource planning.
9 Water resource plans developed under this chapter for a WRIA may not
10 interfere in any manner with a general adjudication of water rights,
11 completed or ongoing. Such a WRIA plan may not in any manner impair,
12 diminish, or interfere with a water right that exists before the
13 adoption of the plan by the appropriate commission under section 12 of
14 this act.

15 All meetings of a WRIA planning unit shall be conducted as public
16 meetings as required for such meetings by the open public meetings act,
17 chapter 42.30 RCW. Some time shall be set aside at the end of each
18 meeting of a WRIA planning unit for public comments.

19 No person who is a member of a WRIA planning unit may designate
20 another to act on behalf of the person as a member or to attend as a
21 member a meeting of the unit on behalf of the person. If a member of
22 a WRIA planning unit is absent from more than five meetings of the WRIA
23 planning unit that constitute twenty percent or more of the meetings
24 that have been conducted by the planning unit while the person is a
25 member of the unit and these absences have not been excused as provided
26 by this section, the member's position on the WRIA planning unit is to
27 be considered vacant. A person's absence from a meeting may be
28 excused: By the chair of the planning unit if a written request to do
29 so is received by the chair before the meeting from which the member is
30 to be absent; or by a majority vote of the members of the planning unit
31 at the meeting during which the member is absent.

32 NEW SECTION. **Sec. 11.** (1) Each WRIA planning unit shall develop
33 a water resource plan. The plan must contain the elements listed in
34 subsection (2) of this section and may include other elements added by
35 the planning unit. Once organized, the first task of the planning unit
36 is to prioritize these elements regarding their importance in the WRIA
37 and in developing a water resource plan for the WRIA. A plan shall not
38 be developed such that its provisions are in conflict with state or

1 federal law.

2 (2) The plan must include the following:

3 (a) A quantitative estimation of how much surface and ground water
4 is in the planning unit using United States geological survey
5 information and other existing sources;

6 (b) A quantitative estimation using existing sources of
7 information, of how much surface and ground water is available for use,
8 both in-stream and out-of-stream, for agricultural, fisheries,
9 recreational, environmental, industrial, municipal, and residential
10 purposes;

11 (c) A quantitative estimation using existing sources of
12 information, of how much surface and ground water is being used, both
13 in-stream and out-of-stream, for agricultural, industrial, fisheries,
14 recreational, environmental, municipal, and residential purposes, and
15 including amounts claimed or permitted for future municipal needs;

16 (d) A quantitative estimation of how much water, approximately, is
17 claimed or permitted, including in-stream flows;

18 (e) A quantitative description of future water-based in-stream and
19 out-of-stream needs in the planning unit, based on projected population
20 and agricultural and other economic growth;

21 (f) Instream flows established prior to January 1, 1995, by rule.
22 Notwithstanding any other provisions of state law, the planning unit
23 will set instream flows as part of the plan for the other rivers,
24 streams, and lakes in the WRIA or combined WRIAs for which flows have
25 not been set and may make adjustments to flows that have already been
26 set. Planning units are encouraged to set the flow levels as soon as
27 is practicable;

28 (g) Management strategies for achieving present and future needs,
29 including:

30 (i) Conservation measures;

31 (ii) Storage enhancements, including modifications to existing
32 reservoirs and new reservoirs;

33 (iii) Market transfers;

34 (iv) In-stream flows;

35 (h) An estimation of hydraulic continuity between ground and
36 surface waters that is to be taken into consideration for the
37 allocation and use of water resources. This estimation shall be based
38 on available data and any data the planning unit may secure with funds
39 other than the funds provided to the unit by the state engineer for

1 WRIA planning;

2 (i) A description of the strategies for plan implementation and the
3 entities responsible for implementing the plan, including but not
4 limited to local, tribal, state, and federal governments working
5 singularly or in combination. The implementing entities may also
6 include activities conducted by private organizations and individuals.

7 (3) Water resource management plans developed pursuant to the
8 process in this chapter and subsequently adopted by a commission under
9 chapter 34.05 RCW are presumed valid. This presumption shall apply in
10 any petition or action filed against a plan. Adopted plans shall be
11 used by the state engineer as the basis for all water resource
12 decisions and actions within the WRIA.

13 NEW SECTION. **Sec. 12.** (1) Upon completing a proposed water
14 resource plan for the WRIA, the WRIA planning unit shall conduct at
15 least one public hearing in the WRIA on the proposed plan. After
16 considering the public comments presented at the hearing or hearings,
17 the planning unit shall submit a copy of its proposed plan to the
18 commission with jurisdiction over the WRIA. A proposed plan may be
19 submitted to the commission only if the unit has provided interim
20 approval of the plan for this purpose by a majority vote of the members
21 of the planning unit.

22 (2) The commission shall conduct at least one public hearing,
23 announced in accordance with chapter 34.05 RCW, on each proposed WRIA
24 water resource plan submitted under this section. The commission shall
25 provide advice as to any aspects of the plan that the commission
26 believes to be in conflict with state or federal law and may provide
27 other recommendations regarding the plan. The commission shall
28 transmit its advice and recommendations regarding the plan to the WRIA
29 planning unit within sixty days of receiving it for review.

30 (3) The WRIA planning unit shall vote on each recommendation
31 provided by the commission and on the commission's advice regarding any
32 elements of the proposed WRIA plan the commission believed to be in
33 conflict with state or federal law. The planning unit may adopt such
34 a recommendation or provide changes to respond to the advice of the
35 commission by a majority vote of the members of the planning unit.

36 The WRIA planning unit shall approve a water resource plan for the
37 WRIA by a two-thirds majority vote of the members of the planning unit.
38 An approved plan shall be submitted to the counties with territory

1 within the WRIA for adoption. If a WRIA planning unit does not approve
2 a plan for submission to the counties within three years of the date
3 the planning unit receives its first funding from the state engineer
4 for the planning process under section 13 of this act, the state
5 engineer shall develop a proposed plan for the WRIA, submit the plan to
6 the commission with jurisdiction for the WRIA, and the commission shall
7 adopt or amend and adopt such a water resource plan for the WRIA.

8 (4) The legislative authority of each of the counties with
9 territory within the WRIA shall conduct at least two public hearings on
10 the WRIA plan submitted to the county under this section. After the
11 public hearings, the legislative authorities of these counties shall
12 convene in joint session to consider the plan. The counties may
13 approve or reject the plan, but may not amend the plan. Approval of a
14 plan, or of recommendations for a plan that is not approved, shall be
15 made by a majority vote of the members of the various legislative
16 authorities of the counties with territory in the WRIA based on the
17 votes allocated under section 8 of this act.

18 If the plan is not approved, it shall be returned to the WRIA
19 planning unit with recommendations for revisions. Any revised plan
20 prepared by the planning unit shall be submitted to the commission with
21 jurisdiction and to the counties as provided by this section for WRIA
22 water resource plans generally.

23 (5) If the plan is approved by the members of the legislative
24 authorities, the plan shall be transmitted to the commission with
25 jurisdiction over the WRIA for adoption. The commission shall adopt
26 such an approved WRIA water resource plan by rule. The commission has
27 no discretion to amend or reject the plan. A copy of the plan and
28 notice of its adoption as rules shall be published in the state
29 register under chapter 34.05 RCW.

30 (6) If the commission advises a planning unit that an element of
31 its WRIA plan is in conflict with state or federal law and the unit
32 does not remove the conflict created by the element from its plan, the
33 state is not liable for any judgment that may be awarded regarding the
34 conflict. This subsection shall not be construed as establishing such
35 state liability for any other element of the plan adopted as rules.

36 NEW SECTION. **Sec. 13.** Once a WRIA planning unit is organized and
37 has established priorities under section 11 of this act, it may apply
38 to the state engineer for funding assistance for developing a water

1 resource plan for the WRIA. The state engineer shall provide five
2 hundred thousand dollars per WRIA for each planning unit applying in
3 this manner from appropriations made expressly for this purpose. The
4 funding shall be provided on a first-come, first-served basis to the
5 extent of the appropriations except that preference shall be given to
6 planning units requesting funding for multi-WRIA planning under section
7 9 of this act. Funding provided under this section shall be considered
8 to be a contractual obligation against the moneys appropriated for this
9 purpose. No more than five hundred thousand dollars per WRIA may be
10 provided by the state engineer to a planning unit.

11 If a planning unit is organized and has established its priorities
12 under section 11 of this act, but the transfer of authority from the
13 department of ecology to the commissions and state engineer under
14 sections 23 and 24 of this act has not yet taken place, the unit may
15 notify the department of ecology that it is organized, has set its
16 priorities, and will be applying for funding assistance from the state
17 engineer under this section. Such a notification establishes the date
18 of application for the unit for the purposes of satisfying the first-
19 come, first-served requirement established by this section for the
20 distribution of such funding assistance by the state engineer.

21 NEW SECTION. **Sec. 14.** The WRIA planning units may accept grants,
22 funds, and other financing, as well as enter into cooperative
23 agreements with private and public entities for planning assistance and
24 funding, including but not limited to funding of the implementation
25 strategies.

26 NEW SECTION. **Sec. 15.** (1) Notwithstanding any other provisions in
27 law, the state engineer shall rule in a timely manner upon applications
28 to appropriate public surface and ground water. For applications that
29 seek to appropriate water from within a WRIA for which a WRIA plan has
30 been adopted, the state engineer shall grant or deny the application
31 within one hundred eighty days of the priority date of the application.
32 For applications that seek to appropriate water from within a WRIA for
33 which no WRIA plan has been adopted, the state engineer shall grant or
34 deny the application within one year of the priority date of the
35 application. The times allowed in this section to rule upon an
36 application shall not include the time it takes the applicant to
37 respond to an explicit request for additional information reasonably

1 required to make a determination on the application. The state
2 engineer shall be allowed only one such request for additional
3 information. The cost of obtaining such information shall be
4 reasonable in relation to the quantity and value of the water right
5 applied for. Once the applicant responds to an information request,
6 the stay of the time allowed for the permit decision shall end.

7 (2) This section shall take effect July 1, 1996.

8 **PART II**
9 **TRANSFER OF POWER**

10 **Sec. 16.** RCW 43.27A.020 and 1987 c 109 s 31 are each amended to
11 read as follows:

12 As used in this chapter, and unless the context indicates
13 otherwise, words and phrases shall mean:

14 (1) "~~((Department))~~ Commission" means the ~~((department of~~
15 ~~ecology;))~~ water resources commissions.

16 (2) "Director" means the ~~((director of ecology;))~~ state engineer.

17 (3) "State agency" and "state agencies" mean any branch, department
18 or unit of state government, however designated or constituted~~((;))~~.

19 (4) "Water resources" means all waters above, upon, or beneath the
20 surface of the earth, located within the state and over which the state
21 has sole or concurrent jurisdiction.

22 (5) "Beneficial use" means, but its meaning shall not be limited
23 to: Domestic water supplies; irrigation; fish, shellfish, game, and
24 other aquatic life; recreation; industrial water supplies; generation
25 of hydroelectric power; and navigation.

26 **Sec. 17.** RCW 43.27A.090 and 1988 c 127 s 25 are each amended to
27 read as follows:

28 The ~~((department))~~ commissions shall be empowered as follows:

29 (1) To represent the state at, and fully participate in, the
30 activities of any basin or regional commission, interagency committee,
31 or any other joint interstate or federal-state agency, committee or
32 commission, or publicly financed entity engaged in the planning,
33 development, administration, management, conservation or preservation
34 of the water resources of the state.

