
SENATE BILL 6757

State of Washington

55th Legislature

1998 Regular Session

By Senator Morton

Read first time 02/10/98. Referred to Committee on Agriculture & Environment.

1 AN ACT Relating to water; amending RCW 43.21B.110, 43.21B.300,
2 43.21B.310, 43.27A.090, 90.03.247, 90.03.250, 90.03.290, 90.03.345,
3 90.03.380, 90.03.383, 90.14.041, 90.14.065, 90.14.071, 90.14.130,
4 90.14.190, 90.40.090, 90.44.100, 90.44.445, 90.54.020, 90.54.180,
5 43.84.092, 90.03.470, 90.03.340, 90.03.270, 90.03.280, 90.03.320,
6 90.03.260, 90.44.060, and 89.30.001; amending 1993 c 495 s 3
7 (uncodified); adding new sections to chapter 43.27A RCW; adding new
8 sections to chapter 90.03 RCW; adding a new section to chapter 89.08
9 RCW; adding new sections to chapter 90.14 RCW; adding a new section to
10 chapter 90.44 RCW; adding a new section to chapter 70.119A RCW; adding
11 a new section to chapter 43.21B RCW; creating new sections; recodifying
12 RCW 43.21A.067; decodifying RCW 90.14.043; repealing RCW 43.21A.064 and
13 90.03.471; making an appropriation; providing an effective date; and
14 providing an expiration date.

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

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

18 The purpose of this section is to set forth the powers of the
19 director to regulate the withdrawal or diversion of public waters and

1 water or water rights related thereto including regulation based on
2 dates of priority or other pertinent factors. Regulatory actions taken
3 under this section shall be based on examination and determination by
4 the director or the court, as applicable, of the various water rights
5 involved according to the department's or its successor agency's
6 records and other records and pertinent facts. The powers set forth in
7 this section may be exercised whether or not a general adjudication
8 relating to the water rights involved has been conducted.

9 (1) In a regulatory situation (a) where a water right or all water
10 rights proposed for regulation by the director, as well as any right or
11 rights of a senior priority that the proposed regulation is designed to
12 protect, is or are embodied in a certificate or certificates issued
13 under RCW 90.03.240, 90.03.330, 90.38.040, 90.42.040, or 90.44.060 or
14 a permit or permits issued pursuant to RCW 90.03.290 or 90.44.060; or
15 (b) where a flow or level has been established by rule pursuant to
16 chapter 90.22 or 90.54 RCW; or (c) where it appears to the director
17 that public waters are being withdrawn without any right or other
18 appropriate authority whatsoever, the director in its discretion is
19 authorized to regulate the right or rights under either RCW 43.27A.190
20 or subsection (2) of this section.

21 (2) In a regulatory situation where one or more of the water rights
22 proposed for regulation by the director, as well as any right or rights
23 of a senior priority that the proposed regulation is designed to
24 protect, is not or are not embodied in a permit or certificate as
25 described in subsection (1) of this section, the director, as its sole
26 and exclusive power to regulate, is authorized to bring an appropriate
27 action at law or in equity, including seeking injunctive relief, as it
28 may deem necessary. Where actions are brought in a state court, the
29 actions shall be initiated in the superior court of the county where
30 the point or points of diversion of the water right or rights proposed
31 for regulation are located. If the points of diversion are located in
32 more than one county, the director may bring the action in a county
33 where a point of diversion is located.

34 (3) Nothing in this section authorizes the director to accomplish
35 a general adjudication of water rights proceeding or the substantial
36 equivalent of a general adjudication of water rights. The exclusive
37 procedure for accomplishing a general adjudication of water rights is
38 under RCW 90.03.110 through 90.03.245 or 90.44.220.

1 (4) Nothing in this section shall amend, revise, or repeal RCW
2 90.14.130 or 90.14.200.

3 (5) This section does not in any way modify regulatory powers
4 previously placed with the department or its successor agency except as
5 provided in subsections (1) and (2) of this section.

6 NEW SECTION. **Sec. 2.** A new section is added to chapter 90.03 RCW
7 to read as follows:

8 Beginning six months after the effective date of this act, the
9 director must make a final determination on water rights applications
10 within twelve months in areas without a regional water resource plan
11 and within three months for applications in areas with a regional water
12 resource plan. Any applications pending six months after the effective
13 date of this act will be deemed to have been filed six months after the
14 effective date of this act for purposes of the time limits established
15 by this section.

16 **Sec. 3.** RCW 43.21B.110 and 1993 c 387 s 22 are each amended to
17 read as follows:

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

23 (a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431,
24 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.48.144, 90.56.310, and
25 90.56.330.

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

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

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

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

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

7 (2) The jurisdiction of the pollution control hearings board is
8 limited as follows:

9 (a) The hearings board has no jurisdiction to review department
10 decisions on water permits or water rights if a person elects to
11 proceed in superior court.

12 (b) The following hearings shall not be conducted by the hearings
13 board:

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

16 (~~(b)~~) (ii) Hearings conducted by the department pursuant to RCW
17 70.94.332, 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and
18 90.44.180.

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

21 (~~(d)~~) (iv) Hearings conducted by the department to adopt, modify,
22 or repeal rules.

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

26 **Sec. 4.** RCW 43.21B.300 and 1993 c 387 s 23 are each amended to
27 read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 potential violation is about to occur to obtain such relief as
2 necessary, including injunctive relief, to insure compliance with the
3 order. The air authorities may bring similar actions to enforce their
4 orders.

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

9 (2) Decisions of the department concerning water permits or water
10 rights may be appealed to the superior court in the county in which the
11 water permit would be issued if a person so elects.

12 NEW SECTION. Sec. 6. The regional water resource planning process
13 must be initiated by filing a petition with the department. The
14 petition must be signed by at least two local governments, tribal
15 governments, or at least one hundred persons claiming the right to
16 water in the same water resource inventory area. The department shall
17 hold a hearing on the petition within ninety days of its receipt. The
18 department shall hold the hearing within the boundaries of the proposed
19 region.

