

CERTIFICATION OF ENROLLMENT
SECOND SUBSTITUTE HOUSE BILL 2054

55th Legislature
1997 Regular Session

Passed by the House April 27, 1997
Yeas 60 Nays 38

**Speaker of the
House of Representatives**

Passed by the Senate April 18, 1997
Yeas 27 Nays 18

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Timothy A. Martin, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SECOND SUBSTITUTE HOUSE BILL 2054** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

SECOND SUBSTITUTE HOUSE BILL 2054

Passed Legislature - 1997 Regular Session

AS AMENDED BY THE SENATE

State of Washington

55th Legislature

1997 Regular Session

By House Committee on Appropriations (originally sponsored by Representatives Chandler, Clements, Mastin and Honeyford)

Read first time 03/10/97.

1 AN ACT Relating to water resource management; amending RCW
2 90.54.040, 90.54.020, 90.54.180, 90.03.383, 90.03.330, 90.14.140,
3 43.21B.110, 43.21B.130, 43.21B.240, 43.21B.305, 43.21B.310, 43.27A.190,
4 90.14.130, 90.14.190, 90.14.200, 90.66.080, 90.03.380, and 90.44.100;
5 reenacting and amending RCW 34.05.514; adding new sections to chapter
6 90.03 RCW; adding a new section to chapter 34.05 RCW; adding new
7 sections to chapter 43.21B RCW; adding a new chapter to Title 90 RCW;
8 and creating new sections.

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

10 **PART I**

11 **BASIN PLANS**

12 NEW SECTION. **Sec. 101.** The purpose of this chapter is to develop
13 a more thorough and cooperative method of determining what the current
14 water resource situation is in each water resource inventory area of
15 the state and to provide local citizens with the maximum possible input
16 concerning their goals and objectives for water resource management and
17 development.

1 It is necessary for the legislature to establish processes and
2 policies that will result in providing state agencies with more
3 specific guidance to manage the water resources of the state consistent
4 with current law and direction provided by local entities and citizens
5 through the process established in accordance with this chapter.

6 NEW SECTION. **Sec. 102.** The legislature finds that the local
7 development of watershed plans for managing water resources and for
8 protecting existing water rights is vital to both state and local
9 interests. The local development of these plans serves vital local
10 interests by placing it in the hands of people: Who have the greatest
11 knowledge of both the resources and the aspirations of those who live
12 and work in the watershed; and who have the greatest stake in the
13 proper, long-term management of the resources. The development of such
14 plans serves the state's vital interests by ensuring that the state's
15 water resources are used wisely, by protecting existing water rights,
16 by protecting instream flows for fish, and by providing for the
17 economic well-being of the state's citizenry and communities.
18 Therefore, the legislature believes it necessary for units of local
19 government throughout the state to engage in the orderly development of
20 these watershed plans.

21 NEW SECTION. **Sec. 103.** Unless the context clearly requires
22 otherwise, the definitions in this section apply throughout this
23 chapter.

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

25 (2) "Implementing rules" for a WRIA plan are the rules needed to
26 give force and effect to the parts of the plan that create rights or
27 obligations for any party including a state agency or that establish
28 water management policy.

29 (3) "Minimum instream flow" means a minimum flow under chapter
30 90.03 or 90.22 RCW or a base flow under chapter 90.54 RCW.

31 (4) "WRIA" means a water resource inventory area established in
32 chapter 173-500 WAC as it existed on January 1, 1997.

33 (5) "Water supply utility" means a water, combined water-sewer,
34 irrigation, reclamation, or public utility district that provides water
35 to persons or other water users within the district or a division or
36 unit responsible for administering a publicly governed water supply
37 system on behalf of a county.

1 (6) "WRIA plan" or "plan" means the product of the planning unit
2 including any rules adopted in conjunction with the product of the
3 planning unit.

4 NEW SECTION. **Sec. 104.** In order to have the best possible program
5 for appropriating and administering water use in the state, the
6 legislature establishes the following principles and criteria to carry
7 out the purpose and intent of chapter . . . , Laws of 1997 (this act).

8 (1) All WRIA planning units established under this chapter shall
9 develop a process to assure that water resource user interests and
10 directly involved interest groups at the local level have the
11 opportunity, in a fair and equitable manner, to give input and
12 direction to the process.

13 (2) If a planning unit requests technical assistance from a state
14 agency as part of its planning activities under this chapter and the
15 assistance is with regard to a subject matter over which the agency has
16 jurisdiction, the state agency shall provide the technical assistance
17 to the planning unit.

18 (3) Plans developed under chapter . . . , Laws of 1997 (this act)
19 shall be consistent with and not duplicative of efforts already under
20 way in a WRIA, including but not limited to watershed analysis
21 conducted under state forest practices statutes and rules.

22 NEW SECTION. **Sec. 105.** (1) Once a WRIA planning unit has been
23 organized and designated a lead agency, it shall notify the department
24 and may apply to the department for funding assistance for conducting
25 the planning. Funds shall be provided from and to the extent of
26 appropriations made by the legislature to the department expressly for
27 this purpose.

28 (2) Each planning unit that has complied with subsection (1) of
29 this section is eligible to receive fifty thousand dollars for each
30 WRIA to initiate the planning process. The department shall allocate
31 additional funds to WRIA planning units based on need demonstrated by
32 a detailed proposed budget submitted by the planning unit for carrying
33 out the duties of the planning unit. Each WRIA planning unit may
34 receive up to two hundred fifty thousand dollars for each WRIA during
35 the first two-year period of planning, with a maximum allocation of
36 five hundred thousand dollars for each WRIA. Funding provided under

1 this section shall be considered a contractual obligation against the
2 moneys appropriated for this purpose.

3 (3) Preference shall be given to planning units requesting funding
4 for conducting multi-WRIA planning under section 108 of this act.

5 (4) The department may retain up to one percent of funds allocated
6 under this section to defray administrative costs.

7 NEW SECTION. **Sec. 106.** (1) This chapter shall not be construed as
8 creating a new cause of action against the state or any county, city,
9 town, water supply utility, conservation district, or planning unit.

10 (2) Notwithstanding RCW 4.92.090, 4.96.010, and 64.40.020, no claim
11 for damages may be filed against the state or any county, city, town,
12 water supply utility, tribal governments, conservation district, or
13 planning unit that or member of a planning unit who participates in a
14 WRIA planning unit for performing responsibilities under this chapter.

15 NEW SECTION. **Sec. 107.** (1)(a) Except as provided in section 108 of
16 this act for multi-WRIA planning, the county with the largest area
17 within the boundaries of a WRIA, the city obtaining the largest amount
18 of water from the WRIA, and the largest water supply utility in the
19 WRIA may jointly and unanimously choose to initiate water resource
20 planning for the WRIA under this chapter. If the initiating group so
21 chooses, it shall make application to the department of ecology to
22 declare its intent to conduct watershed planning. Upon making
23 application to the department, the initiating group shall notify the
24 counties, cities, water supply utilities, tribal governments, and
25 conservation districts with territory within the WRIA that these groups
26 are to meet to appoint their members of the WRIA planning unit. The
27 initiating group may consult with the department regarding the
28 initiation of watershed planning. For the purposes of this section and
29 sections 108 and 112 of this act, a county is considered to have
30 territory within a WRIA only if the territory of the county located in
31 the WRIA constitutes at least fifteen percent of the area of the WRIA.
32 For conducting planning under this chapter, the county with the largest
33 area within the boundaries of the WRIA is the lead agency for the WRIA
34 planning, except as provided in (b) and (c) of this subsection and
35 section 108 of this act for multi-WRIA planning.

36 (b) When the counties of a WRIA have convened jointly to make
37 appointments to the planning unit, they may, by a majority vote, choose

1 as the lead agency for WRIA planning any governmental entity in the
2 WRIA. Such a governmental entity shall act as the lead agency for this
3 purpose if it agrees in writing to accept the designation.

4 (c) For a WRIA located within Pierce, King, Snohomish, or Spokane
5 county, the lead agency shall be the water purveyor that is using the
6 largest amount of water from the WRIA unless the water supply utility
7 notifies in writing the county with the largest area in the WRIA that
8 it chooses not to be the lead agency. Such notice shall be provided
9 within ten working days.

10 (2) In a WRIA where water resource planning efforts have commenced
11 before the effective date of this section, such as but not limited to
12 the Kettle river WRIA, the county legislative authorities with
13 territory within the WRIA in accordance with subsection (1) of this
14 section may, by majority vote, choose to adopt the existing planning
15 unit membership for purposes of planning under chapter . . . , Laws of
16 1997 (this act).

17 Nothing in chapter . . . , Laws of 1997 (this act) shall affect
18 ongoing efforts to develop new resources and the sharing of existing
19 resources. No moratorium may be imposed on water resource decision
20 making by the department solely because of ongoing planning efforts or
21 the absence of a plan or planning effort. Any new planning units
22 formed under this act shall recognize efforts already in progress.