35 (2) To prepare the views and recommendations of the state of
36 Washington on any project, plan, or program relating to the planning,

1 development, administration, management, conservation, and preservation
2 of any waters located in or affecting the state of Washington,
3 including any federal permit or license proposal, and appear on behalf
4 of, and present views and recommendations of the state at any
5 proceeding, negotiation or hearing conducted by the federal government,
6 interstate agency, state or other agency.

7 (3) To cooperate with, assist, advise and coordinate plans with the
8 federal government and its officers and agencies, and serve as a state
9 liaison agency with the federal government in matters relating to the
10 use, conservation, preservation, (~~quality, disposal~~) or control of
11 water and activities related thereto.

12 (4) To cooperate with appropriate agencies of the federal
13 government and/or agencies of other states, to enter into contracts,
14 and to make appropriate contributions to federal or interstate projects
15 and programs and governmental bodies to carry out the provisions of
16 this chapter.

17 (5) To apply for, accept, administer and expend grants, gifts and
18 loans from the federal government or any other entity to carry out the
19 purposes of this chapter and make contracts and do such other acts as
20 are necessary insofar as they are not inconsistent with other
21 provisions hereof.

22 (~~(6) ((To develop and maintain a coordinated and comprehensive state
23 water and water resources related development plan, and adopt, with
24 regard to such plan, such policies as are necessary to insure that the
25 waters of the state are used, conserved and preserved for the best
26 interest of the state. There shall be included in the state plan a
27 description of developmental objectives and a statement of the
28 recommended means of accomplishing these objectives. To the extent the
29 director deems desirable, the plan shall integrate into the state plan,
30 the plans, programs, reports, research and studies of other state
31 agencies.~~

32 (~~(7))~~) To assemble and correlate information relating to water
33 supply, power development, irrigation, watersheds, water use, future
34 possibilities of water use and prospective demands for all purposes
35 served through or affected by water resources development.

36 (~~((8))~~) (7) To assemble and correlate state, local and federal
37 laws, regulations, plans, programs, and policies affecting the
38 beneficial use, (~~(disposal, pollution,)~~) control, or conservation of
39 water, river basin development, flood prevention, parks, reservations,

1 forests, wildlife refuges, drainage ((and sanitary)) systems, ((waste
2 disposal,)) water works, watershed protection and development, instream
3 flows, soil conservation, power facilities and area and municipal water
4 supply needs, and recommend suitable legislation or other action to the
5 legislature, the congress of the United States, or any city,
6 municipality, or to responsible state, local or federal executive
7 departments or agencies.

8 ((+9)) (8) To cooperate with federal, state, regional, interstate
9 and local public and private agencies in the making of plans for
10 drainage, flood control, use, conservation, allocation and distribution
11 of existing water supplies and the development of new water resource
12 projects.

13 ((+10)) (9) To encourage, assist and advise regional, and city and
14 municipal agencies, officials or bodies responsible for planning in
15 relation to water aspects of their programs, and ((coordinate)) to
16 collect information that facilitates the coordination of local water
17 resources activities, programs, and plans.

18 ((+11)) (10) To ((promulgate)) adopt such rules ((and
19 regulations)) as are necessary to carry out the purposes of this
20 chapter.

21 ((+12)) (11) To hold public hearings, and make such
22 investigations, studies and surveys as are necessary to carry out the
23 purposes of the chapter.

24 ((+13)) (12) To subpoena witnesses, compel their attendance,
25 administer oaths, take the testimony of any person under oath and
26 require the production of any books or papers when the ((department))
27 commission deems such measures necessary in the exercise of its rule-
28 making power or in determining whether or not any license, certificate,
29 or permit shall be granted or extended.

30 **Sec. 18.** RCW 43.27A.130 and 1988 c 127 s 26 are each amended to
31 read as follows:

32 The ((department of ecology)) state engineer may make complete
33 inventories of the state's water resources and enter into such
34 agreements with the director of the United States geological survey as
35 will insure that investigations and surveys are carried on in an
36 economical manner.

37 **Sec. 19.** RCW 43.27A.190 and 1987 c 109 s 11 are each amended to

1 read as follows:

2 Notwithstanding and in addition to any other powers granted to the
3 (~~department of ecology~~) state engineer, whenever it appears to the
4 (~~department~~) engineer that a person is violating or is about to
5 violate any of the provisions of the following:

6 (1) Chapter 90.03 RCW; or

7 (2) Chapter 90.44 RCW; or

8 (~~Chapter 86.16 RCW; or~~

9 ~~Chapter 43.37 RCW; or~~

10 ~~(5)) Chapter 43.27A RCW; or~~

11 ~~((6)) (4) Any other law relating to water resources administered~~
12 ~~by the (~~department~~) engineer; or~~

13 ~~((7)) (5) A rule (~~or regulation~~) adopted, or a directive or~~
14 ~~order issued by the (~~department~~) commissions or engineer relating to~~
15 ~~subsections (1) through ~~((6)) (4) of this section; the (~~department~~)~~~~
16 ~~engineer may cause a written regulatory order to be served upon said~~
17 ~~person either personally, or by registered or certified mail delivered~~
18 ~~to addressee only with return receipt requested and acknowledged by him~~
19 ~~or her. The order shall specify the provision of the statute, rule,~~
20 ~~regulation, directive, or order alleged to be or about to be violated,~~
21 ~~and the facts upon which the conclusion of violating or potential~~
22 ~~violation is based, and shall order the act constituting the violation~~
23 ~~or the potential violation to cease and desist or, in appropriate~~
24 ~~cases, shall order necessary corrective action to be taken with regard~~
25 ~~to such acts within a specific and reasonable time. The regulation of~~
26 ~~a headgate or controlling works as provided in RCW 90.03.070, by a~~
27 ~~watermaster, stream patrolman, or other person so authorized by the~~
28 ~~(~~department~~) engineer shall constitute a regulatory order within the~~
29 ~~meaning of this section. A regulatory order issued hereunder shall~~
30 ~~become effective immediately upon receipt by the person to whom the~~
31 ~~order is directed, except for regulations under RCW 90.03.070 which~~
32 ~~shall become effective when a written notice is attached as provided~~
33 ~~therein. Any person aggrieved by such order may appeal the order~~
34 ~~pursuant to RCW 43.21B.310 unless the order is a water quantity~~
35 ~~decision as defined in RCW 43.21A.070, in which case it may be appealed~~
36 ~~to an administrative law judge or to a superior court as provided in~~
37 ~~section 45 of this act.~~

38 **Sec. 20.** RCW 43.21A.020 and 1970 ex.s. c 62 s 2 are each amended

1 to read as follows:

2 In recognition of the responsibility of state government to carry
3 out the policies set forth in RCW 43.21A.010, it is the purpose of this
4 chapter to establish a single state agency with the authority to manage
5 ~~((and develop))~~ our air ~~((and water))~~ resources in an orderly,
6 efficient, and effective manner and to carry out a coordinated program
7 of pollution control involving ~~((these))~~ air, water, and related land
8 resources. To this end a department of ecology is created by this
9 chapter to undertake, in an integrated manner, the ~~((various water))~~
10 regulation, management, and planning ~~((and development))~~ of water
11 quality programs now authorized to be performed by ~~((the department of~~
12 ~~water resources and))~~ the water pollution control commission, the air
13 regulation and management program now performed by the state air
14 pollution control board, the solid waste regulation and management
15 program authorized to be performed by state government as provided by
16 chapter 70.95 RCW, and such other environmental, management protection
17 and development programs as may be authorized by the legislature.

18 **Sec. 21.** RCW 43.21A.067 and 1987 c 109 s 27 are each amended to
19 read as follows:

20 The ~~((director of ecology))~~ state engineer may create within ~~((his~~
21 ~~department))~~ the engineer's office a fund to be known as the "basic
22 data fund."

23 Into such fund shall be deposited all moneys contributed by persons
24 for stream flow, ground water, and water quality data or other
25 hydrographic information furnished by the ~~((department))~~ engineer in
26 cooperation with the United States geological survey, and the fund
27 shall be expended on a matching basis with the United States geological
28 survey for the purpose of obtaining additional basic information needed
29 for an intelligent inventory of water resources in the state.

30 Disbursements from the basic data fund shall be on vouchers
31 approved by the ~~((department))~~ engineer and the district engineer of
32 the United States geological survey.

33 **Sec. 22.** RCW 90.54.040 and 1988 c 47 s 5 are each amended to read
34 as follows:

35 (1) The ~~((department))~~ commissions, through the adoption of
36 appropriate rules, ~~((is))~~ are directed ~~((, as a matter of high priority~~
37 ~~to insure that the waters of the state are utilized for the best~~

1 interests of the people,)) to develop and implement in accordance with
2 the policies of this chapter a ((comprehensive state)) water resources
3 program ((which will provide a process for making decisions)) that
4 implements policies on future water resource allocation and use. ((The
5 department may develop the program in segments so that immediate
6 attention may be given to waters of a given physioeconomic region of
7 the state or to specific critical problems of water allocation and use.

8 The current guidelines, standards, or criteria governing the
9 elements of the water resource program established pursuant to this
10 subsection shall not be altered or amended after March 15, 1988, in
11 accordance with RCW 90.54.022(5).)) The commissions shall have the sole
12 and exclusive authority to adopt rules concerning the regulation of
13 surface and ground water.

14 (2) In relation to the management and regulatory programs relating
15 to water resources vested in ((it)) them, the ((department is))
16 commissions are further directed to modify existing ((regulations))
17 rules and adopt new ((regulations)) rules, when needed and possible, to
18 insure that existing regulatory programs are in accord with the ((water
19 resource policy of this chapter and the program established in
20 subsection (1) of this section. The current guidelines, standards, or
21 criteria governing the department's implementation of this subsection
22 shall not be altered or amended after March 15, 1988, in accordance
23 with subsection (1) of this section)) policies of chapter . . . , Laws
24 of 1995 (this act).

25 (3) The ((department is)) commissions are directed to review all
26 statutes relating to water resources which ((it is)) they are
27 responsible for implementing. When any of the same appear to the
28 ((department)) commissions to be ambiguous, burdensome, unclear,
29 unworkable, unnecessary, or otherwise deficient, ((it)) they shall make
30 recommendations to the legislature including appropriate proposals for
31 statutory modifications or additions. Whenever it appears that the
32 policies of any such statutes are in conflict with the policies of
33 chapter . . . , Laws of 1995 (this ((chapter)) act), and the
34 ((department is)) commissions are unable to fully perform as provided
35 in subsection (2) of this section, the ((department is)) commissions
36 are directed to submit statutory modifications to the legislature
37 which, if enacted, would allow the ((department)) commissions to carry
38 out such statutes in harmony with this chapter.

1 NEW SECTION. **Sec. 23.** (1) On the effective date of this section,
2 all powers, duties, and functions of the department of ecology
3 pertaining to water resource quantity are transferred to the western
4 Washington and eastern Washington water resources commissions or the
5 state engineer. The authority to adopt rules regarding those powers,
6 duties, and functions is transferred to the commissions and the
7 administration of those powers, duties, and functions is transferred to
8 the state engineer. All references to the director or the department
9 of ecology in the Revised Code of Washington shall be construed to mean
10 the western Washington and eastern Washington water resources
11 commissions or the state engineer when referring to the functions
12 transferred in this section.