20 NEW SECTION. Sec. 7. The petition under section 6 of this act
21 shall include the following:

22 (1) The description of the water resource inventory area or areas
23 that are proposed to be included in the regional planning area. A
24 region may consist of one or more water resource inventory areas. If
25 more than one water resource inventory area is proposed to be included
26 in a region, the petition shall include the rationale for inclusion of
27 the additional area or areas;

28 (2) A description of the proposed scope of the plan;

29 (3) An identification of major groups, not to exceed ten groups,
30 with an interest in the basin who would serve as members of the
31 regional planning group;

32 (4) The method of choosing representatives from each major interest
33 group and the number of representatives from each interest group, each
34 planning group shall include at least one representative of the
35 conservation districts active in the proposed planning area;

36 (5) The proposed date to start the planning process and the target
37 date that the final draft regional water resource plan will be

1 transmitted to the appropriate division. The planning period may not
2 exceed two years unless exceptional circumstances are found to exist by
3 the appropriate division and an extension is granted for a specified
4 period of time;

5 (6) A proposed budget and a specific proposed method to fund fifty
6 percent of the cost of the planning process through locally generated
7 funds; and

8 (7) A list of all local governments within the proposed regional
9 planning area.

10 NEW SECTION. **Sec. 8.** (1) The petition under section 6 of this act
11 shall be reviewed by the director for completeness. The director shall
12 return petitions found to be incomplete to the petitioning parties
13 within twenty working days of receipt, with a list of those items that
14 need to be completed.

15 (2) The director shall send a copy of the completed petition to
16 each unit of local government within the proposed region and interested
17 tribal governments, along with a notice announcing the time and date of
18 the hearing on the proposed petition. The notice must be sent at least
19 twenty working days before the hearing. Notice of the hearing shall
20 also be published at least once a week for two consecutive weeks in a
21 daily newspaper of general circulation in the region.

22 (3) The department shall hold a hearing on the petition as
23 submitted. A decision to approve or deny the petition shall be made
24 within one hundred twenty days from the date of the hearing. After the
25 hearing, the division may make changes to the proposal. The department
26 may approve the petition if it is determined that there is general
27 local support and need for initiating the planning process, and a
28 reasonable chance that the planning process will succeed in producing
29 a draft water resource plan for the region. The approval shall
30 establish a budget for the planning process, including a limitation on
31 the amount of funds to be provided by the state, which shall not exceed
32 fifty percent of the original budgeted amount.

33 NEW SECTION. **Sec. 9.** If the approved petition proposes
34 development of habitat conservation measures because there are species
35 that are endangered or threatened within the regional planning area,
36 and if the planning group so requests, the governor shall, within
37 thirty days of the approval, request appropriate federal agencies to

1 endorse under the endangered species act the development of a habitat
2 conservation plan for species listed or that may soon be listed as
3 endangered or threatened. In coordination with the regional planning
4 group, the governor may request the federal government to enter into a
5 memorandum of understanding or cooperative agreement for the
6 development and implementation of habitat conservation measures that
7 will, at a minimum, satisfy the requirements of the endangered species
8 act.

9 NEW SECTION. **Sec. 10.** Upon approval of a petition in accordance
10 with section 8 of this act, the regional planning group as proposed in
11 the petition shall convene and elect its own leadership. After the
12 group is organized, it shall develop a draft final plan meeting the
13 requirements of section 13 of this act and all rules and guidelines
14 developed by the department.

15 The regional planning group shall make every effort to accommodate
16 the concerns of all interests. Approval of the draft final plan shall
17 be by a majority vote prior to submission of the draft final plan to
18 the appropriate county legislative authorities under section 12 of this
19 act.

20 NEW SECTION. **Sec. 11.** The regional planning group shall submit
21 the draft final plan to the county legislative authorities with
22 jurisdiction in the regional planning area. The counties in the
23 regional planning area shall each have at least two public hearings on
24 the draft final plan within sixty days of receipt of the plan.

25 After all counties in the regional planning area have held the
26 required public hearings, the regional planning group will convene to
27 consider the public comments and potential revisions to the plan to
28 address those comments. The regional planning group must readopt the
29 revised plan by majority vote and then submit the final plan to the
30 counties in the regional planning area. The county legislative
31 authorities shall approve or reject the final plan within thirty days
32 of its submittal.

33 NEW SECTION. **Sec. 12.** Once a final draft plan has been developed
34 by the regional planning group and approved by each county pursuant to
35 section 11 of this act, the department shall, within sixty days, hold
36 a hearing on the draft plan. For regional water resource plans that

1 have been submitted to the division's predecessor agency, the division
2 shall have one hundred eighty days from the effective date of this act
3 to hold a hearing on the proposed plan.

4 The department shall evaluate the plan based on the following
5 criteria:

6 (1) The plan can be legally implemented within existing or by
7 specific changes to state law;

8 (2) The plan has the general support of the community and local
9 governments within the affected planning area and of affected tribal
10 governments;

11 (3) Funds are available or will be requested by the department to
12 provide for the state share of the cost of implementing the plan;

13 (4) The plan provides for adequate protection of fish habitat in
14 the region;

15 (5) The plan provides adequate water for the needs of the people in
16 the basin and the economies upon which they depend as viewed by the
17 people in the basin; and

18 (6) The plan is consistent with the comprehensive plans adopted by
19 any of the counties within the regional planning area pursuant to the
20 growth management act.

21 NEW SECTION. **Sec. 13.** (1) Within ninety days after the public
22 hearing on the final draft regional water resource plan, the department
23 shall approve the plan as submitted.

24 (2) The department may approve the plan contingent upon action by
25 the state legislature to provide adequate funding or to modify state
26 law necessary to implement the plan. The department shall prepare any
27 funding requests and proposed changes to state law necessary to
28 implement approved regional water resource plans to the next session of
29 the legislature.

30 NEW SECTION. **Sec. 14.** The appropriate components of any new
31 regional plans, any regional plans in existence on the effective date
32 of this act, and any future amendments to water resource programs
33 contained in chapters 173-501 through 173-592 WAC shall be adopted as
34 a rule under the administrative procedure act, chapter 34.05 RCW.