23 (3)(a) One WRIA planning unit shall be appointed for the WRIA as
24 provided by this section or for a multi-WRIA area as provided by
25 section 108 of this act for multi-WRIA planning. The planning unit
26 shall be composed of:

27 (i) One member representing each county with territory in the WRIA
28 appointed by the county;

29 (ii) One member representing cities for each county with territory
30 in the WRIA appointed by the cities within that county;

31 (iii) One member representing water supply utilities for each
32 county with territory within the WRIA, appointed jointly by the three
33 largest water supply utilities in the county;

34 (iv) One member representing all conservation districts with
35 territory within the WRIA appointed jointly by those districts;

36 (v) Three members representing various special interest groups
37 appointed jointly by the cities with territory within the WRIA; and six
38 members representing various special interest groups appointed jointly
39 by the counties with territory within the WRIA;

1 (vi) One member representing the general citizenry appointed
2 jointly by the cities with territory within the WRIA;

3 (vii) Three members representing the general citizenry appointed
4 jointly by the counties with territory in the WRIA, of which at least
5 one shall be a holder of a water right certificate and at least one
6 shall be a holder of a water right for which a statement of claim was
7 in the state's water rights claims registry before January 1, 1997;

8 (viii) If one or more federal Indian reservations are located in
9 whole or in part within the boundaries of the WRIA, the planning unit
10 shall extend an invitation to the tribal government of each reservation
11 to appoint one member representing that tribal government; and

12 (ix) Three members representing state agencies including the
13 secretary of the department of transportation or the secretary's
14 designee, the director of the department of fish and wildlife or the
15 director's designee, and the director of the department of ecology or
16 the director's designee. The three members representing state
17 government shall have a single vote representing state agency
18 interests.

19 (b) In addition, for a WRIA located within Pierce, King, Snohomish,
20 or Spokane county, one representative of the water purveyor using the
21 largest amount of water from the WRIA shall be a voting member of the
22 planning unit whether the principal offices of the purveyor are or are
23 not located within the WRIA.

24 (4) Except for a person appointed under subsection (3)(a)(ix) or
25 (b) of this section, each person appointed to a WRIA planning unit
26 shall have been a resident and a property owner of the WRIA for at
27 least three years. No state employees or state officials other than
28 members appointed under subsection (3)(a)(ix) of this section may be
29 appointed to the planning unit. In appointing persons to the WRIA
30 planning unit representing special interest groups, the counties and
31 cities shall consider industrial water users, general businesses,
32 hydroelectric and thermal power producers, and irrigated agriculture,
33 nonirrigated agriculture, forestry, recreation, environmental, and
34 fisheries interest groups and other groups with interests in the WRIA.

35 (5)(a) In voting to appoint the members of a WRIA planning unit, to
36 select a lead agency for water resource planning under section 107 or
37 108 of this act, to approve a WRIA plan under section 112 of this act,
38 or to request or concur with a request for multi-WRIA planning under
39 section 108 of this act, each county with territory within the WRIA

1 shall have three votes, divided equally among the members of the
2 county's legislative authority and these actions shall be made by
3 majority vote based on the votes allocated under this section. In
4 voting to appoint members of a WRIA planning unit: Each city with
5 territory within the WRIA shall have one vote and appointments shall be
6 made by majority vote of such cities; each water supply utility other
7 than those of a city or town with territory within the WRIA shall have
8 one vote and appointments shall be made by majority vote of such
9 districts; and each conservation district with territory within the
10 WRIA shall have one vote and appointments shall be made by majority
11 vote of such districts. All appointments shall be made within sixty
12 days of the date the appointing authorities other than the counties are
13 notified to convene to make appointments or the appointments shall be
14 made by the counties with territory in the WRIA in the same manner the
15 counties make other appointments.

16 (b) The members appointed to the WRIA planning unit under
17 subsection (3)(a)(i), (ii), and (iii) of this section may, within
18 thirty days, by unanimous vote, increase the number of members of the
19 planning unit appointed under subsection (3)(a)(v), (vi), and (vii) of
20 this section by up to five members. Appointment of additional members
21 to the planning unit shall be made within thirty days from the date of
22 application to the department under subsection (1)(a) of this section.

23 (c) A vacancy on the planning unit shall be filled by appointment
24 in the same manner prescribed for appointing the position that has
25 become vacant. The planning unit shall convene and begin work as soon
26 as two-thirds of the number of persons eligible to be members of the
27 planning unit have been appointed. All positions must be filled within
28 thirty days of the convening of the planning unit. The unit shall not
29 interrupt its work to await additional original appointments or
30 appointments to fill any vacancies that may occur in its membership.

31 NEW SECTION. Sec. 108. (1) The counties with territory in a WRIA,
32 the city obtaining the largest quantity of water from the WRIA, and the
33 largest water supply utility in the WRIA may jointly and unanimously
34 elect to initiate multi-WRIA planning. If this initiating group so
35 chooses, the initiating group shall notify the counties, cities, water
36 supply utilities, tribal governments, and conservation districts with
37 territory within the multi-WRIA area that these groups are to meet to
38 appoint their members of the multi-WRIA area planning unit.

1 (a) The planning unit shall be composed of:

2 (i) One member representing each county with territory in the
3 multi-WRIA area appointed by that county;

4 (ii) One member representing cities for each county with territory
5 in the multi-WRIA area appointed by the cities within that county;

6 (iii) One member representing water supply utilities for each
7 county with territory within the multi-WRIA area appointed jointly by
8 the three water supply utilities in each county;

9 (iv) Up to two members, as that number is determined by the
10 districts, representing all conservation districts with territory
11 within the multi-WRIA area and appointed jointly by those districts;

12 (v) Three members representing various special interest groups
13 appointed jointly by the cities with territory within the multi-WRIA
14 area; and six members representing various special interest groups
15 appointed jointly by the counties with territory within the multi-WRIA
16 area;

17 (vi) One member representing the general citizenry appointed
18 jointly by the cities with territory within the multi-WRIA area;

19 (vii) Three members representing the general citizenry appointed
20 jointly by the counties with territory in the multi-WRIA area, of which
21 at least one shall be a holder of a water right certificate and at
22 least one shall be a holder of a water right for which a statement of
23 claim was in the state's water rights claims registry before January 1,
24 1997;

25 (viii) If one or more federal Indian reservations are located in
26 whole or in part within the boundaries of the multi-WRIA area, the
27 planning unit shall extend an invitation to the tribal government of
28 each reservation to appoint one member representing that tribal
29 government; and

30 (ix) Three members representing state agencies including the
31 secretary of the department of transportation or the secretary's
32 designee, the director of the department of fish and wildlife or the
33 director's designee, and the director of the department of ecology or
34 the director's designee. The three members representing state
35 government shall have a single vote representing state agency
36 interests.

37 (b) In addition, for a multi-WRIA planning unit located within
38 Pierce, King, Snohomish, or Spokane county, one representative of the
39 water purveyor using the largest amount of water from the multi-WRIA

1 area shall be a voting member of the planning unit whether the
2 principal offices of the purveyor are or are not located within the
3 multi-WRIA area.

4 (c) Except for a person appointed under (a)(ix) or (b) of this
5 subsection, each person appointed to a multi-WRIA planning unit shall
6 have been a resident and property owner within the multi-WRIA area for
7 at least three years. No state employees or state officials other than
8 members appointed under (a)(ix) of this subsection may be appointed to
9 the planning unit. In appointing persons to the multi-WRIA planning
10 unit representing special interest groups the counties and cities shall
11 consider industrial water users, general businesses, hydroelectric and
12 thermal power producers, and irrigated agriculture, nonirrigated
13 agriculture, forestry, recreation, environmental, and fisheries
14 interest groups and other groups with interests in the multi-WRIA area.

15 (2) In a multi-WRIA area where water resource planning efforts have
16 commenced before the effective date of this section, such as but not
17 limited to the Kettle river WRIA, the county legislative authorities
18 with territory within the WRIA in accordance with subsection (1) of
19 this section may, by majority vote, choose to adopt the existing
20 planning unit membership for purposes of planning under chapter . . . ,
21 Laws of 1997 (this act).

22 Nothing in this act shall affect ongoing efforts to develop new
23 resources and the sharing of existing resources. No moratorium may be
24 imposed on water resource decision making by the department solely
25 because of ongoing planning efforts or the absence of a plan or
26 planning effort. Any new planning units formed under this act shall
27 recognize efforts already in progress.

28 (3)(a) The counties in the multi-WRIA area shall select, by a
29 majority vote, a governmental entity in the multi-WRIA area to act as
30 lead agency for water resource planning in the multi-WRIA area under
31 this chapter. Such an entity shall serve as the lead agency if it
32 agrees in writing to do so. All appointments shall be made within
33 sixty days of the date the lead agency in the multi-WRIA area notifies
34 the other appointing authorities to convene to make appointments or the
35 appointments shall be made by the counties with territory in the multi-
36 WRIA area in the same manner the counties make other appointments.

37 (b) The members appointed to the WRIA planning unit under
38 subsection (1)(a)(i), (ii), and (iii) of this section may, within
39 thirty days, by unanimous vote, increase the number of members of the

1 planning unit appointed under subsection (1)(a)(v), (vi), and (vii) of
2 this section by up to five members. Appointment of additional members
3 to the planning unit shall be made within thirty days from the date of
4 application to the department to initiate planning.

5 (c) A vacancy on the planning unit shall be filled by appointment
6 in the same manner prescribed for appointing the position that has
7 become vacant. The planning unit shall convene and begin work as soon
8 as two-thirds of the number of persons eligible to be members of the
9 planning unit have been appointed. All positions must be filled within
10 thirty days of the convening of the planning unit. The unit shall not
11 interrupt its work to await additional original appointments or
12 appointments to fill any vacancies that may occur in its membership.

13 (4) A planning unit for a multi-WRIA area shall perform all of the
14 functions assigned by this chapter to a WRIA planning unit and is
15 subject to all of the provisions of this chapter that apply to a WRIA
16 planning unit.