13 (2)(a) All reports, documents, surveys, books, records, files,
14 papers, or written material including but not limited to the water
15 resources information system established and maintained under RCW
16 90.54.030, in the possession of the department of ecology pertaining to
17 the powers, functions, and duties transferred shall be delivered to the
18 custody of the state engineer. All cabinets, furniture, office
19 equipment, motor vehicles, and other tangible property employed by the
20 department of ecology in carrying out the powers, functions, and duties
21 transferred shall be made available to the western Washington and
22 eastern Washington water resources commissions and the state engineer.
23 All funds, credits, or other assets held in connection with the powers,
24 functions, and duties transferred shall be assigned to the western
25 Washington and eastern Washington water resources commissions and the
26 state engineer.

27 (b) Any appropriations made to the department of ecology for
28 carrying out the powers, functions, and duties transferred shall, on
29 the effective date of this section, be transferred and credited to the
30 western Washington and eastern Washington water resources commissions
31 and the state engineer.

32 (c) Whenever any question arises as to the transfer of any
33 personnel, funds, books, documents, records, papers, files, equipment,
34 or other tangible property used or held in the exercise of the powers
35 and the performance of the duties and functions transferred, the
36 director of financial management shall make a determination as to the
37 proper allocation and certify the same to the state agencies concerned.

38 (3) All employees classified under chapter 41.06 RCW, the state
39 civil service law, of the department of ecology engaged in performing

1 the powers, functions, and duties transferred are transferred to the
2 jurisdiction of the western Washington and eastern Washington water
3 resources commissions and the state engineer. The employees are
4 assigned to the western Washington and eastern Washington water
5 resources commissions and the state engineer to perform their usual
6 duties upon the same terms as formerly, without any loss of rights,
7 subject to any action that may be appropriate thereafter in accordance
8 with the laws and rules governing state civil service.

9 (4) All rules and all pending business before the department of
10 ecology pertaining to the powers, functions, and duties transferred
11 shall be continued and acted upon by the western Washington and eastern
12 Washington water resources commissions and the state engineer. All
13 existing contracts and obligations shall remain in full force and shall
14 be performed by the western Washington and eastern Washington water
15 resources commissions and the state engineer.

16 (5) The transfer of the powers, duties, functions, and personnel of
17 the department of ecology shall not affect the validity of any act
18 performed before the effective date of this section.

19 (6) If apportionments of budgeted funds are required because of the
20 transfers directed by this section, the director of financial
21 management shall certify the apportionments to the agencies affected,
22 the state auditor, and the state treasurer. Each of these shall make
23 the appropriate transfer and adjustments in funds and appropriation
24 accounts and equipment records in accordance with the certification.

25 (7) Nothing contained in this section may be construed to alter any
26 existing collective bargaining unit or the provisions of any existing
27 collective bargaining agreement until the agreement has expired or
28 until the bargaining unit has been modified by action of the personnel
29 board as provided by law.

30 (8) This section shall take effect July 1, 1996.

31 NEW SECTION. **Sec. 24.** Effective July 1, 1996, the powers and
32 duties of the department of ecology concerning water quantity under the
33 following statutes are transferred to the commissions and the state
34 engineer: RCW 43.20.230, 43.21A.061, 43.21A.064 except 43.21A.064(2),
35 43.21A.067, 43.21A.450, 43.21A.460, 43.21A.470, 43.27A.020, 43.27A.090,
36 43.27A.130, 43.27A.190, chapter 43.83B RCW, RCW 43.99E.025, Title 87
37 RCW, and chapters 18.104, 89.12, 89.16, 89.30, 90.03, 90.08, 90.14,
38 90.16, 90.22, 90.24, 90.38, 90.40, 90.42, 90.44, and 90.54 RCW. More

1 specifically, the following powers, duties, programs, and services
2 presently administered and enforced by the department of ecology are
3 transferred to the commissions and the state engineer:

4 (1) Water regulation, management, and development;

5 (2) Permitting authority regarding appropriation, diversion, and
6 use of water;

7 (3) Data collection and other hydrographic information duties;

8 (4) Technical assistance powers and duties regarding water
9 quantity;

10 (5) Authority regarding the water resource aspects of international
11 issues, such as Lake Osoyoos;

12 (6) Participation with the federal government in development of the
13 Columbia basin project and the Yakima enhancement project;

14 (7) Duties and powers regarding irrigation districts and
15 reclamation districts;

16 (8) Reclamation authority for agricultural lands;

17 (9) Powers and duties, both enforcement and administrative
18 authority over water quantity aspects of water resources, including:

19 (a) The water codes;

20 (b) Stream patrolmen and watermasters;

21 (c) Water rights, including but not limited to registration,
22 relinquishment, waiver, and transfer;

23 (d) Appropriation of water for public and industrial purposes;

24 (e) Minimum flows and levels;

25 (f) Regulation of outflow of lakes;

26 (g) Yakima river basin water rights;

27 (h) Water resource management;

28 (i) Regulation of public ground waters; and

29 (j) Water well construction.

30 NEW SECTION. **Sec. 25.** Although authorities are not transferred
31 from the department of ecology to the eastern and western Washington
32 water resources commissions and the state engineer until July 1, 1996,
33 the governor, department, commissions, and state engineer shall take
34 all actions necessary before July 1, 1996, that will ensure an orderly
35 and effective transfer of authority on that date.

36 **PART III**
37 **INTERTIES**

1 **Sec. 26.** RCW 90.03.383 and 1991 c 350 s 1 are each amended to read
2 as follows:

3 (1) The legislature recognizes the value of interties for improving
4 the reliability of public water systems, enhancing their management,
5 and more efficiently utilizing the increasingly limited resource.
6 Given the continued growth in the most populous areas of the state, the
7 increased complexity of public water supply management, and the trend
8 toward regional planning and regional solutions to resource issues,
9 interconnections of public water systems through interties provide a
10 valuable tool to ensure reliable public water supplies for the citizens
11 of the state. Public water systems have been encouraged in the past to
12 utilize interties to achieve public health and resource management
13 objectives. The legislature finds that it is in the public interest to
14 recognize interties existing and in use as of January 1, 1991, and to
15 have associated water rights modified by the department of ecology or
16 its successor to reflect current use of water through those interties,
17 pursuant to subsection (3) of this section. The legislature further
18 finds it in the public interest to develop a coordinated process to
19 review proposals for interties commencing use after January 1, 1991.

20 (2) For the purposes of this section, the following definitions
21 shall apply:

22 (a) "Interties" are interconnections between public water systems
23 permitting exchange, acquisition, or delivery of wholesale and/or
24 retail water between those systems for other than emergency supply
25 purposes, where such exchange, acquisition, or delivery is within
26 established instantaneous and annual withdrawal rates specified in the
27 systems' existing water right permits or certificates, or contained in
28 claims filed pursuant to chapter 90.14 RCW, and which results in better
29 management of public water supply consistent with existing rights and
30 obligations. Interties include interconnections between public water
31 systems permitting exchange, acquisition, or delivery of water to serve
32 as primary or secondary sources of supply(~~(, but do not include~~
33 ~~development of new sources of supply to meet future demand)~~).

34 (b) "Service area" is the area designated as the wholesale and/or
35 retail area in a water system plan or a coordinated water system plan
36 pursuant to chapter 43.20 or 70.116 RCW respectively. When a public
37 water system does not have a designated service area subject to the
38 approval process of those chapters, the service area shall be the
39 designated place of use contained in the water right permit or

1 certificate, or contained in the claim filed pursuant to chapter 90.14
2 RCW.

3 (3) Public water systems with interties existing and in use as of
4 January 1, 1991, or that have received written approval from the
5 department of health prior to that date, shall file written notice of
6 those interties with the department of health and the department of
7 ecology or its successor. The notice may be incorporated into the
8 public water system's five-year update of its water system plan, but
9 shall be filed no later than June 30, 1996. The notice shall identify
10 the location of the intertie; the dates of its first use; the purpose,
11 capacity, and current use; the intertie agreement of the parties and
12 the service areas assigned; and other information reasonably necessary
13 to modify the public water system's water right ((~~permit~~)).
14 Notwithstanding the provisions of RCW 90.03.380 and 90.44.100, for
15 public water systems with interties existing and in use or with written
16 approval as of January 1, 1991, the department of ecology or its
17 successor, upon receipt of notice meeting the requirements of this
18 subsection, shall, as soon as practicable, modify the place of use
19 descriptions in the water right permits, certificates, or claims to
20 reflect the actual use through such interties, provided that the place
21 of use is within service area designations established in a water
22 system plan approved pursuant to chapter 43.20 RCW, or a coordinated
23 water system plan approved pursuant to chapter 70.116 RCW, and further
24 provided that the water used is within the instantaneous and annual
25 withdrawal rates specified in the water rights ((~~permit~~)) and that no
26 outstanding complaints of impairment to existing water rights have been
27 filed with the department of ecology or its successor prior to
28 September 1, 1991. Where such complaints of impairment have been
29 received, the department of ecology or its successor shall make all
30 reasonable efforts to resolve them in a timely manner through agreement
31 of the parties or through available administrative remedies.

32 (4) Notwithstanding the provisions of RCW 90.03.380 and 90.44.100,
33 exchange, acquisition, or delivery of water through interties approved
34 by the department of health commencing use after January 1, 1991, shall
35 be permitted when the intertie improves overall system reliability,
36 enhances the manageability of the systems, provides opportunities for
37 conjunctive use, or delays or avoids the need to develop new water
38 sources, and otherwise meets the requirements of this section, provided
39 that each public water system's water use shall not exceed the

1 instantaneous or annual withdrawal rate specified in its water right
2 authorization, shall not adversely affect existing water rights, and
3 shall not be inconsistent with state-approved plans such as water
4 system plans or other plans which include specific proposals for
5 construction of interties. Interties approved and commencing use after
6 January 1, 1991, shall not be inconsistent with regional water resource
7 plans developed pursuant to chapter 90.54 RCW.

8 (5) For public water systems subject to the approval process of
9 chapter 43.20 RCW or chapter 70.116 RCW, proposals for interties
10 commencing use after January 1, 1991, shall be incorporated into water
11 system plans pursuant to chapter 43.20 RCW or coordinated water system
12 plans pursuant to chapter 70.116 RCW and submitted to the department of
13 health and the department of ecology or its successor for review and
14 approval as provided for in subsections (5) through (9) of this
15 section. The plan shall state how the proposed intertie will improve
16 overall system reliability, enhance the manageability of the systems,
17 provide opportunities for conjunctive use, or delay or avoid the need
18 to develop new water sources.

19 (6) The department of health shall be responsible for review and
20 approval of proposals for new interties. In its review the department
21 of health shall determine whether the intertie satisfies the criteria
22 of subsection (4) of this section, with the exception of water rights
23 considerations, which are the responsibility of the department of
24 ecology or its successor, and shall determine whether the intertie is
25 necessary to address emergent public health or safety concerns
26 associated with public water supply.

27 (7) If the intertie is determined by the department of health to be
28 necessary to address emergent public health or safety concerns
29 associated with public water supply, the public water system shall
30 amend its water system plan as required and shall file an application
31 with the department of ecology or its successor to change its existing
32 water right to reflect the proposed use of the water as described in
33 the approved water system plan. The department of ecology or its
34 successor shall process the application for change pursuant to RCW
35 90.03.380 or 90.44.100 as appropriate, except that, notwithstanding the
36 requirements of those sections regarding notice and protest periods,
37 applicants shall be required to publish notice one time, and the
38 comment period shall be fifteen days from the date of publication of
39 the notice. Within sixty days of receiving the application, the

1 department of ecology or its successor shall issue findings and advise
2 the department of health if existing water rights are determined to be
3 adversely affected. If no determination is provided by the department
4 of ecology or its successor within the sixty-day period, the department
5 of health shall proceed as if existing rights are not adversely
6 affected by the proposed intertie. The department of ecology or its
7 successor may obtain an extension of the sixty-day period by submitting
8 written notice to the department of health and to the applicant
9 indicating a definite date by which its determination will be made. No
10 additional extensions shall be granted, and in no event shall the total
11 review period for the department of ecology or its successor exceed one
12 hundred eighty days.