35 NEW SECTION. **Sec. 15.** A new section is added to chapter 89.08 RCW
36 to read as follows:

1 As part of the regional water resource planning process in this
2 act, the Washington state conservation commission is eligible to
3 receive planning moneys made available to conservation districts for
4 development of the habitat conservation measures and conservation plans
5 on private lands that are part of the plans adopted under sections 6
6 through 14 of this act, to assist in the development of conservation
7 plans on private lands. The plans should:

8 (1) Be voluntary in nature;

9 (2) Be economically feasible to implement;

10 (3) Contribute to the protection and restoration of fish and
11 wildlife habitat;

12 (4) Demonstrate, if appropriate, a net savings of water;

13 (5) Not be in conflict with farm plans required under other
14 programs; and

15 (6) Be consistent with the watershed plan adopted under sections 6
16 through 14 of this act.

17 **Sec. 16.** RCW 43.27A.090 and 1988 c 127 s 25 are each amended to
18 read as follows:

19 The department shall be empowered as follows:

20 (1) To represent the state at, and fully participate in, the
21 activities of any basin or regional commission, interagency committee,
22 or any other joint interstate or federal-state agency, committee or
23 commission, or publicly financed entity engaged in the planning,
24 development, administration, management, conservation or preservation
25 of the water resources of the state.

26 (2) To prepare the views and recommendations of the state of
27 Washington on any project, plan, or program relating to the planning,
28 development, administration, management, conservation, and preservation
29 of any waters located in or affecting the state of Washington,
30 including any federal permit or license proposal, and appear on behalf
31 of, and present views and recommendations of the state at any
32 proceeding, negotiation or hearing conducted by the federal government,
33 interstate agency, state or other agency.

34 (3) To cooperate with, assist, advise and coordinate plans with the
35 federal government and its officers and agencies, and serve as a state
36 liaison agency with the federal government in matters relating to the
37 use, conservation, preservation, quality, disposal, or control of water
38 and activities related thereto.

1 (4) To cooperate with appropriate agencies of the federal
2 government and/or agencies of other states, to enter into contracts,
3 and to make appropriate contributions to federal or interstate projects
4 and programs and governmental bodies to carry out the provisions of
5 this chapter.

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

11 (6) To develop and maintain a coordinated and comprehensive state
12 water and water resources related development plan, and adopt, with
13 regard to such plan, such policies as are necessary to insure that the
14 waters of the state are used, conserved and preserved for the best
15 interest of the state. There shall be included in the state plan a
16 description of developmental objectives and a statement of the
17 recommended means of accomplishing these objectives. To the extent the
18 director deems desirable, the plan shall integrate into the state plan,
19 the plans, programs, reports, research and studies of other state
20 agencies.

21 (7) To assemble and correlate information relating to water supply,
22 power development, irrigation, watersheds, water use, future
23 possibilities of water use and prospective demands for all purposes
24 served through or affected by water resources development.

25 (8) To assemble and correlate state, local and federal laws,
26 regulations, plans, programs, and policies affecting the beneficial
27 use, disposal, pollution, control, or conservation of water, river
28 basin development, flood prevention, parks, reservations, forests,
29 wildlife refuges, drainage and sanitary systems, waste disposal, water
30 works, watershed protection and development, minimum in-stream flows,
31 base flows, soil conservation, power facilities and area and municipal
32 water supply needs, and recommend suitable legislation or other action
33 to the legislature, the congress of the United States, or any city,
34 municipality, or to responsible state, local or federal executive
35 departments or agencies.

36 (9) To cooperate with federal, state, regional, interstate and
37 local public and private agencies in the making of plans for drainage,
38 flood control, use, conservation, allocation and distribution of

1 existing water supplies and the development of new water resource
2 projects.

3 (10) To encourage, assist and advise regional, and city and
4 municipal agencies, officials or bodies responsible for planning in
5 relation to water aspects of their programs, and coordinate local water
6 resources activities, programs, and plans.

7 (11) To ~~((promulgate))~~ adopt such rules ~~((and regulations))~~ as are
8 necessary to carry out the purposes of this chapter. Except for
9 administrative matters, rules authorized under this section that are
10 adopted prior to December 15th of any year shall not take effect before
11 the end of the regular legislative session in the next year and rules
12 adopted after December 15th of any year shall not take effect before
13 the end of the regular legislative session in the second year
14 following. However, if the department votes unanimously to adopt a
15 rule, it shall become effective pursuant to the provision of chapter
16 34.05 RCW.

17 (12) To hold public hearings, and make such investigations, studies
18 and surveys as are necessary to carry out the purposes of the chapter.

19 (13) To subpoena witnesses, compel their attendance, administer
20 oaths, take the testimony of any person under oath and require the
21 production of any books or papers when the department deems such
22 measures necessary in the exercise of its rule-making power or in
23 determining whether or not any license, certificate, or permit shall be
24 granted or extended.

25 **Sec. 17.** RCW 90.03.247 and 1996 c 186 s 523 are each amended to
26 read as follows:

27 Whenever an application for a permit to make beneficial use of
28 public waters is approved relating to a stream or other water body for
29 which minimum flows or levels have been adopted and are in effect at
30 the time of approval, the permit shall be conditioned to protect the
31 levels or flows. ~~((No agency may establish minimum flows and levels or~~
32 ~~similar water flow or level restrictions for any stream or lake of the~~
33 ~~state other than the department of ecology whose authority to establish~~
34 ~~is exclusive, as provided in chapter 90.03 RCW and RCW 90.22.010 and~~
35 ~~90.54.040. The provisions of other statutes, including but not limited~~
36 ~~to RCW 75.20.100 and chapter 43.21C RCW, may not be interpreted in a~~
37 ~~manner that is inconsistent with this section. In establishing such~~
38 ~~minimum flows, levels, or similar restrictions, the department shall,~~

1 ~~during all stages of development by the department of ecology of~~
2 ~~minimum flow proposals, consult with, and carefully consider the~~
3 ~~recommendations of, the department of fish and wildlife, the department~~
4 ~~of community, trade, and economic development, the department of~~
5 ~~agriculture, and representatives of the affected Indian tribes.~~
6 ~~Nothing herein shall preclude the department of fish and wildlife, the~~
7 ~~department of community, trade, and economic development, or the~~
8 ~~department of agriculture from presenting its views on minimum flow~~
9 ~~needs at any public hearing or to any person or agency, and the~~
10 ~~department of fish and wildlife, the department of community, trade,~~
11 ~~and economic development, and the department of agriculture are each~~
12 ~~empowered to participate in proceedings of the federal energy~~
13 ~~regulatory commission and other agencies to present its views on~~
14 ~~minimum flow needs.))~~