17 NEW SECTION. **Sec. 109.** The lead agency shall provide staff
18 support from resources provided for planning under chapter . . . , Laws
19 of 1997 (this act) and from other sources, including but not limited to
20 sources provided under section 113 of this act, for the work of the
21 WRIA planning unit. Each WRIA planning unit may establish its own
22 methods of operation that are consistent with this chapter and may
23 establish methods for reviewing the operations of its lead agency. No
24 planning unit appointed or selected under this chapter may possess or
25 exercise the power of eminent domain. No planning unit appointed or
26 selected under this chapter may take any action that affects in any
27 manner a general adjudication proceeding for water rights, completed or
28 ongoing. Each WRIA planning unit is encouraged to: Consider
29 information and plans that may have been previously developed by other
30 entities in establishing water resource management plans for the WRIA;
31 consider existing data regarding water resources in the WRIA; and, for
32 a WRIA that borders another state, cooperate with local government
33 counterparts in the adjacent state regarding water resource planning.
34 Water resource plans developed under this chapter for a WRIA may not
35 interfere in any manner with a general adjudication of water rights,
36 completed or ongoing. Such a WRIA plan may not in any manner impair or
37 diminish with a water right that exists before the adoption of the plan
38 by the department under section 112 of this act.

1 All meetings of a WRIA planning unit shall be conducted as public
2 meetings as required for such meetings by the open public meetings act,
3 chapter 42.30 RCW. Some time shall be set aside at the end of each
4 meeting of a WRIA planning unit for public comments. Each planning
5 unit shall establish procedures to be followed by the unit in making
6 decisions. The objective to be sought by the planning unit in making
7 decisions is to reach agreement among its members on the decisions.
8 Decisions by a two-thirds majority vote may be used if the unit has
9 found that attempts at achieving full agreement have not been
10 successful.

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

24 NEW SECTION. **Sec. 110.** (1) Each WRIA planning unit shall develop
25 a water resource plan. The plan must address the elements listed in
26 subsection (2) of this section and may include other elements added by
27 the planning unit. Once organized, the first task of the planning unit
28 is to prioritize these elements regarding their importance in the WRIA
29 and in developing a water resource plan for the WRIA. A plan shall not
30 be developed such that its provisions (a) are in conflict with state
31 statute or federal law; (b) impair or diminish in any manner a water
32 right existing before its adoption; (c) are inconsistent with the
33 construction, operation, or maintenance of a federal reclamation
34 project; or (d) are inconsistent with an instream flow or condition
35 established for hydroelectric power project licensed under the federal
36 power act. No aspect of the plan may establish standards for water
37 quality or regulate water quality in any manner whatsoever.

38 (2) The plan must include the following:

1 (a) An assessment of water supply and use in the WRIA, including:

2 (i) A quantitative estimation of the amount of surface and ground
3 water present in the planning unit, using United States geological
4 survey information and other existing sources of information;

5 (ii) A quantitative estimation using existing sources of
6 information, of the amount of precipitation and surface and ground
7 water available, using available technologies, collectively for both
8 current and future water uses, including for instream purposes and for
9 withdrawal or diversion;

10 (iii) A quantitative estimation using existing sources of
11 information, of the amount of surface and ground water actually being
12 used, and the months of peak and minimum use, both in-stream and by
13 withdrawal, for agricultural, industrial, fisheries, recreational,
14 environmental, municipal, and residential purposes, and including
15 amounts claimed, permitted, or certificated for future municipal needs;
16 and

17 (iv) A quantitative estimation of the amount of water,
18 approximately, that is represented by amounts in claims in the water
19 rights claims registry, in water use permits, in certificated rights,
20 and in rules establishing instream flows;

21 (b) A quantitative description of future water-based instream and
22 out-of-stream needs in the planning unit, based on projected population
23 and agricultural and other economic growth. That is, an identification
24 of the water needed collectively for use for agricultural, fisheries,
25 recreational, environmental, industrial, municipal, and residential
26 purposes. If a federal reclamation project is providing water for
27 reclamation purposes within the WRIA or multi-WRIA area, federal
28 reclamation water use requirements shall be those for project lands
29 within the WRIA or multi-WRIA area;

30 (c) Instream flows.

31 (i) Except for the main stem of the Columbia river or the main stem
32 of the Snake river, a planning unit may propose minimum instream flows
33 or lake levels as part of its plan for other rivers and streams in its
34 WRIA or multi-WRIA area.

35 (ii) The planning unit, by unanimous recorded vote of all voting
36 members, may set specific minimum instream flows or lake levels, and
37 such flows or levels shall be adopted by rule of the department.

38 (iii) If the planning unit is unable to approve specific minimum
39 instream flows or levels unanimously, such flows or levels may be

1 submitted as a recommended minimum instream flow or level in the WRIA
2 plan for consideration by the department. Such recommendations must be
3 approved by a two-thirds majority vote of the voting members of the
4 planning unit.

5 (iv) Minimum instream flows or lake levels proposed under this
6 subsection may not conflict with flow requirements or conditions in
7 effect under a license issued under the federal power act.

8 (v) The planning unit may propose adjustments to minimum instream
9 flows or lake levels that have been set by rule before the adoption of
10 the planning unit's plan and will propose minimum instream flows or
11 lake levels as part of the plan for the other rivers, streams, and
12 lakes for which it determines the establishment of flows or levels to
13 be appropriate in the WRIA, or in the multi-WRIA area for multi-WRIA
14 planning under section 108 of this act.

15 (vi) The planning unit, by unanimous recorded vote of all voting
16 members, may adjust established minimum instream flows or lake levels,
17 and such flows or levels shall be adopted by rule of the department.

18 (vii) If the planning unit is unable to approve such adjustments
19 unanimously, such flows or levels may be submitted as a recommended
20 adjustment to established minimum instream flows or lake levels in the
21 WRIA plan for consideration by the department. Such recommendations
22 must be approved by a two-thirds majority vote of the voting members of
23 the planning unit.

24 (viii) A minimum instream flow or lake level set for a body of
25 water in a WRIA plan adopted by the department under section 112 of
26 this act supersedes any minimum flow or level or base flow or any other
27 such flow or level previously established for the body of water by the
28 department;

29 (d) A quantitative description of the ground water and of the
30 surface water available for further appropriation including water that
31 may be obtained through reuse. As used in this subsection (2)(d),
32 "available" means available on the date the plan takes effect as a rule
33 under section 112 of this act;

34 (e) An identification of known areas that provide for the recharge
35 of aquifers from the surface and areas where aquifers recharge surface
36 bodies of water;

37 (f) Strategies for increasing water supplies in the WRIA,
38 including:

39 (i) Water conservation and reuse measures; and

1 (ii) Storage enhancements, including modifications to existing
2 reservoirs, new reservoirs, and underground storage. Any quantity of
3 water made available under these strategies is a quantity that is in
4 addition to the water declared available for appropriation under (d) of
5 this subsection; and

6 (g) An identification of areas where voluntary water-related
7 habitat improvement projects or voluntary transactions providing for
8 the purchase of water-related habitat or water-related habitat
9 easements would provide the greatest benefit to habitat in the WRIA,
10 and a prioritization of the areas based on their potential for
11 providing such benefits. The purpose of this element of the plan is to
12 provide a means of coordinating nonregulatory, voluntary efforts for
13 improving water-related habitat in the WRIA.

14 (3) Upon request the department shall assist the planning unit in
15 drafting proposed implementing rules for the elements of the plan over
16 which the department has authority. The draft rules shall accompany
17 the plan as it is reviewed under the provisions of this chapter.

18 (4) A plan shall not be developed under this chapter to require
19 directly or indirectly the implementation of laws, rules, or programs
20 that are designed primarily to control water pollution or discharges of
21 pollutants to water, to regulate effluent discharges or wastewater
22 treatment systems or facilities, or to establish or require the
23 achievement of water quality standards, including but not limited to
24 chapter 90.48 RCW and rules adopted under chapter 90.48 RCW, the
25 national pollutant discharge elimination system permit program, and the
26 state waste discharge permit program.

27 NEW SECTION. **Sec. 111.** (1) Water resource management plans
28 developed pursuant to the process in this chapter and subsequently
29 adopted by the department under section 112 of this act are presumed
30 valid. This presumption shall apply in any petition or action filed
31 against a plan.

32 (2) Any action taken by a state agency regarding water resources
33 within a WRIA for which a plan has been adopted under section 112 of
34 this act and any planning conducted by a state agency regarding water
35 resources within a WRIA for which a plan has been adopted under section
36 112 of this act shall be taken or conducted in a manner that is
37 consistent with the plan. All actions and decisions of the department
38 regarding water resources in the WRIA shall be consistent with and

1 based upon such an adopted plan for the WRIA. Any other authority of
2 the department exercised within the WRIA regarding water resources
3 shall be exercised in a manner that is consistent with such an adopted
4 plan.

5 NEW SECTION. **Sec. 112.** (1) Upon completing a proposed water
6 resource plan for the WRIA, the WRIA planning unit shall publish notice
7 of and conduct at least one public hearing in the WRIA on the proposed
8 plan. The planning unit shall take care to provide notice of the
9 hearing throughout the WRIA or multi-WRIA area. As a minimum, it shall
10 publish a notice of the hearing in one or more newspapers of general
11 circulation in the WRIA or multi-WRIA area. After considering the
12 public comments presented at the hearing or hearings, the planning unit
13 shall submit a copy of its proposed plan to the department and to the
14 tribal council of each reservation with territory within the WRIA.

15 (2)(a) The department shall provide advice as to any specific
16 subsections or sections of the plan that the department believes to be
17 in conflict with state statute or federal law and may provide other
18 recommendations regarding the plan. The department shall transmit its
19 advice and recommendations regarding the plan to the WRIA planning unit
20 within sixty days of receiving it for review.

21 (b) The tribal council may review and provide comments and
22 recommendations to the planning unit within sixty days of the receipt
23 of the plan.

24 (3) The WRIA planning unit shall consider each recommendation
25 provided under subsection (2) of this section. The planning unit may
26 adopt such a recommendation or provide changes to respond to the advice
27 of the department and the tribal council by a two-thirds majority vote
28 of the members of the planning unit.