13 (8) If the department of health determines the proposed intertie
14 appears to meet the requirements of subsection (4) of this section but
15 is not necessary to address emergent public health or safety concerns
16 associated with public water supply, the department of health shall
17 instruct the applicant to submit to the department of ecology or its
18 successor an application for change to the underlying water right or
19 claim as necessary to reflect the new place of use. The department of
20 ecology or its successor shall consider the applications pursuant to
21 the provisions of RCW 90.03.380 and 90.44.100 as appropriate. The
22 department of ecology or its successor shall not deny or limit a change
23 of place of use for an intertie on the grounds that the holder of a
24 permit has not yet put all of the water authorized in the permit to
25 beneficial use. If in its review of proposed interties and associated
26 water rights the department of ecology or its successor determines that
27 additional information is required to act on the application, the
28 department or its successor may request applicants to provide
29 information necessary for its decision, consistent with agency rules
30 and written guidelines. Parties disagreeing with the decision of the
31 department of ecology ~~((en))~~ or its successor to approve or deny the
32 application for change in place of use may appeal the decision to ((the
33 pollution control hearings board)) an administrative law judge or a
34 superior court as provided in section 45 of this act.

35 (9) The department of health may approve plans containing intertie
36 proposals prior to the department of ecology's or its successor's
37 decision on the water right application for change in place of use.
38 However, notwithstanding such approval, construction work on the
39 intertie shall not begin until the department of ecology or its

1 successor issues the appropriate water right document to the applicant
2 consistent with the approved plan.

3 **PART IV**

4 **WATER-RELATED ACTIONS AND APPEALS**

5 **Sec. 27.** RCW 43.21A.070 and 1970 ex.s. c 62 s 7 are each amended
6 to read as follows:

7 (1) The administrative procedure act, chapter 34.05 RCW, shall
8 apply to the review of ((decisions)) a water quantity decision by the
9 director ((to the same extent as it applied to decisions issued by the
10 directors of the various departments whose powers, duties and functions
11 are transferred by this 1970 amendatory act to the department of
12 ecology)), the state engineer, or the water resource commissions when
13 an administrative hearing is elected under section 45 of this act. The
14 administrative procedure act shall further apply to all other decisions
15 of the director ((as in chapter 34.05 RCW provided)) except as limited
16 by RCW 43.21B.240. In any adjudicative proceeding commenced under
17 chapter 34.05 RCW in response to a water quantity decision, an
18 administrative law judge shall serve as the presiding officer for the
19 hearing in accordance with RCW 34.05.425(3).

20 (2) For purposes of this section, a "water quantity decision"
21 includes, but is not limited to, the following:

22 (a) A decision to grant or deny a permit or certificate for a right
23 to the beneficial use of water or to amend, change, or transfer such a
24 right;

25 (b) A decision to enforce the conditions of a permit for, or right
26 to, the beneficial use of water or to require any person to discontinue
27 the use of water; and

28 (c) A decision to establish a minimum flow or level for water under
29 chapter 90.03, 90.22, or 90.54 RCW, or to reserve water for such a
30 minimum flow or level.

31 (3) A water quantity decision includes any decision made by the
32 department of ecology under subsection (2) of this section before July
33 1, 1996, and any decision made by the state engineer or the water
34 resource commissions on or after July 1, 1996, as provided in chapter
35 ..., Laws of 1995 (this act).

36 **Sec. 28.** RCW 34.05.425 and 1989 c 175 s 14 are each amended to

1 read as follows:

2 (1) Except as provided in subsections (2) and (3) of this section,
3 in the discretion of the agency head, the presiding officer in an
4 administrative hearing shall be:

5 (a) The agency head or one or more members of the agency head;

6 (b) If the agency has statutory authority to do so, a person other
7 than the agency head or an administrative law judge designated by the
8 agency head to make the final decision and enter the final order; or

9 (c) One or more administrative law judges assigned by the office of
10 administrative hearings in accordance with chapter 34.12 RCW.

11 (2) An agency expressly exempted under RCW 34.12.020(4) or other
12 statute from the provisions of chapter 34.12 RCW or an institution of
13 higher education shall designate a presiding officer as provided by
14 rules adopted by the agency.

15 (3) The presiding officer in an administrative hearing for a water
16 quantity decision, as defined in RCW 43.21A.070, when an administrative
17 hearing is elected under section 45 of this act, shall be an
18 administrative law judge assigned by the office of administrative
19 hearings in accordance with chapter 34.12 RCW. The administrative law
20 judge shall make the final decision and enter the final order for these
21 hearings.

22 (4) Any individual serving or designated to serve alone or with
23 others as presiding officer is subject to disqualification for bias,
24 prejudice, interest, or any other cause provided in this chapter or for
25 which a judge is disqualified.

26 ~~((+4))~~ (5) Any party may petition for the disqualification of an
27 individual promptly after receipt of notice indicating that the
28 individual will preside or, if later, promptly upon discovering facts
29 establishing grounds for disqualification.

30 ~~((+5))~~ (6) The individual whose disqualification is requested
31 shall determine whether to grant the petition, stating facts and
32 reasons for the determination.

33 ~~((+6))~~ (7) When the presiding officer is an administrative law
34 judge, the provisions of this section regarding disqualification for
35 cause are in addition to the motion of prejudice available under RCW
36 34.12.050.

37 ~~((+7))~~ (8) If a substitute is required for an individual who
38 becomes unavailable as a result of disqualification or any other
39 reason, the substitute must be appointed by the appropriate appointing

1 authority.

2 ((+8)) (9) Any action taken by a duly appointed substitute for an
3 unavailable individual is as effective as if taken by the unavailable
4 individual.

5 **Sec. 29.** RCW 34.05.419 and 1988 c 288 s 404 are each amended to
6 read as follows:

7 After receipt of an application for an adjudicative proceeding,
8 other than a declaratory order, an agency shall proceed as follows:

9 (1) Except in situations governed by subsection (2) (~~(or)~~), (3), or
10 (4) of this section, within ninety days after receipt of the
11 application or of the response to a timely request made by the agency
12 under subsection (2) of this section, the agency shall do one of the
13 following:

14 (a) Approve or deny the application, in whole or in part, on the
15 basis of brief or emergency adjudicative proceedings, if those
16 proceedings are available under this chapter for disposition of the
17 matter;

18 (b) Commence an adjudicative proceeding in accordance with this
19 chapter; or

20 (c) Dispose of the application in accordance with RCW 34.05.416;

21 (2) Within thirty days after receipt of the application, the agency
22 shall examine the application, notify the applicant of any obvious
23 errors or omissions, request any additional information the agency
24 wishes to obtain and is permitted by law to require, and notify the
25 applicant of the name, mailing address, and telephone number of an
26 office that may be contacted regarding the application;

27 (3) If the application seeks relief that is not available when the
28 application is filed but may be available in the future, the agency may
29 proceed to make a determination of eligibility within the time limits
30 provided in subsection (1) of this section. If the agency determines
31 that the applicant is eligible, the agency shall maintain the
32 application on the agency's list of eligible applicants as provided by
33 law and, upon request, shall notify the applicant of the status of the
34 application;

35 (4) After receipt of an application for an adjudicative proceeding
36 under chapter 34.05 RCW in response to a water quantity decision, as
37 defined in RCW 43.21A.070, the department of ecology, state engineer,
38 or water resource commission shall within thirty days of the receipt of

1 the application commence an adjudicatory proceeding in accordance with
2 this chapter.

3 **Sec. 30.** RCW 34.05.461 and 1989 c 175 s 19 are each amended to
4 read as follows:

5 (1) Except as provided in subsection (2) of this section:

6 (a) If the presiding officer is the agency head or one or more
7 members of the agency head, the presiding officer may enter an initial
8 order if further review is available within the agency, or a final
9 order if further review is not available;

10 (b) If the presiding officer is a person designated by the agency
11 to make the final decision and enter the final order, the presiding
12 officer shall enter a final order, or is an administrative law judge
13 acting pursuant to RCW 34.05.425(3); and

14 (c) If the presiding officer is one or more administrative law
15 judges, the presiding officer shall enter an initial order.

16 (2) With respect to agencies exempt from chapter 34.12 RCW or an
17 institution of higher education, the presiding officer shall transmit
18 a full and complete record of the proceedings, including such comments
19 upon demeanor of witnesses as the presiding officer deems relevant, to
20 each agency official who is to enter a final or initial order after
21 considering the record and evidence so transmitted.

22 (3) Initial and final orders shall include a statement of findings
23 and conclusions, and the reasons and basis therefor, on all the
24 material issues of fact, law, or discretion presented on the record,
25 including the remedy or sanction and, if applicable, the action taken
26 on a petition for a stay of effectiveness. Any findings based
27 substantially on credibility of evidence or demeanor of witnesses shall
28 be so identified. Findings set forth in language that is essentially
29 a repetition or paraphrase of the relevant provision of law shall be
30 accompanied by a concise and explicit statement of the underlying
31 evidence of record to support the findings. The order shall also
32 include a statement of the available procedures and time limits for
33 seeking reconsideration or other administrative relief. An initial
34 order shall include a statement of any circumstances under which the
35 initial order, without further notice, may become a final order.

36 (4) Findings of fact shall be based exclusively on the evidence of
37 record in the adjudicative proceeding and on matters officially noticed
38 in that proceeding. Findings shall be based on the kind of evidence on

1 which reasonably prudent persons are accustomed to rely in the conduct
2 of their affairs. Findings may be based on such evidence even if it
3 would be inadmissible in a civil trial. However, the presiding officer
4 shall not base a finding exclusively on such inadmissible evidence
5 unless the presiding officer determines that doing so would not unduly
6 abridge the parties' opportunities to confront witnesses and rebut
7 evidence. The basis for this determination shall appear in the order.

8 (5) Where it bears on the issues presented, the agency's
9 experience, technical competency, and specialized knowledge may be used
10 in the evaluation of evidence.

11 (6) If a person serving or designated to serve as presiding officer
12 becomes unavailable for any reason before entry of the order, a
13 substitute presiding officer shall be appointed as provided in RCW
14 34.05.425. The substitute presiding officer shall use any existing
15 record and may conduct any further proceedings appropriate in the
16 interests of justice.

17 (7) The presiding officer may allow the parties a designated time
18 after conclusion of the hearing for the submission of memos, briefs, or
19 proposed findings.

20 (8) Initial or final orders shall be served in writing within
21 ninety days after conclusion of the hearing or after submission of
22 memos, briefs, or proposed findings in accordance with subsection (7)
23 of this section unless this period is waived or extended for good cause
24 shown.

25 (9) The presiding officer shall cause copies of the order to be
26 served on each party and the agency.

27 **Sec. 31.** RCW 34.05.514 and 1994 c 257 s 23 are each amended to
28 read as follows:

29 (1) Except as provided in subsections (2) and (3) of this section
30 (~~and RCW 36.70A.300(3)~~), proceedings for review under this chapter
31 shall be instituted by filing a petition in the superior court, at the
32 petitioner's option, for (a) Thurston county, (b) the county of the
33 petitioner's residence or principal place of business, or (c) in any
34 county where the property owned by the petitioner and affected by the
35 contested decision is located.