15 **Sec. 18.** RCW 90.03.250 and 1987 c 109 s 83 are each amended to
16 read as follows:

17 Any person, municipal corporation, firm, irrigation district,
18 association, corporation or water users' association hereafter desiring
19 to appropriate water for a beneficial use shall make an application to
20 the department for a permit to make such appropriation, and shall not
21 use or divert such waters until he has received a permit from the
22 department as in this chapter provided. The construction of any ditch,
23 canal or works, or performing any work in connection with said
24 construction or appropriation, or the use of any waters, shall not be
25 an appropriation of such water nor an act for the purpose of
26 appropriating water unless a permit to make said appropriation has
27 first been granted by the department: PROVIDED, That a temporary
28 permit may be granted upon a proper showing made to the department to
29 be valid only during the pendency of such application for a permit
30 unless sooner revoked by the department: PROVIDED, FURTHER, That
31 nothing in this chapter contained shall be deemed to affect RCW
32 90.40.010 through 90.40.080 except that the notice and certificate
33 therein provided for in RCW 90.40.030 shall be addressed to the
34 department, and the department shall exercise the powers and perform
35 the duties prescribed by RCW 90.40.030.

36 The department shall encourage the filing of a consolidated
37 application for a complex project under a single ownership that
38 proposes to divert or withdraw water from more than one source,

1 including a combination of surface and ground water sources. The
2 filing of a consolidated application for transfer or change of one or
3 more water rights involving multiple sources shall also be encouraged
4 if all of the affected diversions or withdrawals are intended to serve
5 a single project with a single ownership. The department shall adopt
6 and provide forms for consolidated applications.

7 **Sec. 19.** RCW 90.03.290 and 1994 c 264 s 84 are each amended to
8 read as follows:

9 (1) When ~~((an))~~ a completed application complying with the
10 provisions of this chapter and with the rules ~~((and regulations))~~ of
11 the department has been filed, the ~~((same))~~ application shall be placed
12 on record with the department, and it shall be ~~((its))~~ the department's
13 duty to ~~((investigate the application, and))~~ determine what water, if
14 any, is available for appropriation, and find and determine to what
15 beneficial use or uses it can be applied.

16 The department shall investigate the application. The applicant
17 shall provide a completed application form. In addition to providing
18 the information requested on the form, however, the applicant shall
19 also provide such information as may be required for the department's
20 investigation, determinations, and findings regarding the application
21 and may provide additional information. The information provided by
22 the applicant must satisfy the protocols, that is, study plans and
23 criteria, established by the department for obtaining and providing the
24 information. If an applicant provides the information and the
25 protocols set by the department for obtaining and providing it have
26 been satisfied, the department shall review the information and may
27 take actions to verify that the information is accurate, but it may
28 not, except to replace inaccurate information, take actions that would
29 constitute obtaining major portions of the information anew.

30 (2) With regard to an application:

31 (a) If it is proposed to appropriate water for irrigation purposes,
32 the department shall investigate, determine and find what lands are
33 capable of irrigation by means of water found available for
34 appropriation.

35 (b) If it is proposed to appropriate water for the purpose of power
36 development, the department shall investigate, determine and find
37 whether the proposed development is likely to prove detrimental to the

1 public interest, having in mind the highest feasible use of the waters
2 belonging to the public.

3 (3) If the application does not contain, and the applicant does not
4 promptly furnish sufficient information on which to base such findings,
5 the department may issue a preliminary permit, for a period of not to
6 exceed three years, requiring the applicant to make such surveys,
7 investigations, studies, and progress reports, as in the opinion of the
8 department may be necessary. If the applicant fails to comply with the
9 conditions of the preliminary permit, it and the application or
10 applications on which it is based shall be automatically canceled and
11 the applicant so notified. If the holder of a preliminary permit
12 shall, before its expiration, file with the department a verified
13 report of expenditures made and work done under the preliminary permit,
14 which, in the opinion of the department, establishes the good faith,
15 intent and ability of the applicant to carry on the proposed
16 development, the preliminary permit may, with the approval of the
17 governor, be extended, but not to exceed a maximum period of five years
18 from the date of the issuance of the preliminary permit.

19 (4) The department shall make and file as part of the record in the
20 matter, written findings of fact concerning all things investigated,
21 and if it shall find that there is water available for appropriation
22 for a beneficial use, and the appropriation thereof as proposed in the
23 application will not impair existing rights or be detrimental to the
24 public welfare, it shall issue a permit stating the amount of water to
25 which the applicant shall be entitled and the beneficial use or uses to
26 which it may be applied: PROVIDED, That where the water applied for is
27 to be used for irrigation purposes, it shall become appurtenant only to
28 such land as may be reclaimed thereby to the full extent of the soil
29 for agricultural purposes. But where there is no unappropriated water
30 in the proposed source of supply, or where the proposed use conflicts
31 with existing rights, or threatens to prove detrimental to the public
32 interest, having due regard to the highest feasible development of the
33 use of the waters belonging to the public, it shall be duty of the
34 department to reject such application and to refuse to issue the permit
35 asked for. If the permit is refused because of conflict with existing
36 rights and such applicant shall acquire same by purchase or
37 condemnation under RCW 90.03.040, the department may thereupon grant
38 such permit. Any application may be approved for a less amount of
39 water than that applied for, if there exists substantial reason

1 therefor, and in any event shall not be approved for more water than
2 can be applied to beneficial use for the purposes named in the
3 application. In determining whether or not a permit shall issue upon
4 any application, it shall be the duty of the department to investigate
5 all facts relevant and material to the application. After the
6 department approves said application in whole or in part and before any
7 permit shall be issued thereon to the applicant, such applicant shall
8 pay the fee provided in RCW 90.03.470: PROVIDED FURTHER, That in the
9 event a permit is issued by the department upon any application, it
10 shall be its duty to notify the director of fish and wildlife and
11 affected federally recognized Indian tribes of such issuance.