29 The WRIA planning unit shall approve a water resource plan for the
30 WRIA by a two-thirds majority vote of the members of the planning unit.
31 An approved plan shall be submitted to the counties with territory
32 within the WRIA for adoption. If a WRIA planning unit receives funding
33 for WRIA or multi-WRIA planning under section 105 of this act and does
34 not approve a plan for submission to the counties within four years of
35 the date the planning unit receives the first of that funding from the
36 department for the planning, the department shall develop and adopt a
37 water resource plan for the WRIA or multi-WRIA area.

1 (4) The legislative authority of each of the counties with
2 territory within the WRIA shall provide public notice for and conduct
3 at least one public hearing on the WRIA plan submitted to the county
4 under this section. The counties shall take care to provide notice of
5 the hearings throughout the WRIA or multi-WRIA area. As a minimum,
6 they shall publish a notice of the hearings in one or more newspapers
7 of general circulation in the WRIA or multi-WRIA area. After the
8 public hearings, the legislative authorities of these counties shall
9 convene in joint session to consider the plan. The counties may
10 approve or reject the plan, but may not amend the plan. Approval of a
11 plan, or of recommendations for a plan that is not approved, shall be
12 made by a majority vote of the members of the various legislative
13 authorities of the counties with territory in the WRIA based on the
14 votes allocated under section 107 of this act.

15 If the plan is not approved, it shall be returned to the WRIA
16 planning unit with recommendations for revisions. Any revised plan and
17 implementing rules prepared by the planning unit shall be submitted to
18 the department and to the counties as provided by this section for WRIA
19 water resource plans generally.

20 (5) If the plan and implementing rules are approved by the members
21 of the legislative authorities, the plan shall be transmitted to the
22 department for adoption. The department shall adopt such an approved
23 WRIA water resource plan through the adopting of implementing rules.
24 The department has no discretion to amend or reject the plan or
25 implementing rules except those recommendations provided in section
26 110(2)(c) (iii) or (vii) of this act. A copy of the implementing rules
27 and notice of its adoption as rules shall be published in the state
28 register under chapter 34.05 RCW. The public hearing required by
29 chapter 34.05 RCW shall be deemed to have been satisfied by public
30 hearings held by county legislative authorities.

31 (6) If the department finds that an element of a WRIA plan is in
32 conflict with state statute or federal law and the planning unit does
33 not remove the conflict created by the element from its plan, the
34 department and the planning unit shall submit the conflict to
35 mediation. If mediation does not resolve the conflict within sixty
36 days, the department shall file a petition for declaratory judgment in
37 the superior court to determine whether the element is or is not in
38 conflict with state statute or federal law. The petition shall be
39 filed in the superior court in the county with the largest area in the

1 WRIA or multi-WRIA area governed by the plan. The counties that
2 approved the plan shall be named as parties to the proceeding. The
3 superior court shall review the potential conflict under the error of
4 law standard. If the superior court finds that an element of the plan
5 is in conflict with state statute or federal law, that element of the
6 plan shall be invalid. Decisions on such petitions are reviewable as
7 in other civil cases. This subsection shall not be construed as
8 establishing such state liability for any other element of the plan
9 adopted as rules.

10 NEW SECTION. **Sec. 113.** The WRIA planning units may accept grants,
11 funds, and other financing, as well as enter into cooperative
12 agreements with private and public entities for planning assistance and
13 funding.

14 NEW SECTION. **Sec. 114.** A new section is added to chapter 90.03
15 RCW to read as follows:

16 (1) The department shall rule in a timely manner upon complete
17 applications to appropriate public surface and ground water. For
18 complete applications that seek to appropriate water from within a WRIA
19 for which a WRIA plan has been adopted, the department shall grant or
20 deny the application within one hundred eighty days of the date the
21 properly completed application is filed with the department, except as
22 provided in subsection (2) of this section. For applications filed
23 after July 1, 1999, that seek to appropriate water from within a WRIA
24 for which no WRIA plan has been adopted, the department shall grant or
25 deny the application within one year of the date the properly completed
26 application is filed with the department, except as provided in
27 subsection (2) of this section. The times allowed in this section to
28 rule upon an application shall not include the time it takes the
29 applicant to respond to an explicit request for additional information
30 reasonably required to make a determination on the application. The
31 department shall be allowed only one such request for additional
32 information. The cost of obtaining such information shall be
33 reasonable in relation to the quantity and value of the water right
34 applied for. Once the applicant responds to an information request,
35 the stay of the time allowed for the permit decision shall end.

36 (2) If a detailed statement, generally referred to as an
37 environmental impact statement, must be prepared under chapter 43.21C

1 RCW for or in regard to an application to appropriate water, the
2 department shall grant or deny the application within ninety days of
3 the date the final environmental impact statement is available from the
4 official responsible for it under chapter 43.21C RCW.

5 (3) The department shall report by January 1, 1999, to the
6 legislature on the status of processing applications under this
7 section.

8 NEW SECTION. **Sec. 115.** A new section is added to chapter 34.05
9 RCW to read as follows:

10 (1) Once a plan has been adopted by the counties in the WRIA under
11 section 112 of this act and the plan has been submitted to the
12 department of ecology, the department shall file implementing rules for
13 the plan with the code reviser along with an order adopting the
14 implementing rules. The code reviser shall cause the order and the
15 implementing rules to be published in the Washington state register in
16 the manner provided for the adoption of final rules and shall
17 incorporate the implementing rules into the Washington Administrative
18 Code. No other aspect of this chapter that establishes procedures for
19 the adoption of rules applies to the adoption of the plan by the
20 department.

21 (2) For the purposes of this section, "WRIA" has the meaning
22 established in section 103 of this act.

23 **Sec. 116.** RCW 90.54.040 and 1997 c ... s 2 (Senate Bill 5029) are
24 each amended to read as follows:

25 (1) Consistent with chapter . . . , Laws of 1997 (this act) the
26 department, through the adoption of appropriate rules, is directed, as
27 a matter of high priority to insure that the waters of the state are
28 utilized for the best interests of the people, to develop and implement
29 in accordance with the policies of this chapter a comprehensive state
30 water resources program which will provide a process for making
31 decisions on future water resource allocation and use. The department
32 may develop the program in segments so that immediate attention may be
33 given to waters of a given physioeconomic region of the state or to
34 specific critical problems of water allocation and use.

35 (2) In relation to the management and regulatory programs relating
36 to water resources vested in it, the department is further directed to
37 modify existing regulations and adopt new regulations, when needed and

1 possible, to insure that existing regulatory programs are in accord
2 with the water resource policy of this chapter and the program
3 established in subsection (1) of this section.

4 (3) The department is directed to review all statutes relating to
5 water resources which it is responsible for implementing. When any of
6 the same appear to the department to be ambiguous, unclear, unworkable,
7 unnecessary, or otherwise deficient, it shall make recommendations to
8 the legislature including appropriate proposals for statutory
9 modifications or additions. Whenever it appears that the policies of
10 any such statutes are in conflict with the policies of this chapter,
11 and the department is unable to fully perform as provided in subsection
12 (2) of this section, the department is directed to submit statutory
13 modifications to the legislature which, if enacted, would allow the
14 department to carry out such statutes in harmony with this chapter.

15 **PART II**

16 **STORAGE**

17 **Sec. 201.** RCW 90.54.020 and 1989 c 348 s 1 are each amended to
18 read as follows:

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

21 (1) Uses of water for domestic, stock watering, industrial,
22 commercial, agricultural, irrigation, hydroelectric power production,
23 mining, fish and wildlife maintenance and enhancement, recreational,
24 and thermal power production purposes, and preservation of
25 environmental and aesthetic values, and all other uses compatible with
26 the enjoyment of the public waters of the state, are declared to be
27 beneficial.

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

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

34 (a) Perennial rivers and streams of the state shall be retained
35 with base flows necessary to provide for preservation of wildlife,
36 fish, scenic, aesthetic and other environmental values, and
37 navigational values. Lakes and ponds shall be retained substantially

1 in their natural condition. Withdrawals of water which would conflict
2 therewith shall be authorized only in those situations where it is
3 clear that overriding considerations of the public interest will be
4 served.

5 (b) Waters of the state shall be of high quality. Regardless of
6 the quality of the waters of the state, all wastes and other materials
7 and substances proposed for entry into said waters shall be provided
8 with all known, available, and reasonable methods of treatment prior to
9 entry. Notwithstanding that standards of quality established for the
10 waters of the state would not be violated, wastes and other materials
11 and substances shall not be allowed to enter such waters which will
12 reduce the existing quality thereof, except in those situations where
13 it is clear that overriding considerations of the public interest will
14 be served. Technology-based effluent limitations or standards for
15 discharges for municipal water treatment plants located on the
16 Chehalis, Columbia, Cowlitz, Lewis, or Skagit river shall be adjusted
17 to reflect credit for substances removed from the plant intake water
18 if:

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

21 (ii) The municipality demonstrates that no violation of receiving
22 water quality standards or appreciable environmental degradation will
23 result.

24 (4) The development of multipurpose water storage facilities shall
25 be a high priority for programs of water allocation, planning,
26 management, and efficiency. The department, other state agencies,
27 local governments, and planning units formed under section 107 or 108
28 of this act shall evaluate the potential for the development of new
29 storage projects and the benefits and effects of storage in reducing
30 damage to stream banks and property, increasing the use of land,
31 providing water for municipal, industrial, agricultural, power
32 generation, and other beneficial uses, and improving stream flow
33 regimes for fisheries and other instream uses.

34 (5) Adequate and safe supplies of water shall be preserved and
35 protected in potable condition to satisfy human domestic needs.

36 ((+5)) (6) Multiple-purpose impoundment structures are to be
37 preferred over single-purpose structures. Due regard shall be given to
38 means and methods for protection of fishery resources in the planning

1 for and construction of water impoundment structures and other
2 artificial obstructions.