36 (2) For proceedings involving institutions of higher education, the
37 petition shall be filed either in the county in which the principal
38 office of the institution involved is located or in the county of a

1 branch campus if the action involves such branch.

2 (3) For proceedings involving water quantity decisions, as defined
3 in RCW 43.21A.070, the petition shall be filed in the superior court in
4 the county that will be directly and immediately affected by the
5 decision.

6 **Sec. 32.** RCW 34.05.530 and 1988 c 288 s 506 are each amended to
7 read as follows:

8 A person has standing to obtain judicial review of agency action if
9 that person is aggrieved or adversely affected by the agency action.
10 An agency has standing to obtain judicial review of a final order if
11 the final order is adverse to the agency and is issued by an
12 administrative law judge acting pursuant to RCW 34.05.425(3). A person
13 is aggrieved or adversely affected within the meaning of this section
14 only when all three of the following conditions are present:

15 (1) The agency action has prejudiced or is likely to prejudice that
16 person;

17 (2) That person's asserted interests are among those that the
18 agency was required to consider when it engaged in the agency action
19 challenged; and

20 (3) A judgment in favor of that person would substantially
21 eliminate or redress the prejudice to that person caused or likely to
22 be caused by the agency action.

23 **Sec. 33.** RCW 34.05.534 and 1988 c 288 s 507 are each amended to
24 read as follows:

25 A person may file a petition for judicial review under this chapter
26 only after exhausting all administrative remedies available within the
27 agency whose action is being challenged, or available within any other
28 agency authorized to exercise administrative review, except:

29 (1) A petitioner for judicial review of a rule need not have
30 participated in the rule-making proceeding upon which that rule is
31 based, or have petitioned for its amendment or repeal;

32 (2) A petitioner for judicial review need not exhaust
33 administrative remedies to the extent that this chapter or any other
34 statute states that exhaustion is not required; ((or))

35 (3) The court may relieve a petitioner of the requirement to
36 exhaust any or all administrative remedies upon a showing that:

37 (a) The remedies would be patently inadequate;

1 (b) The exhaustion of remedies would be futile; or
2 (c) The grave irreparable harm that would result from having to
3 exhaust administrative remedies would clearly outweigh the public
4 policy requiring exhaustion of administrative remedies; or

5 (4) A petitioner for judicial review of a final order issued by an
6 administrative law judge acting pursuant to RCW 34.05.425(3) need not
7 exhaust any other administrative remedy.

8 **Sec. 34.** RCW 34.12.040 and 1981 c 67 s 4 are each amended to read
9 as follows:

10 Whenever a state agency conducts a hearing which is not presided
11 over by officials of the agency who are to render the final decision,
12 the hearing shall be conducted by an administrative law judge assigned
13 under this chapter. In any adjudicative proceeding commenced under
14 chapter 34.05 RCW in response to a water quantity decision, as defined
15 in RCW 43.21A.070, the hearing shall be conducted by an administrative
16 law judge assigned under this chapter according to procedural rules
17 developed by the chief administrative law judge. The chief
18 administrative law judge shall ensure that hearings pertaining to water
19 quantity decisions by the department of ecology will be conducted in
20 the general area where the petitioner resides, or provide for the
21 hearings to be conducted by telephone. In assigning administrative law
22 judges, the chief administrative law judge shall wherever practical (1)
23 use personnel having expertise in the field or subject matter of the
24 hearing, and (2) assign administrative law judges primarily to the
25 hearings of particular agencies on a long-term basis.

26 **Sec. 35.** RCW 43.21B.110 and 1993 c 387 s 22 are each amended to
27 read as follows:

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

33 (a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431,
34 70.105.080, 70.107.050, 88.46.090, (~~90.03.600~~) 90.48.144, 90.56.310,
35 and 90.56.330.

36 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
37 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,

1 ((90.14.130,)) and 90.48.120.

2 (c) The issuance, modification, or termination of any permit,
3 certificate, or license by the department or any air authority in the
4 exercise of its jurisdiction, including the issuance or termination of
5 a waste disposal permit, the denial of an application for a waste
6 disposal permit, or the modification of the conditions or the terms of
7 a waste disposal permit.

8 (d) Decisions of local health departments regarding the grant or
9 denial of solid waste permits pursuant to chapter 70.95 RCW.

10 (e) Decisions of local health departments regarding the issuance
11 and enforcement of permits to use or dispose of biosolids under RCW
12 70.95J.080.

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

16 (2) The jurisdiction of the pollution control hearings board is
17 further limited as follows:

18 (a) The hearings board shall have no jurisdiction whatsoever to
19 review water quantity decisions as defined in RCW 43.21A.070, to review
20 orders pertaining to the relinquishment of a water right under RCW
21 90.14.130, or to review proceedings regarding general adjudications of
22 water rights conducted under chapter 90.03 or 90.44 RCW.

23 (b) The following hearings shall not be conducted by the hearings
24 board:

25 ((a)) (i) Hearings required by law to be conducted by the
26 shorelines hearings board pursuant to chapter 90.58 RCW.

27 ((b)) (ii) Hearings conducted by the department pursuant to RCW
28 70.94.332, 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and
29 90.44.180.

30 ((c) Proceedings by the department relating to general
31 adjudications of water rights pursuant to chapter 90.03 or 90.44 RCW.

32 (d)) (iii) Hearings conducted by the department to adopt, modify,
33 or repeal rules.

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

37 **Sec. 36.** RCW 43.21B.130 and 1990 c 65 s 3 are each amended to read
38 as follows:

1 The administrative procedure act, chapter 34.05 RCW, shall apply to
2 the appeal of rules and regulations adopted by the board to the same
3 extent as it applied to the review of rules and regulations adopted by
4 the directors and/or boards or commissions of the various departments
5 whose powers, duties and functions were transferred by section 6,
6 chapter 62, Laws of 1970 ex. sess. to the department. Except with
7 regard to water quantity decisions by the department, as defined in RCW
8 43.21A.070, which are appealable to a superior court or to an
9 administrative law judge under section 45 of this act, and orders
10 pertaining to the relinquishment of a water right under RCW 90.14.130,
11 all other decisions and orders of the director and all decisions of air
12 pollution control boards or authorities established pursuant to chapter
13 70.94 RCW shall be subject to review by the hearings board as provided
14 in this chapter.

15 **Sec. 37.** RCW 43.21B.240 and 1989 c 175 s 105 are each amended to
16 read as follows:

17 The department and air authorities shall not have authority to hold
18 adjudicative proceedings pursuant to the Administrative Procedure Act,
19 chapter 34.05 RCW, except with regard to water quantity decisions as
20 defined in RCW 43.21A.070 that may be appealed to an administrative law
21 judge as provided in RCW 34.05.425(3). ((Such)) All other hearings,
22 except for water quantity decisions that are appealed to a superior
23 court under section 45 of this act and appeals of orders pertaining to
24 the relinquishment of a water right under RCW 90.14.130, shall be held
25 by the pollution control hearings board.

26 **Sec. 38.** RCW 43.21B.300 and 1993 c 387 s 23 are each amended to
27 read as follows:

28 (1) Any civil penalty provided in RCW 18.104.155, 70.94.431,
29 70.105.080, 70.107.050, 88.46.090, ((90.03.600,)) 90.48.144, 90.56.310,
30 and 90.56.330 shall be imposed by a notice in writing, either by
31 certified mail with return receipt requested or by personal service, to
32 the person incurring the penalty from the department, the administrator
33 of the office of marine safety, or the local air authority, describing
34 the violation with reasonable particularity. Within fifteen days after
35 the notice is received, the person incurring the penalty may apply in
36 writing to the department, the administrator, or the authority for the
37 remission or mitigation of the penalty. Upon receipt of the

1 application, the department, the administrator, or authority may remit
2 or mitigate the penalty upon whatever terms the department, the
3 administrator, or the authority in its discretion deems proper. The
4 department or the authority may ascertain the facts regarding all such
5 applications in such reasonable manner and under such rules as it may
6 deem proper and shall remit or mitigate the penalty only upon a
7 demonstration of extraordinary circumstances such as the presence of
8 information or factors not considered in setting the original penalty.

9 (2) Any penalty imposed under this section may be appealed to the
10 pollution control hearings board in accordance with this chapter if the
11 appeal is filed with the hearings board and served on the department,
12 the administrator, or authority thirty days after receipt by the person
13 penalized of the notice imposing the penalty or thirty days after
14 receipt of the notice of disposition of the application for relief from
15 penalty.

16 (3) A penalty shall become due and payable on the later of:

17 (a) Thirty days after receipt of the notice imposing the penalty;

18 (b) Thirty days after receipt of the notice of disposition on
19 application for relief from penalty, if such an application is made; or

20 (c) Thirty days after receipt of the notice of decision of the
21 hearings board if the penalty is appealed.

22 (4) If the amount of any penalty is not paid to the department or
23 the administrator within thirty days after it becomes due and payable,
24 the attorney general, upon request of the department or the
25 administrator, shall bring an action in the name of the state of
26 Washington in the superior court of Thurston county, or of any county
27 in which the violator does business, to recover the penalty. If the
28 amount of the penalty is not paid to the authority within thirty days
29 after it becomes due and payable, the authority may bring an action to
30 recover the penalty in the superior court of the county of the
31 authority's main office or of any county in which the violator does
32 business. In these actions, the procedures and rules of evidence shall
33 be the same as in an ordinary civil action.

34 (5) All penalties recovered shall be paid into the state treasury
35 and credited to the general fund except those penalties imposed
36 pursuant to RCW 18.104.155, which shall be credited to the reclamation
37 account as provided in RCW 18.104.155(7), RCW 70.94.431, the
38 disposition of which shall be governed by that provision, RCW
39 70.105.080, which shall be credited to the hazardous waste control and

1 elimination account, created by RCW 70.105.180, and RCW 90.56.330,
2 which shall be credited to the coastal protection fund created by RCW
3 90.48.390.

4 **Sec. 39.** RCW 43.21B.310 and 1992 c 73 s 3 are each amended to read
5 as follows:

6 (1) Except as provided in subsection (2) of this section, any order
7 issued by the department, the administrator of the office of marine
8 safety, or authority pursuant to RCW 70.94.211, 70.94.332, 70.105.095,
9 43.27A.190, 86.16.020, 88.46.070, or 90.48.120(2) or any provision
10 enacted after July 26, 1987, or any permit, certificate, or license
11 issued by the department may be appealed to the pollution control
12 hearings board if the appeal is filed with the board and served on the
13 department or authority within thirty days after receipt of the order.
14 Except as provided under chapter 70.105D RCW, (~~this is~~) these are the
15 exclusive means of appeal of such an order.

16 (~~(2)~~) (a) The department, the administrator, or the authority in
17 its discretion may stay the effectiveness of an order during the
18 pendency of such an appeal.

19 (~~(3)~~) (b) At any time during the pendency of an appeal of such an
20 order to the board or to an administrative law judge acting pursuant to
21 RCW 34.05.425(3), the appellant may apply pursuant to RCW 43.21B.320 to
22 the hearings board or administrative law judge for a stay of the order
23 or for the removal thereof.

24 (~~(4)~~) (c) Any appeal before the hearings board must contain the
25 following in accordance with the rules of the hearings board:

26 (~~(a)~~) (i) The appellant's name and address;

27 (~~(b)~~) (ii) The date and docket number of the order, permit, or
28 license appealed;

29 (~~(c)~~) (iii) A description of the substance of the order, permit,
30 or license that is the subject of the appeal;

31 (~~(d)~~) (iv) A clear, separate, and concise statement of every
32 error alleged to have been committed;

33 (~~(e)~~) (v) A clear and concise statement of facts upon which the
34 requester relies to sustain his or her statements of error; and

35 (~~(f)~~) (vi) A statement setting forth the relief sought.