12 This section does not apply to changes made under section 22 of
13 this act or to applications for transfers or changes made under RCW
14 90.03.380 or 90.44.100.

15 **Sec. 20.** RCW 90.03.345 and 1979 ex.s. c 216 s 7 are each amended
16 to read as follows:

17 Subject to section 6 of this act, the establishment of reservations
18 of water for agriculture, hydroelectric energy, municipal, industrial,
19 and other beneficial uses under RCW 90.54.050(1) or minimum flows or
20 levels under RCW 90.22.010 or 90.54.040 shall constitute appropriations
21 within the meaning of this chapter with priority dates as of the
22 effective dates of their establishment. Whenever an application for a
23 permit to make beneficial use of public waters embodied in a
24 reservation, established after September 1, 1979, is filed with the
25 department of ecology after the effective date of such reservation, the
26 priority date for a permit issued pursuant to an approval by the
27 department of ecology of the application shall be the effective date of
28 the reservation.

29 **Sec. 21.** RCW 90.03.380 and 1997 c 442 s 801 are each amended to
30 read as follows:

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

1 beneficial use or the purpose of use may be changed, if such change can
2 be made without detriment or injury to existing rights. A change in
3 the place of use, point of diversion, and/or purpose of use of a water
4 right to enable irrigation of additional acreage or the addition of new
5 uses may be permitted if such change results in no increase in the
6 annual consumptive quantity of water used under the water right. For
7 purposes of this section, "annual consumptive quantity" means the
8 estimated or actual annual amount of water diverted pursuant to the
9 water right, reduced by the estimated annual amount of return flows,
10 averaged over the most recent five-year period of continuous beneficial
11 use of the water right. Before any transfer of such right to use water
12 or change of the point of diversion of water or change of purpose of
13 use can be made, any person having an interest in the transfer or
14 change, shall file a written application therefor with the department,
15 and the application shall not be granted until notice of the
16 application is published as provided in RCW 90.03.280. If it shall
17 appear that such transfer or such change may be made without injury or
18 detriment to existing rights, the department shall issue to the
19 applicant a certificate in duplicate granting the right for such
20 transfer or for such change of point of diversion or of use. The
21 certificate so issued shall be filed and be made a record with the
22 department and the duplicate certificate issued to the applicant may be
23 filed with the county auditor in like manner and with the same effect
24 as provided in the original certificate or permit to divert water.

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

31 (3) A change in place of use by an individual water user or users
32 of water provided by an irrigation district need only receive approval
33 for the change from the board of directors of the district if the use
34 of water continues within the irrigation district(~~(, and when water is~~
35 ~~provided by an irrigation entity that is a member of a board of joint~~
36 ~~control created under chapter 87.80 RCW, approval need only be received~~
37 ~~from the board of joint control if the use of water continues within~~
38 ~~the area of jurisdiction of the joint board and the change can be made~~
39 ~~without detriment or injury to existing rights)). The board of~~

1 directors may approve such a change if the board determines that the
2 change: Will not adversely affect the district's ability to deliver
3 water to other landowners; will not require the construction by the
4 district of diversion or drainage facilities unless the board finds
5 that the construction by the district is in the interest of the
6 district; will not impair the financial or operational integrity of the
7 district; and is consistent with the contractual obligations of the
8 district.

9 (4) Subsections (1), (2), and (3) of this section do not apply to
10 a change regarding a portion of the water governed by a water right
11 that is made surplus to the beneficial uses exercised under the right
12 through the implementation of practices or technologies, including but
13 not limited to conveyance practices or technologies, which are more
14 efficient or more water use efficient than those under which the right
15 was perfected or through a change in the crops grown under the water
16 right. The use within an irrigation district of water supplied by the
17 district and made surplus as provided in this subsection shall be
18 regulated solely as provided by the board of directors of the
19 irrigation district except as follows: Such a use requires the
20 approval of the board of directors of the irrigation district or must
21 otherwise be authorized by the board; the board may approve or
22 authorize such a use only if the use does not impair the financial or
23 operational integrity of the district; and water made surplus through
24 a change in the crops grown with district-supplied water is not
25 available for use as a matter of right by the individual water user
26 making the change, but may be used by the board for the benefit of the
27 district generally. The district's board of directors may approve or
28 otherwise authorize under this subsection uses of such surplus water
29 that result in the total irrigated acreage within the district
30 exceeding the irrigated acreage recorded with the department for the
31 district's water right if the board notifies the department of the
32 change in the irrigated acreage within the district. Such a
33 notification provides a change in the district's water right and, upon
34 receiving the notification, the department shall revise its records for
35 the district's right to reflect the change. The use of water other
36 than irrigation district-supplied water that is made surplus as
37 provided in this subsection is governed by section 22 of this act.

1 (~~(4)~~) (5) This section shall not apply to trust water rights
2 acquired by the state through the funding of water conservation
3 projects under chapter 90.38 RCW or RCW 90.42.010 through 90.42.070.

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

8 NEW SECTION. Sec. 22. A new section is added to chapter 90.03 RCW
9 to read as follows:

10 If a portion of the water governed by a water right is made surplus
11 to the beneficial uses exercised under the right through the
12 implementation of practices or technologies, including but not limited
13 to conveyance practices or technologies, which are more efficient or
14 more water use efficient than those under which the right was perfected
15 or through a change in the crops grown under the water right, the right
16 to use the surplus water may be changed to use on other lands owned by
17 the holder of the water right that are contiguous to the lands upon
18 which the use of the water was authorized by the right before such a
19 change. Such a change shall be made without loss of priority of the
20 right. The holder of the water right shall notify the department of
21 such a change. The notification provides a change in the holder's
22 water right and, upon receiving the notification, the department shall
23 revise its records for the water right to reflect the change.