3 ~~((+6))~~ (7) Federal, state, and local governments, individuals,
4 corporations, groups and other entities shall be encouraged to carry
5 out practices of conservation as they relate to the use of the waters
6 of the state. In addition to traditional development approaches,
7 improved water use efficiency and conservation shall be emphasized in
8 the management of the state's water resources and in some cases will be
9 a potential new source of water with which to meet future needs
10 throughout the state.

11 ~~((+7))~~ (8) Development of water supply systems, whether publicly
12 or privately owned, which provide water to the public generally in
13 regional areas within the state shall be encouraged. Development of
14 water supply systems for multiple domestic use which will not serve the
15 public generally shall be discouraged where water supplies are
16 available from water systems serving the public.

17 ~~((+8))~~ (9) Full recognition shall be given in the administration
18 of water allocation and use programs to the natural interrelationships
19 of surface and ground waters.

20 ~~((+9))~~ (10) Expressions of the public interest will be sought at
21 all stages of water planning and allocation discussions.

22 ~~((+10))~~ (11) Water management programs, including but not limited
23 to, water quality, flood control, drainage, erosion control and storm
24 runoff are deemed to be in the public interest.

25 **Sec. 202.** RCW 90.54.180 and 1989 c 348 s 5 are each amended to
26 read as follows:

27 Consistent with the fundamentals of water resource policy set forth
28 in this chapter, state and local governments, individuals,
29 corporations, groups and other entities shall be encouraged to carry
30 out water use efficiency and conservation programs and practices
31 consistent with the following:

32 (1) Water efficiency and conservation programs should utilize an
33 appropriate mix of economic incentives, cost share programs, regulatory
34 programs, and technical and public information efforts. Programs which
35 encourage voluntary participation are preferred.

36 (2) Increased water use efficiency should receive consideration as
37 a potential source of water in state and local water resource planning
38 processes. In determining the cost-effectiveness of alternative water

1 sources, consideration should be given to the benefits of conservation,
2 including waste water recycling, and (~~(impoundment)~~) storage of waters.

3 (3) In determining the cost-effectiveness of alternative water
4 sources, full consideration should be given to the benefits of storage
5 which can reduce the damage to stream banks and property, increase the
6 utilization of land, provide water for municipal, industrial,
7 agricultural, and other beneficial uses, provide for the generation of
8 electric power from renewable resources, and improve stream flow
9 regimes for fishery and other instream uses.

10 (4) Entities receiving state financial assistance for construction
11 of water source expansion or acquisition of new sources shall develop,
12 and implement if cost-effective, a water use efficiency and
13 conservation element of a water supply plan pursuant to RCW
14 43.20.230(1).

15 (5) State programs to improve water use efficiency should focus on
16 those areas of the state in which water is overappropriated; areas that
17 experience diminished streamflows or aquifer levels; and areas where
18 projected water needs, including those for instream flows, exceed
19 available supplies.

20 (6) Existing and future generations of citizens of the state of
21 Washington should be made aware of the importance of the state's water
22 resources and the need for wise and efficient use and development of
23 this vital resource. In order to increase this awareness, state
24 agencies should integrate public education on increasing water use
25 efficiency into existing public information efforts. This effort shall
26 be coordinated with other levels of government, including local
27 governments and Indian tribes.

28 PART III

29 GENERAL ADJUDICATIONS

30 NEW SECTION. **Sec. 301.** A new section is added to chapter 90.03
31 RCW to read as follows:

32 The legislature finds that the lack of certainty regarding water
33 rights within a water resource basin may impede management and planning
34 for water resources. The legislature further finds that planning units
35 conducting water resource planning under chapter 90.-- RCW (sections
36 101 through 113 of this act) may find that the certainty provided by a
37 general adjudication of water rights under this chapter is required for

1 water planning or water management in a water resource inventory area
2 or in a portion of the area. Therefore, such planning units may
3 petition the department to conduct such a general adjudication and the
4 department shall give high priority to such a request in initiating any
5 such general adjudications under this chapter.

6 **PART IV**
7 **WATER PURVEYORS**

8 **Sec. 401.** RCW 90.03.383 and 1991 c 350 s 1 are each amended to
9 read as follows:

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

27 (2) For the purposes of this section, the following definitions
28 shall apply:

29 (a) "Interties" are interconnections between public water systems
30 permitting exchange, acquisition, or delivery of wholesale and/or
31 retail water between those systems for other than emergency supply
32 purposes, where such exchange, acquisition, or delivery is within
33 established instantaneous and annual withdrawal rates specified in the
34 systems' existing water right permits or certificates, or contained in
35 claims filed pursuant to chapter 90.14 RCW, and which results in better
36 management of public water supply consistent with existing rights and
37 obligations. Interties include interconnections between public water

1 systems permitting exchange, acquisition, or delivery of water to serve
2 as primary or secondary sources of supply(~~(, but do not include~~
3 ~~development of new sources of supply to meet future demand))~~ and the
4 development of new sources of supply to meet future demands if the
5 water system or systems receiving water through such an intertie make
6 efficient use of existing sources of water supply and the provision of
7 water through such an intertie is consistent with local land use plans.
8 For this purpose, a system's full compliance with the state department
9 of health's conservation guidelines for such systems is deemed
10 efficient use.

11 (b) "Service area" is the area designated as the wholesale and/or
12 retail area in a water system plan or a coordinated water system plan
13 pursuant to chapter 43.20 or 70.116 RCW respectively. When a public
14 water system does not have a designated service area subject to the
15 approval process of those chapters, the service area shall be the
16 designated place of use contained in the water right permit or
17 certificate, or contained in the claim filed pursuant to chapter 90.14
18 RCW.

19 (3)(a) Public water systems with interties existing and in use as
20 of January 1, 1991, or that have received written approval from the
21 department of health prior to that date, shall file written notice of
22 those interties with the department of health and the department of
23 ecology. The notice may be incorporated into the public water system's
24 five-year update of its water system plan, but shall be filed no later
25 than June 30, 1996. The notice shall identify the location of the
26 intertie; the dates of its first use; the purpose, capacity, and
27 current use; the intertie agreement of the parties and the service
28 areas assigned; and other information reasonably necessary to modify
29 the public water system's water right ((permit)). Notwithstanding the
30 provisions of RCW 90.03.380 and 90.44.100, for public water systems
31 with interties existing and in use or with written approval as of
32 January 1, 1991, the department of ecology, upon receipt of notice
33 meeting the requirements of this subsection, shall, as soon as
34 practicable, modify the place of use descriptions in the water right
35 permits, certificates, or claims to reflect the actual use through such
36 interties, provided that the place of use is within service area
37 designations established in a water system plan approved pursuant to
38 chapter 43.20 RCW, or a coordinated water system plan approved pursuant
39 to chapter 70.116 RCW, and further provided that the water used is

1 within the instantaneous and annual withdrawal rates specified in the
2 water rights ~~((permit))~~ and that no outstanding complaints of
3 impairment to existing water rights have been filed with the department
4 of ecology prior to September 1, 1991. Where such complaints of
5 impairment have been received, the department of ecology shall make all
6 reasonable efforts to resolve them in a timely manner through agreement
7 of the parties or through available administrative remedies.

8 (b) An intertie meeting the requirements of this subsection (3) for
9 modifying the place of use description in a water right permit,
10 certificate, or claim may be used to its full design or built capacity
11 within the most recently approved retail or wholesale or retail and
12 wholesale service area, without further approval under this section and
13 without regard to the capacity actually used before January 1, 1991.

14 (4) Notwithstanding the provisions of RCW 90.03.380 and 90.44.100,
15 exchange, acquisition, or delivery of water through interties approved
16 by the department of health commencing use after January 1, 1991, shall
17 be permitted when the intertie improves overall system reliability,
18 enhances the manageability of the systems, provides opportunities for
19 conjunctive use, or delays or avoids the need to develop new water
20 sources, and otherwise meets the requirements of this section, provided
21 that each public water system's water use shall not exceed the
22 instantaneous or annual withdrawal rate specified in its water right
23 authorization, shall not adversely affect existing water rights, and
24 shall not be inconsistent with state-approved plans such as water
25 system plans or other plans which include specific proposals for
26 construction of interties. Interties approved and commencing use after
27 January 1, 1991, shall not be inconsistent with regional water resource
28 plans developed pursuant to chapter 90.54 RCW or chapter 90.-- RCW
29 (sections 101 through 113 of this act).

30 (5) For public water systems subject to the approval process of
31 chapter 43.20 RCW or chapter 70.116 RCW, proposals for interties
32 commencing use after January 1, 1991, shall be incorporated into water
33 system plans pursuant to chapter 43.20 RCW or coordinated water system
34 plans pursuant to chapter 70.116 RCW and submitted to the department of
35 health and the department of ecology for review and approval as
36 provided for in subsections (5) through (9) of this section. The plan
37 shall state how the proposed intertie will improve overall system
38 reliability, enhance the manageability of the systems, provide

1 opportunities for conjunctive use, or delay or avoid the need to
2 develop new water sources.

3 (6) The department of health shall be responsible for review and
4 approval of proposals for new interties. In its review the department
5 of health shall determine whether the intertie satisfies the criteria
6 of subsection (4) of this section, with the exception of water rights
7 considerations, which are the responsibility of the department of
8 ecology, and shall determine whether the intertie is necessary to
9 address emergent public health or safety concerns associated with
10 public water supply.