36 (~~(5)~~) (d) Upon failure to comply with any final order of the
37 department or the administrator or the administrative law judge acting
38 pursuant to RCW 34.05.425(3), the attorney general, on request of the

1 department or the administrator, may bring an action in the superior
2 court of the county where the violation occurred or the potential
3 violation is about to occur to obtain such relief as necessary,
4 including injunctive relief, to insure compliance with the order. The
5 air authorities may bring similar actions to enforce their orders.

6 ~~((+6+))~~ (e) An appealable decision or order shall be identified as
7 such and shall contain a conspicuous notice to the recipient that it
8 may be appealed only by filing an appeal with the hearings board and
9 serving it on the department within thirty days of receipt.

10 (2) Water quantity decisions, as defined in RCW 43.21A.070, may not
11 be appealed to the hearings board; they may be appealed either to an
12 administrative law judge or to a superior court as provided in section
13 45 of this act. Appeals of orders pertaining to the relinquishment of
14 a water right shall be filed in a superior court as provided by RCW
15 90.14.130.

16 **Sec. 40.** RCW 43.21B.320 and 1987 c 109 s 7 are each amended to
17 read as follows:

18 (1) A person appealing to the hearings board, or to an
19 administrative law judge acting pursuant to RCW 34.05.425(3), an order
20 of the department or an authority, not stayed by the issuing agency,
21 may obtain a stay of the effectiveness of that order only as set forth
22 in this section.

23 (2) An appealing party may request a stay by including such a
24 request in the appeal document, in a subsequent motion, or by such
25 other means as the rules of the hearings board or the procedural rules
26 developed by the chief administrative law judge for appeals made
27 pursuant to RCW 34.05.425(3) shall prescribe. The request must be
28 accompanied by a statement of grounds for the stay and evidence setting
29 forth the factual basis upon which request is based. The hearings
30 board or the administrative law judge shall hear the request for a stay
31 as soon as possible. The hearing on the request for stay may be
32 consolidated with the hearing on the merits.

33 (3) The applicant may make a prima facie case for stay if the
34 applicant demonstrates either a likelihood of success on the merits of
35 the appeal or irreparable harm. Upon such a showing, the hearings
36 board or administrative law judge shall grant the stay unless the
37 department or authority demonstrates either (a) a substantial
38 probability of success on the merits or (b) likelihood of success on

1 the merits and an overriding public interest which justifies denial of
2 the stay.

3 (4) Unless otherwise stipulated by the parties, the hearings board
4 or administrative law judge, after granting or denying an application
5 for a stay, shall expedite the hearing and decision on the merits.

6 (5) Any party or other person aggrieved by the grant or denial of
7 a stay by the hearings board may petition the superior court for
8 Thurston county for review of that decision pursuant to chapter 34.05
9 RCW pending the appeal on the merits before the board. Any party or
10 other person aggrieved by the grant or denial of a stay by an
11 administrative law judge acting pursuant to RCW 34.05.425(3) may
12 petition the superior court for the county that will be directly and
13 immediately affected by the stay. The superior court shall expedite
14 its review of the decision of the hearings board or administrative law
15 judge.

16 **Sec. 41.** RCW 90.14.130 and 1987 c 109 s 13 are each amended to
17 read as follows:

18 When it appears to the department of ecology that a person entitled
19 to the use of water has not beneficially used his or her water right or
20 some portion thereof, and it appears that ~~((said))~~ the right has or may
21 have reverted to the state because of such nonuse, as provided by RCW
22 90.14.160, 90.14.170, or 90.14.180, the department of ecology shall
23 notify such person by order: PROVIDED, That where a company,
24 association, district, or the United States has filed a blanket claim
25 under the provisions of RCW 90.14.060 for the total benefits of those
26 served by it, the notice shall be served on such company, association,
27 district or the United States and not upon any of its individual water
28 users who may not have used the water or some portion thereof which
29 they were entitled to use. The order shall contain: (1) A description
30 of the water right, including the approximate location of the point of
31 diversion, the general description of the lands or places where such
32 waters were used, the water source, the amount involved, the purpose of
33 use, and the apparent authority upon which the right is based; (2) a
34 statement that unless sufficient cause be shown on appeal the water
35 right will be declared relinquished; and (3) a statement that such
36 order may be appealed to ~~((the pollution control hearings board))~~ a
37 superior court. Any person aggrieved by such an order may appeal it to
38 ~~((the pollution control hearings board pursuant to RCW 43.21B.310))~~ the

1 superior court in the county where the land is located upon which the
2 water was used. Any such appeal to a superior court shall be de novo.
3 The order shall be served by registered or certified mail to the last
4 known address of the person and be posted at the point of division or
5 withdrawal. The order by itself shall not alter the recipient's right
6 to use water, if any.

7 **Sec. 42.** RCW 90.14.190 and 1987 c 109 s 14 are each amended to
8 read as follows:

9 Any person feeling aggrieved by any water quantity decision (~~of~~
10 ~~the department of ecology~~) as defined in RCW 43.21A.070 may have the
11 same reviewed (~~pursuant to RCW 43.21B.310~~) by an administrative law
12 judge or a superior court under section 45 of this act. In any such
13 review, the findings of fact as set forth in the report of the
14 department of ecology shall be prima facie evidence of the fact of any
15 waiver or relinquishment of a water right or portion thereof. If the
16 (~~hearings board~~) administrative law judge affirms the decision of the
17 department, a party seeks review in superior court of (~~that hearings~~
18 ~~board~~) the administrative law judge's decision pursuant to chapter
19 34.05 RCW, and the court determines that the party was injured by an
20 arbitrary, capricious, or erroneous order of the department, the court
21 may award reasonable attorneys' fees. An order regarding the
22 relinquishment of a water right shall be appealed under RCW 90.14.130.

23 **Sec. 43.** RCW 90.14.200 and 1989 c 175 s 180 are each amended to
24 read as follows:

25 (1) All matters relating to the implementation and enforcement of
26 this chapter by the department of ecology shall be carried out in
27 accordance with chapter 34.05 RCW, the Administrative Procedure Act,
28 except where the provisions of this chapter expressly conflict with
29 chapter 34.05 RCW. Proceedings held (~~pursuant to~~) under RCW
30 90.14.130 are (adjudicative proceedings within the meaning of chapter
31 34.05 RCW. Final decisions of the department of ecology in these
32 proceedings) appealable to a superior court as provided in that
33 section. Other final decisions of the department of ecology under this
34 chapter are subject to review by an administrative law judge or a
35 superior court in accordance with (chapter 43.21B RCW) section 45 of
36 this act.

37 (2) RCW 90.14.130 provides nonexclusive procedures for determining

1 a relinquishment of water rights under RCW 90.14.160, 90.14.170, and
2 90.14.180. RCW 90.14.160, 90.14.170, and 90.14.180 may be applied in,
3 among other proceedings, general adjudication proceedings initiated
4 under RCW 90.03.110 or 90.44.220: PROVIDED, That nothing herein shall
5 apply to litigation involving determinations of the department of
6 ecology under RCW 90.03.290 relating to the impairment of existing
7 rights.

8 **Sec. 44.** RCW 90.66.080 and 1979 c 3 s 8 are each amended to read
9 as follows:

10 The department is hereby empowered to promulgate such rules as may
11 be necessary to carry out the provisions of this chapter. Decisions of
12 the department, other than rule making, shall be subject to review by
13 an administrative law judge or a superior court in accordance with
14 (~~chapter 43.21B RCW~~) section 45 of this act.

15 NEW SECTION. **Sec. 45.** A new section is added to chapter 43.21B
16 RCW to read as follows:

17 A person who is aggrieved or adversely affected by a water quantity
18 decision, as defined in RCW 43.21A.070, may appeal the decision either
19 to an administrative law judge under RCW 34.05.425(3) or directly to a
20 superior court. Any direct appeal to a superior court as authorized by
21 this section shall be de novo and must be filed in the superior court
22 in the county that will be directly and immediately affected by the
23 decision.

24 **Sec. 46.** RCW 43.27A.190 and 1987 c 109 s 11 are each amended to
25 read as follows:

26 Notwithstanding and in addition to any other powers granted to the
27 department of ecology, whenever it appears to the department that a
28 person is violating or is about to violate any of the provisions of the
29 following:

- 30 (1) Chapter 90.03 RCW; or
- 31 (2) Chapter 90.44 RCW; or
- 32 (3) Chapter 86.16 RCW; or
- 33 (4) Chapter 43.37 RCW; or
- 34 (5) Chapter 43.27A RCW; or
- 35 (6) Any other law relating to water resources administered by the
36 department; or

1 (7) A rule or regulation adopted, or a directive or order issued by
2 the department relating to subsections (1) through (6) of this section;
3 the department may cause a written regulatory order to be served upon
4 said person either personally, or by registered or certified mail
5 delivered to addressee only with return receipt requested and
6 acknowledged by him. The order shall specify the provision of the
7 statute, rule, regulation, directive or order alleged to be or about to
8 be violated, and the facts upon which the conclusion of violating or
9 potential violation is based, and shall order the act constituting the
10 violation or the potential violation to cease and desist or, in
11 appropriate cases, shall order necessary corrective action to be taken
12 with regard to such acts within a specific and reasonable time. The
13 regulation of a headgate or controlling works as provided in RCW
14 90.03.070, by a watermaster, stream patrolman, or other person so
15 authorized by the department shall constitute a regulatory order within
16 the meaning of this section. A regulatory order issued hereunder shall
17 become effective immediately upon receipt by the person to whom the
18 order is directed, except for regulations under RCW 90.03.070 which
19 shall become effective when a written notice is attached as provided
20 therein. Any person aggrieved by such order may appeal the order
21 pursuant to RCW 43.21B.310 unless the order is a water quantity
22 decision as defined in RCW 43.21A.070, in which case it may be appealed
23 to an administrative law judge or to a superior court as provided in
24 section 45 of this act.

25 **PART V**

26 **TRANSFERS AND SPREADING**

27 **Sec. 47.** RCW 90.03.380 and 1991 c 347 s 15 are each amended to
28 read as follows:

29 (1) The right to the use of water which has been applied to a
30 beneficial use in the state shall be and remain appurtenant to the land
31 or place upon which the same is used: PROVIDED, HOWEVER, That ((said))
32 the right may be transferred to another or to others and become
33 appurtenant to any other land or place of use without loss of priority
34 of right theretofore established if such change can be made without
35 detriment or injury to existing rights. The point of diversion of
36 water for beneficial use or the purpose of use may be changed, if such
37 change can be made without detriment or injury to existing rights.

1 Before any transfer of such right to use water or change of the point
2 of diversion of water or change of purpose of use can be made, any
3 person having an interest in the transfer or change, shall file a
4 written application therefor with the department, and ~~((said))~~ the
5 application shall not be granted until notice of ~~((said))~~ the
6 application ~~((shall be))~~ is published as provided in RCW 90.03.280. If
7 it shall appear that such transfer or such change may be made without
8 injury or detriment to existing rights, the department shall issue to
9 the applicant a certificate in duplicate granting the right for such
10 transfer or for such change of point of diversion or of use. The
11 certificate so issued shall be filed and be made a record with the
12 department and the duplicate certificate issued to the applicant may be
13 filed with the county auditor in like manner and with the same effect
14 as provided in the original certificate or permit to divert water.