24 This section does not apply to water supplied by an irrigation
25 district.

26 **Sec. 23.** RCW 90.03.383 and 1991 c 350 s 1 are each amended to read
27 as follows:

28 (1) The legislature recognizes the value of interties for improving
29 the reliability of public water systems, enhancing their management,
30 and more efficiently utilizing the increasingly limited resource.
31 Given the continued growth in the most populous areas of the state, the
32 increased complexity of public water supply management, and the trend
33 toward regional planning and regional solutions to resource issues,
34 interconnections of public water systems through interties provide a
35 valuable tool to ensure reliable public water supplies for the citizens
36 of the state. Public water systems have been encouraged in the past to
37 utilize interties to achieve public health and resource management

1 objectives. The legislature finds that it is in the public interest to
2 recognize interties existing and in use as of January 1, 1991, and to
3 have associated water rights modified by the department of ecology to
4 reflect current use of water through those interties, pursuant to
5 subsection (3) of this section. The legislature further finds it in
6 the public interest to develop a coordinated process to review
7 proposals for interties commencing use after January 1, 1991.

8 (2) For the purposes of this section, the following definitions
9 shall apply:

10 (a) "Interties" are interconnections between public water systems
11 permitting exchange or delivery of water between those systems for
12 other than emergency supply purposes, where such exchange or delivery
13 is within established instantaneous and annual withdrawal rates
14 specified in the systems' existing water right permits or certificates,
15 or contained in claims filed pursuant to chapter 90.14 RCW, and which
16 results in better management of public water supply consistent with
17 existing rights and obligations. Interties include interconnections
18 between public water systems permitting exchange or delivery of water
19 to serve as primary or secondary sources of supply, but do not include
20 development of new sources of supply to meet future demand.

21 (b) "Service area" is the area designated in a water system plan or
22 a coordinated water system plan pursuant to chapter 43.20 or 70.116 RCW
23 respectively. When a public water system does not have a designated
24 service area subject to the approval process of those chapters, the
25 service area shall be the designated place of use contained in the
26 water right permit or certificate, or contained in the claim filed
27 pursuant to chapter 90.14 RCW.

28 (3) Public water systems with interties existing and in use as of
29 January 1, 1991, or that have received written approval from the
30 department of health prior to that date, shall file written notice of
31 those interties with the department of health and the department of
32 ecology. The notice may be incorporated into the public water system's
33 five-year update of its water system plan, but shall be filed no later
34 than June 30, 1996. The notice shall identify the location of the
35 intertie; the dates of its first use; the purpose, capacity, and
36 current use; the intertie agreement of the parties and the service
37 areas assigned; and other information reasonably necessary to modify
38 the water right permit. Notwithstanding the provisions of RCW
39 90.03.380 and 90.44.100, for public water systems with interties

1 existing and in use as of January 1, 1991, the department of ecology,
2 upon receipt of notice meeting the requirements of this subsection,
3 shall, as soon as practicable, modify the place of use descriptions in
4 the water right permits, certificates, or claims to reflect the actual
5 use through such interties, provided that the place of use is within
6 service area designations established in a water system plan approved
7 pursuant to chapter 43.20 RCW, or a coordinated water system plan
8 approved pursuant to chapter 70.116 RCW, and further provided that the
9 water used is within the instantaneous and annual withdrawal rates
10 specified in the water right permit and that no outstanding complaints
11 of impairment to existing water rights have been filed with the
12 department of ecology prior to September 1, 1991. Where such
13 complaints of impairment have been received, the department of ecology
14 shall make all reasonable efforts to resolve them in a timely manner
15 through agreement of the parties or through available administrative
16 remedies.

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

31 (5) For public water systems subject to the approval process of
32 chapter 43.20 RCW or chapter 70.116 RCW, proposals for interties
33 commencing use after January 1, 1991, shall be incorporated into water
34 system plans pursuant to chapter 43.20 RCW or coordinated water system
35 plans pursuant to chapter 70.116 RCW and submitted to the department of
36 health and the department of ecology for review and approval as
37 provided for in subsections (5) through (9) of this section. The plan
38 shall state how the proposed intertie will improve overall system
39 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. If in its review of proposed
4 interties and associated water rights the department of ecology
5 determines that additional information is required to act on the
6 application, the department may request applicants to provide
7 information necessary for its decision, consistent with agency rules
8 and written guidelines. Parties disagreeing with the decision of the
9 department of ecology on the application for change in place of use may
10 appeal the decision to the pollution control hearings board or a
11 superior court.

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

18 **Sec. 24.** RCW 90.14.041 and 1997 c 440 s 2 are each amended to read
19 as follows:

20 (1) All persons using or claiming the right to withdraw or divert
21 and make beneficial use of public surface or ground waters of the
22 state, except as provided in this section(~~(, RCW 90.14.043,)~~) and RCW
23 90.14.068, shall file with the department of ecology not later than
24 June 30, 1974, a statement of claim for each water right asserted on a
25 form provided by the department. Neither this section nor RCW
26 90.14.068 apply to any water rights which are based on the authority of
27 a permit or certificate issued by the department of ecology or one of
28 its predecessors. Further, RCW 90.14.068 does not apply to the
29 beneficial uses of water which are the subject of statements of claim
30 in the water rights claims registry prior to September 1, 1997, or
31 which are exempted from permit and application requirements by RCW
32 90.44.050 and neither this section nor RCW 90.14.068 requires that
33 statements of claims for such uses be filed during the filing period
34 established by RCW 90.14.068.

35 (2) Any person who placed water to beneficial use for irrigation or
36 stock watering purposes before January 1, 1996, for which a permit or
37 certificate was not issued by the department of ecology or its
38 predecessor, holds a water right subject to the following conditions:

1 (a) The priority date shall be the effective date of this act; (b) the
2 amount of water withdrawn may not exceed the maximum annual amount put
3 to beneficial use during the five-year period before January 1, 1996;
4 (c) there must not have been a period of nonuse for five consecutive
5 years; and (d) the person must have filed an application for a water
6 right or a transfer of a water right with the department of ecology
7 before December 31, 1997.

8 **Sec. 25.** RCW 90.14.065 and 1987 c 93 s 1 are each amended to read
9 as follows:

10 Any person or entity, or successor to such person or entity, having
11 a statement of claim on file with the water rights claims registry on
12 April 20, 1987, may submit to the department of ecology for filing, an
13 amendment to such a statement of claim if the submitted amendment is
14 based on:

15 (1) An error in estimation of the quantity of the applicant's water
16 claim prescribed in RCW 90.14.051 if the applicant provides reasons for
17 the failure to claim such right in the original claim;

18 (2) A change in circumstances not foreseeable at the time the
19 original claim was filed, if such change in circumstances relates only
20 to the manner of transportation or diversion of the water and not to
21 the use or quantity of such water; or

22 (3) The amendment is ministerial in nature.