11 (7) If the intertie is determined by the department of health to be
12 necessary to address emergent public health or safety concerns
13 associated with public water supply, the public water system shall
14 amend its water system plan as required and shall file an application
15 with the department of ecology to change its existing water right to
16 reflect the proposed use of the water as described in the approved
17 water system plan. The department of ecology shall process the
18 application for change pursuant to RCW 90.03.380 or 90.44.100 as
19 appropriate, except that, notwithstanding the requirements of those
20 sections regarding notice and protest periods, applicants shall be
21 required to publish notice one time, and the comment period shall be
22 fifteen days from the date of publication of the notice. Within sixty
23 days of receiving the application, the department of ecology shall
24 issue findings and advise the department of health if existing water
25 rights are determined to be adversely affected. If no determination is
26 provided by the department of ecology within the sixty-day period, the
27 department of health shall proceed as if existing rights are not
28 adversely affected by the proposed intertie. The department of ecology
29 may obtain an extension of the sixty-day period by submitting written
30 notice to the department of health and to the applicant indicating a
31 definite date by which its determination will be made. No additional
32 extensions shall be granted, and in no event shall the total review
33 period for the department of ecology exceed one hundred eighty days.

34 (8) If the department of health determines the proposed intertie
35 appears to meet the requirements of subsection (4) of this section but
36 is not necessary to address emergent public health or safety concerns
37 associated with public water supply, the department of health shall
38 instruct the applicant to submit to the department of ecology an
39 application for change to the underlying water right or claim as

1 necessary to reflect the new place of use. The department of ecology
2 shall consider the applications pursuant to the provisions of RCW
3 90.03.380 and 90.44.100 as appropriate. The department of ecology
4 shall not deny or limit a change of place of use for an intertie on the
5 grounds that the holder of a permit has not yet put all of the water
6 authorized in the permit to beneficial use. If in its review of
7 proposed interties and associated water rights the department of
8 ecology determines that additional information is required to act on
9 the application, the department may request applicants to provide
10 information necessary for its decision, consistent with agency rules
11 and written guidelines. Parties disagreeing with the decision of the
12 department of ecology ((æ)) to approve or deny the application for
13 change in place of use may appeal the decision to the pollution control
14 hearings board.

15 (9) The department of health may approve plans containing intertie
16 proposals prior to the department of ecology's decision on the water
17 right application for change in place of use. However, notwithstanding
18 such approval, construction work on the intertie shall not begin until
19 the department of ecology issues the appropriate water right document
20 to the applicant consistent with the approved plan.

21 (10) The 1997 amendments to this section in this act are null and
22 void if any one of sections 101 through 115 of this act is vetoed by
23 June 30, 1997.

24 **Sec. 402.** RCW 90.03.330 and 1987 c 109 s 89 are each amended to
25 read as follows:

26 (1) Upon a showing satisfactory to the department that any
27 appropriation has been perfected in accordance with the provisions of
28 this chapter, it shall be the duty of the department to issue to the
29 applicant a certificate stating such facts in a form to be prescribed
30 by him, and such certificate shall thereupon be recorded with the
31 department. Any original water right certificate issued, as provided
32 by this chapter, shall be recorded with the department and thereafter,
33 at the expense of the party receiving the same, be by the department
34 transmitted to the county auditor of the county or counties where the
35 distributing system or any part thereof is located, and be recorded in
36 the office of such county auditor, and thereafter be transmitted to the
37 owner thereof.

1 water conveyance practices, technologies, or facilities, that are more
2 efficient or more water use efficient than practices, technologies, or
3 facilities previously used under the water right.

4 (2) Notwithstanding any other provisions of RCW 90.14.130 through
5 90.14.180, there shall be no relinquishment of any water right:

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

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

13 (c) If such right is claimed for a determined future development to
14 take place ((either)) at any time within fifteen years of either July
15 1, 1967, or the most recent beneficial use of the water right,
16 whichever date is later, or

17 (d) If such right is claimed for municipal water supply purposes
18 under chapter 90.03 RCW, or

19 (e) If such waters are not subject to appropriation under the
20 applicable provisions of RCW 90.40.030 as now or hereafter amended.

21 **PART VI**
22 **GENERAL PERMITS**

23 NEW SECTION. Sec. 601. The legislature finds that the present
24 delay in the processing of water right applications is not beneficial
25 to the citizens of the state nor is it in keeping with the goal of
26 managing the resource to the highest possible standard and maximum net
27 benefit.

28 The legislature further finds that water conservation efforts would
29 be greatly enhanced by a permit system that encourages water right
30 applicants to use only the amount of water actually necessary to meet
31 their needs.

32 NEW SECTION. Sec. 602. A new section is added to chapter 90.03
33 RCW to read as follows:

34 (1) The department shall develop a general permit system for
35 appropriating water for nonconsumptive, nonbypass uses. This system
36 must be designed and used to accurately identify and register any water

1 right application that qualifies for the streamlined process of
2 appropriation of water by meeting the requirements in this section and
3 registering the use. The general permit system must be applicable
4 state-wide, and all waters of the state shall be eligible for coverage
5 under the system. The evaluation and report required for an
6 application under RCW 90.03.290 are not required for applications
7 processed under the general permit system. For the purposes of this
8 section:

9 (a) "Nonconsumptive, nonbypass use" means a use of water in which
10 water is diverted from a stream or drawn from an aquifer and following
11 its use is discharged back into or near the point of diversion or
12 withdrawal without diminishment in quality and less than five thousand
13 gallons of net consumption per day; and

14 (b) "Without diminishment of quality" means that, before being
15 discharged back to its source, the water being discharged meets state
16 water quality standards adopted under chapter 90.48 RCW.

17 (2) The department shall, by January 1, 1998, establish the general
18 permit system by adopting rules in accordance with chapter 34.05 RCW.
19 Before the adoption of rules for a system, the department shall consult
20 with representatives of the following interest groups: Agriculture;
21 aquaculture; home construction and development; county government; city
22 government; surface mining; and the environmental community. At least
23 four public hearings must be held at various locations around the
24 state, not less than two of which shall be east of the crest of the
25 Cascade mountains. The rules must identify criteria for proposed uses
26 of water for which applications might be processed under the system and
27 must establish procedures for filing and processing applications and
28 issuing water rights certificates under the general permit system.

29 NEW SECTION. **Sec. 603.** A new section is added to chapter 90.03
30 RCW to read as follows:

31 An application for registration as a nonconsumptive, nonbypass
32 water user under the general permit system established under section
33 602 of this act must be made on a form adopted and provided by the
34 department. Within sixty days of receipt of a properly completed
35 application, the department shall determine whether the proposed use is
36 eligible to be processed under the general permit system. If the
37 department determines that the proposed use is eligible to be processed
38 under the system, the application must be processed under the system

1 within the next sixty days. The priority date of the water right
2 established pursuant to this section shall be the date that the
3 properly completed application is submitted. If the department
4 determines that the proposed use is not eligible for the processing,
5 the department shall explain to the applicant in writing the reasons
6 for its determination. For a proposed use determined ineligible for
7 the processing, if the department finds that the information contained
8 on the application form substantially satisfies the information
9 requirements for an application for a use that would normally be filed
10 for processing the application outside of the general permit system,
11 the department shall notify the applicant of its finding and shall
12 process the application as if it were filed for processing outside of
13 the system. If the department finds that the information does not
14 substantially satisfy the requirements, the application must be
15 considered to be incomplete for the processing and the applicant must
16 be notified of this consideration.

17 NEW SECTION. **Sec. 604.** A new section is added to chapter 90.03
18 RCW to read as follows:

19 Nothing in sections 602 and 603 of this act authorizes the
20 impairment or operates to impair any existing water rights. A water
21 right holder under sections 602 and 603 of this act shall not make
22 withdrawals that impair a senior water right. A holder of a senior
23 water right who believes his or her water right is impaired may file a
24 complaint with the department of ecology. Where such complaints of
25 impairment have been received, the department of ecology shall make all
26 reasonable efforts to resolve them in a timely manner through agreement
27 of the parties. Nothing in section 602 or 603 of this act may be
28 construed as waiving any requirement established under chapter 90.48
29 RCW or federal law that a permittee secure a discharge permit regarding
30 water quality.

31 NEW SECTION. **Sec. 605.** If specific funding for the purposes of
32 this act, referencing this act by bill or chapter number, is not
33 provided by June 30, 1997, in the omnibus appropriations act, this act
34 is null and void.

35 **PART VII**
36 **APPEALS**

1 NEW SECTION. **Sec. 701.** The legislature recognizes that in many
2 cases the value of real property directly depends upon the amount of
3 water that is available for use on that property. The legislature also
4 recognizes that water rights are a type of property right in which many
5 different parties may assert an interest. Current statutes require
6 many property rights actions in which different parties assert
7 interests, such as actions for partition or eminent domain, to be filed
8 in superior court. The legislature further finds that informal
9 procedures such as mediation and fact finding have been employed
10 successfully in other areas of the law, and may produce positive
11 results in certain types of water disputes. The legislature therefore
12 finds that property owners should have a choice to select informal or
13 formal hearings before the pollution control hearings board, and that
14 relinquishment proceedings should be appealed to the local superior
15 courts.

16 **Sec. 702.** RCW 34.05.514 and 1995 c 347 s 113 and 1995 c 292 s 9
17 are each reenacted and amended to read as follows:

18 (1) Except as provided in subsections (2) and (3) of this section,
19 proceedings for review under this chapter shall be instituted by paying
20 the fee required under RCW 36.18.020 and filing a petition in the
21 superior court, at the petitioner's option, for (a) Thurston county,
22 (b) the county of the petitioner's residence or principal place of
23 business, or (c) in any county where the property owned by the
24 petitioner and affected by the contested decision is located.

25 (2) For proceedings involving institutions of higher education, the
26 petition shall be filed either in the county in which the principal
27 office of the institution involved is located or in the county of a
28 branch campus if the action involves such branch.

29 (3) For proceedings involving the relinquishment of a water right
30 and appeals of formal and informal hearings of the pollution control
31 hearings board involving a water quantity decision as defined in
32 section 713 of this act, the petition shall be filed in the superior
33 court for the county in which is located the land upon which the water
34 was used.