15 (2) If an application for change proposes to transfer water rights
16 from one irrigation district to another, the department shall, before
17 publication of notice, receive concurrence from each of the irrigation
18 districts that such transfer or change will not adversely affect the
19 ability to deliver water to other landowners or impair the financial or
20 operational integrity of either of the districts.

21 (3) A change in place of use by an individual water user or users
22 of water provided by an irrigation district need only receive approval
23 for the change from the board of directors of the district if the use
24 of water continues within the irrigation district. The board of
25 directors may approve such a change if the board determines that the
26 change: Will not adversely affect the district's ability to deliver
27 water to other landowners; will not require the construction by the
28 district of diversion or drainage facilities unless the board finds
29 that the construction by the district is in the interest of the
30 district; will not impair the financial or operational integrity of the
31 district; and is consistent with the contractual obligations of the
32 district.

33 (4) Subsections (1), (2), and (3) of this section do not apply to
34 a change regarding a portion of the water governed by a water right
35 that is made surplus to the beneficial uses exercised under the right
36 through the implementation of practices or technologies, including but
37 not limited to conveyance practices or technologies, which are more
38 efficient or more water use efficient than those under which the right
39 was perfected or through a change in the crops grown under the water

1 right. The use within an irrigation district of water supplied by the
2 district and made surplus as provided in this subsection shall be
3 regulated solely as provided by the board of directors of the
4 irrigation district except as follows: Such a use requires the
5 approval of the board of directors of the irrigation district or must
6 otherwise be authorized by the board; the board may approve or
7 authorize such a use only if the use does not impair the financial or
8 operational integrity of the district; and water made surplus through
9 a change in the crops grown with district-supplied water is not
10 available for use as a matter of right by the individual water user
11 making the change, but may be used by the board for the benefit of the
12 district generally. The district's board of directors may approve or
13 otherwise authorize under this subsection uses of such surplus water
14 that result in the total irrigated acreage within the district
15 exceeding the irrigated acreage recorded with the department for the
16 district's water right if the board notifies the department of the
17 change in the irrigated acreage within the district. Such a
18 notification provides a change in the district's water right and, upon
19 receiving the notification, the department shall revise its records for
20 the district's right to reflect the change. The use of water other
21 than irrigation district-supplied water that is made surplus as
22 provided in this subsection is governed by section 48 of this act.

23 (5) This section shall not apply to trust water rights acquired by
24 the state through the funding of water conservation projects under
25 chapter 90.38 RCW or RCW 90.42.010 through 90.42.070.

26 (6) The department may not initiate relinquishment proceedings
27 under chapter 90.14 RCW regarding a water right for which an
28 application for a transfer or change is filed under this section for a
29 period of two years after the date the department receives the filing.

30 **NEW SECTION. Sec. 48.** A new section is added to chapter 90.03 RCW
31 to read as follows:

32 If a portion of the water governed by a water right is made surplus
33 to the beneficial uses exercised under the right through the
34 implementation of practices or technologies, including but not limited
35 to conveyance practices or technologies, which are more efficient or
36 more water use efficient than those under which the right was perfected
37 or through a change in the crops grown under the water right, the right
38 to use the surplus water may be changed to use on other lands owned by

1 the holder of the water right that are contiguous to the lands upon
2 which the use of the water was authorized by the right before such a
3 change. Such a change shall be made without loss of priority of the
4 right. The holder of the water right shall notify the department of
5 such a change. The notification provides a change in the holder's
6 water right and, upon receiving the notification, the department shall
7 revise its records for the water right to reflect the change.

8 This section does not apply to water supplied by an irrigation
9 district.

10 **Sec. 49.** RCW 90.44.100 and 1987 c 109 s 113 are each amended to
11 read as follows:

12 (1) After an application to, and upon the issuance by the
13 department of an amendment to the appropriate permit or certificate of
14 ground water right, the holder of a valid right to withdraw public
15 ground waters may, without losing his priority of right, construct
16 wells or other means of withdrawal at a new location in substitution
17 for or in addition to those at the original location, or he may change
18 the manner or the place of use of the water(~~(: PROVIDED, HOWEVER, That~~
19 ~~such)).~~ An amendment shall be issued only after publication of notice
20 of the application and findings as prescribed in the case of an
21 original application. Such amendment shall be issued by the department
22 only on the conditions that: ~~((+1))~~ (a) The additional or substitute
23 well or wells shall tap the same body of public ground water as the
24 original well or wells; ~~((+2))~~ (b) use of the original well or wells
25 shall be discontinued upon construction of the substitute well or
26 wells; ~~((+3))~~ (c) the construction of an additional well or wells
27 shall not enlarge the right conveyed by the original permit or
28 certificate; and ~~((+4))~~ (d) other existing rights shall not be
29 impaired. The department may specify an approved manner of
30 construction and shall require a showing of compliance with the terms
31 of the amendment, as provided in RCW 90.44.080 in the case of an
32 original permit.

33 (2) This section does not apply to a change in use of a portion of
34 the water governed by a ground water right that is made surplus to the
35 beneficial uses exercised under the right through the implementation of
36 practices or technologies, including but not limited to conveyance
37 practices or technologies, which are more efficient or more water use
38 efficient than those under which the right was perfected or through a

1 change in the crops grown under the water right. RCW 90.03.380(4) and
2 section 48 of this act apply to water made surplus as provided in this
3 subsection.

4 (3) The department may not initiate relinquishment proceedings
5 under chapter 90.14 RCW regarding a water right for which an
6 application for a transfer or change is filed under this section for a
7 period of two years after the date the department receives the filing.

8 **Sec. 50.** RCW 90.03.290 and 1994 c 264 s 84 are each amended to
9 read as follows:

10 When an application complying with the provisions of this chapter
11 and with the rules and regulations of the department has been filed,
12 the same shall be placed on record with the department, and it shall be
13 its duty to investigate the application, and determine what water, if
14 any, is available for appropriation, and find and determine to what
15 beneficial use or uses it can be applied. If it is proposed to
16 appropriate water for irrigation purposes, the department shall
17 investigate, determine and find what lands are capable of irrigation by
18 means of water found available for appropriation. If it is proposed to
19 appropriate water for the purpose of power development, the department
20 shall investigate, determine and find whether the proposed development
21 is likely to prove detrimental to the public interest, having in mind
22 the highest feasible use of the waters belonging to the public. If the
23 application does not contain, and the applicant does not promptly
24 furnish sufficient information on which to base such findings, the
25 department may issue a preliminary permit, for a period of not to
26 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, be extended, but not to exceed a maximum period of five years
38 from the date of the issuance of the preliminary permit. The

1 department shall make and file as part of the record in the matter,
2 written findings of fact concerning all things investigated, and if it
3 shall find that there is water available for appropriation for a
4 beneficial use, and the appropriation thereof as proposed in the
5 application will not impair existing rights or be detrimental to the
6 public welfare, it shall issue a permit stating the amount of water to
7 which the applicant shall be entitled and the beneficial use or uses to
8 which it may be applied: PROVIDED, That where the water applied for is
9 to be used for irrigation purposes, it shall become appurtenant only to
10 such land as may be reclaimed thereby to the full extent of the soil
11 for agricultural purposes. But where there is no unappropriated water
12 in the proposed source of supply, or where the proposed use conflicts
13 with existing rights, or threatens to prove detrimental to the public
14 interest, having due regard to the highest feasible development of the
15 use of the waters belonging to the public, it shall be duty of the
16 department to reject such application and to refuse to issue the permit
17 asked for. If the permit is refused because of conflict with existing
18 rights and such applicant shall acquire same by purchase or
19 condemnation under RCW 90.03.040, the department may thereupon grant
20 such permit. Any application may be approved for a less amount of
21 water than that applied for, if there exists substantial reason
22 therefor, and in any event shall not be approved for more water than
23 can be applied to beneficial use for the purposes named in the
24 application. In determining whether or not a permit shall issue upon
25 any application, it shall be the duty of the department to investigate
26 all facts relevant and material to the application. After the
27 department approves said application in whole or in part and before any
28 permit shall be issued thereon to the applicant, such applicant shall
29 pay the fee provided in RCW 90.03.470: PROVIDED FURTHER, That in the
30 event a permit is issued by the department upon any application, it
31 shall be its duty to notify the director of fish and wildlife of such
32 issuance.

33 This section does not apply to changes made under section 48 of
34 this act or to applications for transfers or changes made under RCW
35 90.03.380 or 90.44.100.

36 **Sec. 51.** RCW 90.44.445 and 1993 c 99 s 1 are each amended to read
37 as follows:

38 In any acreage expansion program adopted by the department as an

1 element of a ground water management program, the authorization for a
2 water right certificate holder to participate in the program shall be
3 on an annual basis for the first two years. After the two-year period,
4 the department may authorize participation for ten-year periods. The
5 department may authorize participation for ten-year periods for
6 certificate holders who have already participated in an acreage
7 expansion program for two years. The department may require annual
8 certification that the certificate holder has complied with all
9 requirements of the program. The department may terminate the
10 authority of a certificate holder to participate in the program for one
11 calendar year if the certificate holder fails to comply with the
12 requirements of the program.

13 This section applies only in an area with a ground water area or
14 subarea management program in effect on the effective date of this
15 section. The provisions of section 48 of this act, RCW 90.03.380, and
16 90.44.100 apply to transfers, changes, and amendments to permits or
17 rights for the beneficial use of ground water in any other area.

18 **PART VI**

19 **HYDRAULIC CONTINUITY AND INSTREAM FLOW**

20 NEW SECTION. **Sec. 52.** A new section is added to chapter 90.44 RCW
21 to read as follows:

22 (1) Section 53 of this act establishes criteria to guide the
23 department in making determinations whether the water in wells is in
24 hydraulic continuity with surface water. Section 53 of this act
25 applies to all wells, and to all existing and proposed appropriations
26 of ground water except exempt uses. The authority under section 53 of
27 this act may be locally superseded by a WRIA plan adopted under section
28 12 of this act.

29 (2) For the purposes of this section and section 53 of this act:

30 (a) "Confined aquifer" means an aquifer in which ground water is
31 under sufficient hydrostatic head to rise above the bottom of the
32 overlying confining bed, whether or not the water rises above land
33 surface.

34 (b) "Confining bed" means a layer of low permeability material
35 immediately overlying a confined aquifer.

36 (c) "Department" means the department of ecology or its successor.

37 (d) "Director" means the director of ecology.

1 (e) "Hydraulic continuity" means that water can move between a
2 surface water source and an adjacent aquifer.

3 (f) "Unconfined aquifer" means an aquifer in which the hydrostatic
4 head at the upper surface of the ground water is atmospheric.

5 NEW SECTION. **Sec. 53.** A new section is added to chapter 90.44 RCW
6 to read as follows:

7 For the purposes of permitting and distributing ground water, the
8 hydraulic continuity of ground water with surface water shall be
9 determined by the department.

10 (1) The department shall determine whether wells produce water from
11 an unconfined or confined aquifer. Except for wells that satisfy the
12 conditions in subsection (2) of this section, the department shall
13 further determine whether the aquifer is hydraulically continuous to
14 the surface water source. Where the aquifer is a confined aquifer, the
15 burden of proof of the determination of whether the aquifer is
16 hydraulically continuous to the surface water source is on the
17 department. The determination of whether the aquifer is hydraulically
18 continuous shall be based on a finding there exists a clear and direct
19 relationship between a surface water body and the ground water source
20 from which water would be withdrawn. The relationship must be
21 demonstrable through a reasonable and repeatable test, or tests, that
22 can be applied in the field, and that apply generally accepted methods
23 of hydrogeologic science. The information from the field tests shall
24 be provided in the well water report for any well in question. If
25 there is no water well report available or if the information provided
26 is inadequate, the department shall make the determination on the basis
27 of the best available information. Such information may include other
28 water well reports, topographic maps, hydrogeologic maps or reports,
29 water level and other pertinent data collected during a field
30 inspection, or any other available data or information that is
31 appropriate, including any that is provided by potentially affected
32 parties.