23 The department shall accept any such submission and file the same
24 in the registry unless the department by written determination
25 concludes that the requirements of subsection (1), (2), or (3) of this
26 section have not been satisfied. Any person aggrieved by a
27 determination of the department may obtain a review thereof by filing
28 a petition for review with the pollution control hearings board or
29 superior court, if a person so elects, within thirty days of the date
30 of the determination by the department. The provisions of RCW
31 90.14.081 shall apply to any amendment filed under this section.

32 **Sec. 26.** RCW 90.14.071 and 1997 c 440 s 3 are each amended to read
33 as follows:

34 Except as provided in section ((5)) 36 of this act or as exempted
35 from filing by RCW 90.14.041, any person claiming the right to divert
36 or withdraw waters of the state as set forth in RCW 90.14.041, who
37 fails to file a statement of claim as provided in RCW 90.14.041((7

1 ~~90.14.043,~~) or 90.14.068 and in RCW 90.14.051 and 90.14.061, shall be
2 conclusively deemed to have waived and relinquished any right, title,
3 or interest in said right.

4 **Sec. 27.** RCW 90.14.130 and 1987 c 109 s 13 are each amended to
5 read as follows:

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

33 **Sec. 28.** RCW 90.14.190 and 1987 c 109 s 14 are each amended to
34 read as follows:

35 Any person feeling aggrieved by any decision of the department of
36 ecology may have the same reviewed pursuant to RCW 43.21B.310. In any
37 such review, the findings of fact as set forth in the report of the

1 department of ecology shall be prima facie evidence of the fact of any
2 waiver or relinquishment of a water right or portion thereof. If the
3 hearings board affirms the decision of the department, a party seeks
4 review in superior court of that hearings board decision pursuant to
5 chapter 34.05 RCW, and the court determines that the party was injured
6 by an arbitrary, capricious, or erroneous order of the department, the
7 court may award reasonable attorneys' fees. Any order regarding the
8 relinquishment of a water right shall be appealed pursuant to RCW
9 90.14.130.

10 **Sec. 29.** RCW 90.40.090 and 1988 c 127 s 83 are each amended to
11 read as follows:

12 An application filed by the department of ecology or its assignee,
13 the United States Bureau of Reclamation, for a permit to appropriate
14 waters of the Columbia River under chapter 90.03 RCW, for the
15 development of the Grand Coulee project shall be perfected in the same
16 manner and to the same extent as though such appropriation had been
17 made by a private person, corporation, or association(~~(, but no fees,~~
18 ~~as provided for in RCW 90.03.470, shall be required)~~).

19 **Sec. 30.** RCW 90.44.100 and 1997 c 316 s 2 are each amended to read
20 as follows:

21 (1) After an application to, and upon the issuance by the
22 department of an amendment to the appropriate permit or certificate of
23 ground water right, the holder of a valid right to withdraw public
24 ground waters may, without losing the holder's priority of right,
25 construct wells or other means of withdrawal at a new location in
26 substitution for or in addition to those at the original location, or
27 the holder may change the manner or the place of use of the water.

28 (2) An amendment to construct replacement or a new additional well
29 or wells at a location outside of the location of the original well or
30 wells or to change the manner or place of use of the water shall be
31 issued only after publication of notice of the application and findings
32 as prescribed in the case of an original application. Such amendment
33 shall be issued by the department only on the conditions that: (a) The
34 additional or replacement well or wells shall tap the same body of
35 public ground water as the original well or wells; (b) where a
36 replacement well or wells is approved, the use of the original well or
37 wells shall be discontinued and the original well or wells shall be

1 properly decommissioned as required under chapter 18.104 RCW; (c) where
2 an additional well or wells is constructed, the original well or wells
3 may continue to be used, but the combined total withdrawal from the
4 original and additional well or wells shall not enlarge the right
5 conveyed by the original permit or certificate; and (d) other existing
6 rights shall not be impaired. The department may specify an approved
7 manner of construction and shall require a showing of compliance with
8 the terms of the amendment, as provided in RCW 90.44.080 in the case of
9 an original permit.

10 (3) The construction of a replacement or new additional well or
11 wells at the location of the original well or wells shall be allowed
12 without application to the department for an amendment. However, the
13 following apply to such a replacement or new additional well: (a) The
14 well shall tap the same body of public ground water as the original
15 well or wells; (b) if a replacement well is constructed, the use of the
16 original well or wells shall be discontinued and the original well or
17 wells shall be properly decommissioned as required under chapter 18.104
18 RCW; (c) if a new additional well is constructed, the original well or
19 wells may continue to be used, but the combined total withdrawal from
20 the original and additional well or wells shall not enlarge the right
21 conveyed by the original water use permit or certificate; (d) the
22 construction and use of the well shall not interfere with or impair
23 water rights with an earlier date of priority than the water right or
24 rights for the original well or wells; (e) the replacement or
25 additional well shall be located no closer than the original well to a
26 well it might interfere with; (f) the department may specify an
27 approved manner of construction of the well; and (g) the department
28 shall require a showing of compliance with the conditions of this
29 subsection (3).

30 (4) As used in this section, the "location of the original well or
31 wells" is the area described as the point of withdrawal in the original
32 public notice published for the application for the water right for the
33 well.

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

1 change in the crops grown under the water right. RCW 90.03.380(4) and
2 section 22 of this act apply to water made surplus as provided in this
3 subsection.

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

8 **Sec. 31.** RCW 90.44.445 and 1993 c 99 s 1 are each amended to read
9 as follows:

10 In any acreage expansion program adopted by the department as an
11 element of a ground water management program, the authorization for a
12 water right certificate holder to participate in the program shall be
13 on an annual basis for the first two years. After the two-year period,
14 the department may authorize participation for ten-year periods. The
15 department may authorize participation for ten-year periods for
16 certificate holders who have already participated in an acreage
17 expansion program for two years. The department may require annual
18 certification that the certificate holder has complied with all
19 requirements of the program. The department may terminate the
20 authority of a certificate holder to participate in the program for one
21 calendar year if the certificate holder fails to comply with the
22 requirements of the program.