35 **Sec. 703.** RCW 43.21B.110 and 1993 c 387 s 22 are each amended to
36 read as follows:

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

6 (a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431,
7 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.48.144, 90.56.310, and
8 90.56.330.

9 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
10 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,
11 (~~90.14.130~~) and 90.48.120.

12 (c) The issuance, modification, or termination of any permit,
13 certificate, or license by the department or any air authority in the
14 exercise of its jurisdiction, including the issuance or termination of
15 a waste disposal permit, the denial of an application for a waste
16 disposal permit, or the modification of the conditions or the terms of
17 a waste disposal permit.

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

20 (e) Decisions of local health departments regarding the issuance
21 and enforcement of permits to use or dispose of biosolids under RCW
22 70.95J.080.

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

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

28 (a) The hearings board has no jurisdiction to review orders
29 pertaining to the relinquishment of a water right under RCW 90.14.130,
30 or to review proceedings regarding general adjudications of water
31 rights conducted pursuant to chapter 90.03 or 90.44 RCW.

32 (b) The following hearings shall not be conducted by the hearings
33 board:

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

36 ~~((b))~~ (ii) Hearings conducted by the department pursuant to RCW
37 70.94.332, 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and
38 90.44.180.

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

3 ~~(d))~~ (iii) Hearings conducted by the department to adopt, modify,
4 or repeal rules.

5 (3) ~~((Review of))~~ Rules and regulations adopted by the hearings
6 board shall be subject to review in accordance with the provisions of
7 the Administrative Procedure Act, chapter 34.05 RCW.

8 **Sec. 704.** RCW 43.21B.130 and 1990 c 65 s 3 are each amended to
9 read as follows:

10 The administrative procedure act, chapter 34.05 RCW, shall apply to
11 the appeal of rules and regulations adopted by the board to the same
12 extent as it applied to the review of rules and regulations adopted by
13 the directors and/or boards or commissions of the various departments
14 whose powers, duties and functions were transferred by section 6,
15 chapter 62, Laws of 1970 ex. sess. to the department. ~~((All other~~
16 ~~decisions and orders of the director and all decisions of air pollution~~
17 ~~control boards or authorities established pursuant to chapter 70.94 RCW~~
18 ~~shall be subject to review by the hearings board as provided in this~~
19 ~~chapter.))~~

20 **Sec. 705.** RCW 43.21B.240 and 1989 c 175 s 105 are each amended to
21 read as follows:

22 The department and air authorities shall not have authority to hold
23 adjudicative proceedings pursuant to the Administrative Procedure Act,
24 chapter 34.05 RCW. Such hearings, except for appeals of orders
25 pertaining to the relinquishment of a water right issued pursuant to
26 RCW 90.14.130, shall be held by the pollution control hearings board.

27 **Sec. 706.** RCW 43.21B.305 and 1994 c 253 s 5 are each amended to
28 read as follows:

29 In an appeal that involves a penalty of five thousand dollars or
30 less, the appeal may be heard by one member of the board, whose
31 decision shall be the final decision of the board. An informal hearing
32 appeal relating to a water quantity decision as defined in section 713
33 of this act may be heard by one member of the board. The board shall
34 define by rule alternative procedures to expedite small appeals. These
35 alternatives may include: Mediation, upon agreement of all parties
36 unless initiated as provided in section 713 of this act; submission of

1 testimony by affidavit; conducting hearing by telephone; or other forms
2 that may lead to less formal and faster resolution of appeals.

3 **Sec. 707.** RCW 43.21B.310 and 1992 c 73 s 3 are each amended to
4 read as follows:

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

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

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

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

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

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

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

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

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

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

34 ~~((5))~~ (d) Upon failure to comply with any final order of the
35 department or the administrator, the attorney general, on request of
36 the department or the administrator, may bring an action in the
37 superior court of the county where the violation occurred or the
38 potential violation is about to occur to obtain such relief as

1 necessary, including injunctive relief, to insure compliance with the
2 order. The air authorities may bring similar actions to enforce their
3 orders.

4 ~~((+6+))~~ (e) An appealable decision or order shall be identified as
5 such and shall contain a conspicuous notice to the recipient that it
6 may be appealed only by filing an appeal with the hearings board and
7 serving it on the department within thirty days of receipt.

8 (2) Water quantity decisions of the department, as defined in
9 section 713 of this act, may be appealed to the pollution control
10 hearings board as provided in section 713 of this act. Appeals of
11 orders pertaining to the relinquishment of a water right are filed in
12 superior court as provided by RCW 90.14.130.

13 **Sec. 708.** RCW 43.27A.190 and 1987 c 109 s 11 are each amended to
14 read as follows:

15 Notwithstanding and in addition to any other powers granted to the
16 department of ecology, whenever it appears to the department that a
17 person is violating or is about to violate any of the provisions of the
18 following:

19 (1) Chapter 90.03 RCW; or

20 (2) Chapter 90.44 RCW; or

21 (3) Chapter 86.16 RCW; or

22 (4) Chapter 43.37 RCW; or

23 (5) Chapter 43.27A RCW; or

24 (6) Any other law relating to water resources administered by the
25 department; or

26 (7) A rule or regulation adopted, or a directive or order issued by
27 the department relating to subsections (1) through (6) of this section;
28 the department may cause a written regulatory order to be served upon
29 ~~((said))~~ the person either personally, or by registered or certified
30 mail delivered to addressee only with return receipt requested and
31 acknowledged by him or her. The order shall specify the provision of
32 the statute, rule, regulation, directive or order alleged to be or
33 about to be violated, and the facts upon which the conclusion of
34 violating or potential violation is based, and shall order the act
35 constituting the violation or the potential violation to cease and
36 desist or, in appropriate cases, shall order necessary corrective
37 action to be taken with regard to such acts within a specific and
38 reasonable time. The regulation of a headgate or controlling works as

1 provided in RCW 90.03.070, by a watermaster, stream patrolman, or other
2 person so authorized by the department shall constitute a regulatory
3 order within the meaning of this section. A regulatory order issued
4 hereunder shall become effective immediately upon receipt by the person
5 to whom the order is directed, except for regulations under RCW
6 90.03.070 which shall become effective when a written notice is
7 attached as provided therein. Any person aggrieved by such order may
8 appeal the order pursuant to RCW 43.21B.310, except that appeals of
9 orders pertaining to the relinquishment of a water right shall be filed
10 in superior court pursuant to RCW 90.14.130.

11 **Sec. 709.** RCW 90.14.130 and 1987 c 109 s 13 are each amended to
12 read as follows:

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

1 and be posted at the point of division or withdrawal. The order by
2 itself shall not alter the recipient's right to use water, if any.

3 **Sec. 710.** RCW 90.14.190 and 1987 c 109 s 14 are each amended to
4 read as follows:

5 Any person feeling aggrieved by any decision of the department of
6 ecology may have the same reviewed pursuant to RCW 43.21B.310.
7 However, any order pertaining to the relinquishment of a water right
8 shall be filed in superior court pursuant to RCW 90.14.130. In any such
9 review, the findings of fact as set forth in the report of the
10 department of ecology shall be prima facie evidence of the fact of any
11 waiver or relinquishment of a water right or portion thereof. If the
12 hearings board affirms the decision of the department, a party seeks
13 review in superior court of that hearings board decision pursuant to
14 chapter 34.05 RCW, and the court determines that the party was injured
15 by an arbitrary, capricious, or erroneous order of the department, the
16 court may award reasonable attorneys' fees.

17 **Sec. 711.** RCW 90.14.200 and 1989 c 175 s 180 are each amended to
18 read as follows:

19 (1) All matters relating to the implementation and enforcement of
20 this chapter by the department of ecology shall be carried out in
21 accordance with chapter 34.05 RCW, the Administrative Procedure Act,
22 except where the provisions of this chapter expressly conflict with
23 chapter 34.05 RCW. Proceedings held pursuant to RCW 90.14.130 are
24 ~~((adjudicative proceedings within the meaning of chapter 34.05 RCW.~~
25 ~~Final decisions of the department of ecology in these proceedings))~~
26 appealable to superior court as provided in that section. Other final
27 decisions of the department of ecology under this chapter are subject
28 to review by the pollution control hearings board in accordance with
29 chapter 43.21B RCW.

30 (2) RCW 90.14.130 provides nonexclusive procedures for determining
31 a relinquishment of water rights under RCW 90.14.160, 90.14.170, and
32 90.14.180. RCW 90.14.160, 90.14.170, and 90.14.180 may be applied in,
33 among other proceedings, general adjudication proceedings initiated
34 under RCW 90.03.110 or 90.44.220: PROVIDED, That nothing herein shall
35 apply to litigation involving determinations of the department of
36 ecology under RCW 90.03.290 relating to the impairment of existing
37 rights.

1 **Sec. 712.** RCW 90.66.080 and 1979 c 3 s 8 are each amended to read
2 as follows:

3 The department is hereby empowered to promulgate such rules as may
4 be necessary to carry out the provisions of this chapter. Decisions of
5 the department, other than rule making, shall be subject to review by
6 the pollution control hearings board or a superior court in accordance
7 with chapter 43.21B RCW.

8 NEW SECTION. **Sec. 713.** A new section is added to chapter 43.21B
9 RCW to read as follows:

10 (1) A water right claimant, or permit or certificate holder or
11 applicant who is aggrieved or adversely affected by a water quantity
12 decision may appeal the decision to the pollution control hearings
13 board pursuant to RCW 43.21B.310. A formal hearing before the board
14 may only be granted if all parties to the appeal of the water quantity
15 decision agree to a formal hearing.

16 (2) At the request of any party, the board shall conduct an
17 informal hearing, consisting of mediation and, if a settlement cannot
18 be agreed upon, fact finding with recommendations. The hearings board
19 shall adopt rules governing the election, practice, and procedures of
20 informal hearings consistent with this section and section 714 of this
21 act.