33 (2) All wells located a horizontal distance less than one-fourth
34 mile from a surface water source that produce water from an unconfined
35 aquifer shall be assumed to be hydraulically continuous to the surface
36 water source, unless the applicant or appropriator provides
37 satisfactory information or demonstration to the contrary. Department
38 staff may provide reasonable assistance to the applicant or

1 appropriator in acquiring the satisfactory information.

2 (3) The department shall determine the horizontal distance between
3 any well in question and the nearest surface water source on the basis
4 of the edge of the surface water source as also determined by the
5 department.

6 (4) All wells that produce water from an aquifer that is determined
7 by field evidence to be hydraulically continuous to a surface water
8 source shall be assumed to have the potential to cause substantial
9 interference with the surface water source if the existing or proposed
10 ground water appropriation is within one of the following categories:

11 (a) The point of appropriation is a horizontal distance less than
12 one-fourth mile from the surface water source;

13 (b) The rate of appropriation is greater than five cubic feet per
14 second, if the point of appropriation is a horizontal distance less
15 than one mile from the surface water source;

16 (c) The rate of appropriation is greater than one percent of the
17 pertinent adopted minimum perennial streamflow or instream water right
18 with a senior priority date, if one is applicable, or of the discharge
19 that is equaled or exceeded eighty percent of the time, as determined
20 or estimated by the department, and if the point of appropriation is a
21 horizontal distance less than one mile from the surface water source;
22 or

23 (d) The ground water appropriation, if continued for a period of
24 thirty days, would result in stream depletion greater than twenty-five
25 percent of the rate of appropriation, if the point of appropriation is
26 a horizontal distance less than one mile from the surface water source.
27 Using the best available information, stream depletion shall be
28 determined or estimated by the department, employing at least one of
29 the following methods:

30 (i) Suitable equations and graphical techniques that are described
31 in pertinent publications (such as "Computation of Rate and Volume of
32 Stream Depletion by Wells", by C.T. Jenkins, in: "Techniques of Water-
33 Resources Investigations of the United States Geological Survey: Book
34 4, Chapter D1");

35 (ii) A computer program or ground water model that is based on such
36 or similar equations or techniques.

37 (5) Any wells, other than those covered in subsection (4) of this
38 section, that produce water from an aquifer that is determined to be
39 hydraulically continuous to the surface water source may be determined

1 by the department to cause substantial interference with the surface
2 water source. In making this determination, the department shall
3 consider at least the following factors:

4 (a) A reduction in streamflow or surface water supply; or

5 (b) An impairment or detrimental effect on the public interest as
6 expressed by an applicable closure on surface water appropriation,
7 minimum perennial streamflow, or instream water right with a senior
8 priority date; or

9 (c) The percentage of the ground water appropriation that was, or
10 would have become, surface water; or

11 (d) There is interference and such interference would be immediate
12 or delayed; or

13 (e) Demonstrable cumulative adverse impacts on streamflow or
14 surface water supply.

15 (6) All wells that produce water from an aquifer that is not
16 hydraulically continuous to a surface water source shall be assumed not
17 to interfere with the surface water source.

18 **Sec. 54.** RCW 90.22.010 and 1994 c 264 s 86 are each amended to
19 read as follows:

20 (~~The department of ecology~~) A WRIA plan adopted under section 12
21 of this act may establish minimum water flows or levels for streams,
22 lakes or other public waters for the purposes of protecting fish, game,
23 birds or other wildlife resources, or recreational or aesthetic values
24 of said public waters whenever it appears to be in the public interest
25 to establish the same. (~~In addition, the department of ecology shall,~~
26 ~~when requested by the department of fish and wildlife to protect fish,~~
27 ~~game or other wildlife resources under the jurisdiction of the~~
28 ~~requesting state agency, or if the department of ecology finds it~~
29 ~~necessary to preserve water quality, establish such minimum flows or~~
30 ~~levels as are required to protect the resource or preserve the water~~
31 ~~quality described in the request or determination. Any request~~
32 ~~submitted by the department of fish and wildlife shall include a~~
33 ~~statement setting forth the need for establishing a minimum flow or~~
34 ~~level. When the department acts to preserve water quality, it shall~~
35 ~~include a similar statement with the proposed rule filed with the code~~
36 ~~reviser.)) This section shall not apply to waters artificially stored
37 in reservoirs, provided that in the granting of storage permits by the
38 department of ecology or its successor agency in the future, full~~

1 recognition shall be given to downstream minimum flows, if any there
2 may be, which have theretofore been established hereunder.

3 The current guidelines, standards, or criteria governing the
4 instream flow programs established pursuant to this chapter shall not
5 be altered or amended after March 15, 1988, in accordance with RCW
6 90.54.022(5).

7 **Sec. 55.** RCW 90.03.247 and 1994 c 264 s 82 are each amended to
8 read as follows:

9 Whenever an application for a permit to make beneficial use of
10 public waters is approved relating to a stream or other water body for
11 which minimum flows or levels have been adopted and are in effect at
12 the time of approval, the permit shall be conditioned to protect the
13 levels or flows. No agency may establish minimum flows and levels or
14 similar water flow or level restrictions for any stream or lake of the
15 state (~~other than the department of ecology whose authority to~~
16 ~~establish is exclusive,~~) except as provided in ((chapter 90.03 RCW and
17 RCW 90.22.010 and 90.54.040)) section 12 of this act. The provisions
18 of other statutes, including but not limited to RCW 75.20.100 and
19 chapter 43.21C RCW, may not be interpreted in a manner that is
20 inconsistent with this section. (~~In establishing such minimum flows,~~
21 ~~levels, or similar restrictions, the department shall, during all~~
22 ~~stages of development by the department of ecology of minimum flow~~
23 ~~proposals, consult with, and carefully consider the recommendations of,~~
24 ~~the department of fish and wildlife, the state energy office, the~~
25 ~~department of agriculture, and representatives of the affected Indian~~
26 ~~tribes.)) Nothing herein shall preclude the commission, state
27 engineer, department of ecology, department of fish and wildlife, the
28 energy office, or the department of agriculture from presenting its
29 views on minimum flow needs at any public hearing or to any person or
30 agency, and the department of fish and wildlife, the energy office, and
31 the department of agriculture are each empowered to participate in
32 proceedings of the federal energy regulatory commission and other
33 agencies to present its views on minimum flow needs.~~

34 NEW SECTION. **Sec. 56.** The following acts or parts of acts are
35 each repealed:

36 (1) RCW 90.22.020 and 1994 c 264 s 87, 1987 c 506 s 97, 1985 c 196
37 s 1, 1984 c 7 s 384, & 1969 ex.s. c 284 s 4; and

1 (2) RCW 90.22.060 and 1993 sp.s. c 4 s 13.

2 **PART VII**
3 **MISCELLANEOUS**

4 NEW SECTION. **Sec. 57.** A new section is added to chapter 34.05 RCW
5 to read as follows:

6 (1) Once the eastern or western Washington water resources
7 commission receives a water resource plan submitted by a WRIA planning
8 unit for advice and recommendations under section 12 of this act, the
9 commission shall conduct at least one public hearing on the plan and
10 shall provide notice of the hearing and proposed plan as provided in
11 RCW 34.05.320 for the proposal of a rule. The commission shall
12 maintain a file for the plan. Once the plan has been adopted by the
13 counties in the WRIA under section 12 of this act and the plan has been
14 submitted to the commission, the commission shall file the plan with
15 the code reviser along with an order adopting the plan as rules. The
16 code reviser shall cause the order and the water resource plan to be
17 published in the Washington state register in the manner provided for
18 the adoption of final rules and shall incorporate the plan into the
19 Washington Administrative Code. No other aspect of this chapter that
20 establishes procedures for the adoption of rules applies to the
21 adoption of the plan by the commission.

22 (2) For the purposes of this section, "WRIA" has the meaning
23 established in section 2 of this act.

24 NEW SECTION. **Sec. 58.** A new section is added to chapter 43.21A
25 RCW to read as follows:

26 A rule, order, or directive of the department adopted or issued
27 under chapter 86.16 or 43.37 RCW shall be adopted or issued in
28 accordance with the administrative procedure act, chapter 34.05 RCW,
29 and may be appealed as provided by chapter 43.21B RCW.

30 NEW SECTION. **Sec. 59.** Part headings as used in this act do not
31 constitute any part of the law.

32 NEW SECTION. **Sec. 60.** Sections 1 through 15, 23, and 24 of this
33 act shall constitute a new chapter in Title 43 RCW.

1 NEW SECTION. **Sec. 61.** RCW 90.14.043 is decodified.

2 NEW SECTION. **Sec. 62.** RCW 43.21A.067 as amended by this act shall
3 be recodified as a section in the new chapter created in section 60 of
4 this act.

5 NEW SECTION. **Sec. 63.** The following acts or parts of acts are
6 each repealed:

7 (1) RCW 43.21A.064 and 1977 c 75 s 46 & 1965 c 8 s 43.21.130; and

8 (2) RCW 90.54.030 and 1990 c 295 s 2, 1988 c 47 s 4, & 1971 ex.s.
9 c 225 s 3.

10 NEW SECTION. **Sec. 64.** Sections 16, 17, 19 through 21, 58, and 61
11 through 63 of this act shall take effect July 1, 1996.

12 NEW SECTION. **Sec. 65.** Section 46 of this act shall expire July 1,
13 1996.

14 NEW SECTION. **Sec. 66.** Sections 22 and 52 through 56 of this act
15 are necessary for the immediate preservation of the public peace,
16 health, or safety, or support of the state government and its existing
17 public institutions, and shall take effect immediately."

18 Correct the title accordingly.

19 EFFECT: (1) Each of the cities of Seattle, Tacoma, and Everett are
20 permitted to nominate two persons for appointment to the western
21 Washington commission. King, Pierce, and Snohomish counties each now
22 nominate two (rather than three) persons for appointment to the
23 commission and from the 12 nominations made by these counties and
24 cities, the Governor is to appoint five members of the commission. (2)
25 A representative of the largest purveyor of water from a WRIA in King,
26 Pierce, or Snohomish county is added to the planning unit for the WRIA
27 whether the principal offices of the purveyor are or are not located in
28 the WRIA. (3) Provisions stating that WRIA plans are the exclusive
29 means by which new or revised instream flows may be set take effect
30 immediately. (4) Rules for determining hydraulic continuity between
31 surface and ground water are set by statute and take effect
32 immediately. (5) The provisions of the bill regarding the use of
33 surplus water are altered. (6) Jurisdiction over the state's water
34 well construction laws is transferred to the commissions and the State
35 Engineer. (7) The counties grouped to make nominations for
36 appointments to the eastern Washington commission are listed (rather
37 than being grouped by Congressional district). (8) Environmental
38 groups are among the special interest groups to be considered for

1 appointments to the WRIA planning units and recreational and
2 environmental uses of water are to be estimated by the planning units.
3 (9) The Governor now has 90 days (rather than 60 days) from effective
4 date of the bill to make appointments to the commissions. (10) A
5 notice filed with DOE by a planning unit prior to the transfer of
6 authorities indicating that the unit is ready to receive state funding
7 places it in line for receiving funding from the State Engineer.

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