22 (3) For purposes of this chapter, a "water quantity decision"
23 includes the following:

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

27 (b) A decision to enforce the conditions of a permit for, or right
28 to, the beneficial use of water or to require any person to discontinue
29 the use of water.

30 NEW SECTION. **Sec. 714.** A new section is added to chapter 43.21B
31 RCW to read as follows:

32 (1) When one of the parties elects an informal hearing pursuant to
33 section 713 of this act, a board member or an administrative law judge
34 from the environmental hearings office shall be assigned as the
35 mediator for the appeal.

36 (2) The parties involved in the informal hearing must provide the
37 mediator and the other parties in advance with a clear, concise

1 statement of the disputed issues and the parties' position in relation
2 to the issues and supporting documentation. The mediator shall meet
3 with the parties either jointly or separately, in the general area of
4 the project under review or by telephone, at the discretion of the
5 mediator, and shall take such steps as the mediator deems appropriate
6 to resolve their differences and reach a settlement agreement. If a
7 settlement agreement is reached, the mediator shall prepare and submit
8 to the hearings board a written order of dismissal to which the
9 settlement agreement is attached. The hearings board shall enter the
10 order and dismiss the case unless the hearings board finds that the
11 settlement agreement is contrary to law.

12 If the hearings board finds that the settlement agreement is
13 contrary to law, it shall notify the parties and refer the dispute back
14 to mediation.

15 (3) If the parties are unable to achieve a settlement agreement
16 within ninety days after being appointed, the mediator shall issue a
17 statement that a settlement agreement has not been reached. After
18 issuance of the statement, the party filing the appeal may request the
19 hearings board to submit the dispute to fact finding with
20 recommendations. Notice of the request for fact finding must be sent
21 to the other parties.

22 (4) Within five days of the receipt of the request for fact
23 finding, the hearings board shall assign a board member or an
24 administrative appeals judge from the environmental hearings office to
25 serve as fact finder. The person who served as the mediator to the
26 dispute may serve as the fact finder with the consent of both parties.

27 (5) Within five days of being appointed, the fact finder shall
28 establish a date, time, and place for the fact-finding hearing. The
29 date of the hearing must be within thirty days of the appointment of
30 the fact finder. The hearing shall be conducted in the general area
31 where the project under review is located. At least seven days before
32 the date of the hearing, each party must submit to the fact finder and
33 to the other parties written proposals on all of the issues it intends
34 to submit to fact finding. The fact finder has the power to issue
35 subpoenas requiring the attendance and production of witnesses and the
36 production of evidence. The order of presentation at the hearing shall
37 be as agreed by the parties or as determined by the fact finder. Each
38 documentary exhibit shall be filed with the fact finder and copies
39 shall be provided to the other parties. The fact finder shall declare

1 the hearing closed after the parties have completed presenting their
2 testimony within agreed time limits.

3 (6) The fact finder shall, within thirty days following the
4 conclusion of the hearing, make written findings of fact and written
5 recommendations to the parties as to how the dispute should be
6 resolved. The fact finder may not apply any presumption as part of the
7 findings of fact or recommendations. A copy of the findings and
8 recommendations shall be filed with the hearings board. The findings
9 of fact and recommendations of the fact finder are advisory only, and
10 are not subject to review by the hearings board.

11 (7) The time limits established in this section may be extended by
12 mutual agreement of all the parties.

13 NEW SECTION. **Sec. 715.** A new section is added to chapter 43.21B
14 RCW to read as follows:

15 (1) Within thirty days after the fact finder has filed the findings
16 of fact and recommendations pursuant to section 714 of this act, a
17 party may request a formal hearing by the hearings board or appeal the
18 water quantity decision directly to superior court. All parties must
19 agree to a formal hearing by the hearings board before a formal hearing
20 is granted.

21 (2) If a party elects to file an action in superior court following
22 an informal hearing, it must be filed in the county in which is located
23 the land upon which the water is or would be used.

24 NEW SECTION. **Sec. 716.** A new section is added to chapter 43.21B
25 RCW to read as follows:

26 An appeal to superior court of a water quantity decision, as
27 defined in section 713 of this act, following an informal hearing by
28 the board shall be heard de novo. If an informal hearing on the
29 decision or order had been completed by the pollution control hearings
30 board, no issue may be raised in superior court that was not raised and
31 discussed as part of the fact-finding hearing. No bond may be required
32 on appeals to the superior court or on review by the supreme court
33 unless specifically required by the judge of the superior court.

34 **PART VIII**
35 **MISCELLANEOUS**

1 **Sec. 801.** RCW 90.03.380 and 1996 c 320 s 19 are each amended to
2 read as follows:

3 (1) The right to the use of water which has been applied to a
4 beneficial use in the state shall be and remain appurtenant to the land
5 or place upon which the same is used: PROVIDED, HOWEVER, That ((said))
6 the right may be transferred to another or to others and become
7 appurtenant to any other land or place of use without loss of priority
8 of right theretofore established if such change can be made without
9 detriment or injury to existing rights. The point of diversion of
10 water for beneficial use or the purpose of use may be changed, if such
11 change can be made without detriment or injury to existing rights. A
12 change in the place of use, point of diversion, and/or purpose of use
13 of a water right to enable irrigation of additional acreage or the
14 addition of new uses may be permitted if such change results in no
15 increase in the annual consumptive quantity of water used under the
16 water right. For purposes of this section, "annual consumptive
17 quantity" means the estimated or actual annual amount of water diverted
18 pursuant to the water right, reduced by the estimated annual amount of
19 return flows, averaged over the most recent five-year period of
20 continuous beneficial use of the water right. Before any transfer of
21 such right to use water or change of the point of diversion of water or
22 change of purpose of use can be made, any person having an interest in
23 the transfer or change, shall file a written application therefor with
24 the department, and ((said)) the application shall not be granted until
25 notice of ((said)) the application ((shall-be)) is published as
26 provided in RCW 90.03.280. If it shall appear that such transfer or
27 such change may be made without injury or detriment to existing rights,
28 the department shall issue to the applicant a certificate in duplicate
29 granting the right for such transfer or for such change of point of
30 diversion or of use. The certificate so issued shall be filed and be
31 made a record with the department and the duplicate certificate issued
32 to the applicant may be filed with the county auditor in like manner
33 and with the same effect as provided in the original certificate or
34 permit to divert water.

35 (2) If an application for change proposes to transfer water rights
36 from one irrigation district to another, the department shall, before
37 publication of notice, receive concurrence from each of the irrigation
38 districts that such transfer or change will not adversely affect the

1 ability to deliver water to other landowners or impair the financial
2 integrity of either of the districts.

3 (3) A change in place of use by an individual water user or users
4 of water provided by an irrigation district need only receive approval
5 for the change from the board of directors of the district if the use
6 of water continues within the irrigation district, and when water is
7 provided by an irrigation entity that is a member of a board of joint
8 control created under chapter 87.80 RCW, approval need only be received
9 from the board of joint control if the use of water continues within
10 the area of jurisdiction of the joint board and the change can be made
11 without detriment or injury to existing rights.

12 (4) This section shall not apply to trust water rights acquired by
13 the state through the funding of water conservation projects under
14 chapter 90.38 RCW or RCW 90.42.010 through 90.42.070.

15 **Sec. 802.** RCW 90.44.100 and 1987 c 109 s 113 are each amended to
16 read as follows:

17 After an application to, and upon the issuance by the department of
18 an amendment to the appropriate permit or certificate of ground water
19 right, the holder of a valid right to withdraw public ground waters
20 may, without losing his priority of right, construct wells or other
21 means of withdrawal at a new location in substitution for or in
22 addition to those at the original location, or he may change the manner
23 or the place of use of the water(~~(:—PROVIDED, HOWEVER, That such)~~).
24 An amendment shall be issued only after publication of notice of the
25 application and findings as prescribed in the case of an original
26 application. Such amendment shall be issued by the department only on
27 the conditions that: (1) The additional or substitute well or wells
28 shall tap the same body of public ground water as the original well or
29 wells; (2) use of the original well or wells shall be discontinued upon
30 construction of the substitute well or wells; (3) the construction of
31 an additional well or wells shall not enlarge the right conveyed by the
32 original permit or certificate; and (4) other existing rights shall not
33 be impaired. An amendment to a permit or certificate to change the
34 place of use, point of withdrawal, and/or purpose of use of a ground
35 water right to enable irrigation of additional acreage or the addition
36 of new uses may be issued if such change results in no increase in the
37 annual consumptive quantity of water used under a certificate or
38 authorized for use under a permit. For purposes of this section,

1 "annual consumptive quantity" means the estimated or actual annual
2 amount of water withdrawn pursuant to a certificate or the amount
3 authorized for use pursuant to a permit, reduced by the estimated
4 annual amount of return flows. For permits or certificates under which
5 actual amounts of water have been withdrawn, withdrawals and return
6 flows shall be averaged over the most recent five-year period of
7 continuous beneficial use of the ground water right or, if the period
8 of actual continuous beneficial use is less than five years, such
9 lesser period. The department may specify an approved manner of
10 construction and shall require a showing of compliance with the terms
11 of the amendment, as provided in RCW 90.44.080 in the case of an
12 original permit.

13 NEW SECTION. Sec. 803. As used in this act, part headings
14 constitute no part of the law.

15 NEW SECTION. Sec. 804. Sections 101 through 113 of this act
16 constitute a new chapter in Title 90 RCW.

17 NEW SECTION. Sec. 805. If any provision of this act or its
18 application to any person or circumstance is held invalid, the
19 remainder of the act or the application of the provision to other
20 persons or circumstances is not affected.

--- END ---