23 This section applies only in an area with a ground water area or
24 subarea management program in effect on the effective date of this act.
25 The provisions of section 22 of this act, RCW 90.03.380, and 90.44.100
26 apply to transfers, changes, and amendments to permits or rights for
27 the beneficial use of ground water in any other area.

28 **Sec. 32.** RCW 90.54.020 and 1997 c 442 s 201 are each amended to
29 read as follows:

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

32 (1) Uses of water for domestic, stock watering, industrial,
33 commercial, agricultural, irrigation, hydroelectric power production,
34 mining, fish and wildlife maintenance and enhancement, recreational,
35 and thermal power production purposes, and preservation of
36 environmental and aesthetic values, and all other uses compatible with

1 the enjoyment of the public waters of the state, are declared to be
2 beneficial.

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

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

9 (a) Perennial rivers and streams of the state shall be retained
10 with base flows necessary to provide for preservation of wildlife,
11 fish, scenic, aesthetic and other environmental values, and
12 navigational values. Lakes and ponds shall be retained substantially
13 in their natural condition. Withdrawals of water which would conflict
14 therewith shall be authorized only in those situations where it is
15 clear that overriding considerations of the public interest will be
16 served.

17 (b) Waters of the state shall be of high quality. Regardless of
18 the quality of the waters of the state, all wastes and other materials
19 and substances proposed for entry into said waters shall be provided
20 with all known, available, and reasonable methods of treatment prior to
21 entry. Notwithstanding that standards of quality established for the
22 waters of the state would not be violated, wastes and other materials
23 and substances shall not be allowed to enter such waters which will
24 reduce the existing quality thereof, except in those situations where
25 it is clear that overriding considerations of the public interest will
26 be served. Technology-based effluent limitations or standards for
27 discharges for municipal water treatment plants located on the
28 Chehalis, Columbia, Cowlitz, Lewis, or Skagit river shall be adjusted
29 to reflect credit for substances removed from the plant intake water
30 if:

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

33 (ii) The municipality demonstrates that no violation of receiving
34 water quality standards or appreciable environmental degradation will
35 result.

36 ~~(4) ((The development of multipurpose water storage facilities~~
37 ~~shall be a high priority for programs of water allocation, planning,~~
38 ~~management, and efficiency. The department, other state agencies,~~
39 ~~local governments, and planning units formed under section 107 or 108~~

1 of this act shall evaluate the potential for the development of new
2 storage projects and the benefits and effects of storage in reducing
3 damage to stream banks and property, increasing the use of land,
4 providing water for municipal, industrial, agricultural, power
5 generation, and other beneficial uses, and improving stream flow
6 regimes for fisheries and other instream uses)) Development of
7 multipurpose storage facilities shall be a high priority for programs
8 of water allocation, planning, management, and efficiency. Federal,
9 state, and local governments, individuals, corporations, regional
10 planning groups formed pursuant to sections 6 through 10 of this act,
11 and other entities shall evaluate the potential for development of new
12 storage projects and the benefits of storage that can reduce the damage
13 to stream banks and property, increase the utilization of land, provide
14 water for municipal, industrial, agricultural, and other beneficial
15 uses, provide for the generation of electric power from renewable
16 resources, and improve stream flow regimes for fishery and other
17 instream uses.

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

20 (6) Multiple-purpose impoundment structures are to be preferred
21 over single-purpose structures. Due regard shall be given to means and
22 methods for protection of fishery resources in the planning for and
23 construction of water impoundment structures and other artificial
24 obstructions.

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

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

1 (9) Full recognition shall be given in the administration of water
2 allocation and use programs to the natural interrelationships of
3 surface and ground waters.

4 (10) Expressions of the public interest will be sought at all
5 stages of water planning and allocation discussions.

6 (11) Water management programs, including but not limited to, water
7 quality, flood control, drainage, erosion control and storm runoff are
8 deemed to be in the public interest.

9 **Sec. 33.** RCW 90.54.180 and 1989 c 348 s 5 are each amended to read
10 as follows:

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

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

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

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

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

37 (5) State programs to improve water use efficiency should focus on
38 those areas of the state in which water is overappropriated; areas that

1 experience diminished streamflows or aquifer levels; and areas where
2 projected water needs, including those for instream flows, exceed
3 available supplies.

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

12 NEW SECTION. **Sec. 34.** A new section is added to chapter 90.14 RCW
13 to read as follows:

14 Any person or entity, or successor to such person or entity, having
15 a statement of claim on file with the water rights claims registry on
16 the effective date of this act, may submit to the department of ecology
17 for filing an amendment to such a statement of claim as provided in
18 this section. Such an amendment may be submitted only to correct an
19 error in the statement filed and the person submitting the amendment
20 shall attest in writing that the amendment does not constitute an
21 expansion of the right for which the statement of claim was intended.
22 Such an amendment may be submitted only during the period established
23 in RCW 90.14.068 for filing statements of claim.

24 The department shall accept any such submission and file the
25 amendment in the registry unless the department by written
26 determination concludes that the requirements of this section have not
27 been satisfied. Any person aggrieved by a determination of the
28 department may obtain a review thereof by filing a petition for review
29 with the pollution control hearings board within thirty days of the
30 date of the determination by the department. The provisions of RCW
31 90.14.081 shall apply to any amendment filed under this section. This
32 section shall not be construed as limiting the authority of a person or
33 entity to submit an amendment under RCW 90.14.065.

34 NEW SECTION. **Sec. 35.** A new section is added to chapter 90.14 RCW
35 to read as follows:

36 During the period beginning March 1, 1997, and ending at midnight
37 June 30, 1999, neither the department of ecology nor the pollution

1 control hearings board may determine or find that a water right has
2 been waived or relinquished under this chapter based on the failure of
3 any person or entity to file a statement of claim for the right under
4 this chapter. Any finding or determination issued contrary to this
5 section is void. If the department or the board determined that a
6 person waived or relinquished a water right during the time period
7 specified in this section, but prior to the effective date of this act,
8 the sole remedy for the person shall be to file a new claim or submit
9 an amendment under section 34 of this act, RCW 90.14.065, or 90.14.068.

10 NEW SECTION. **Sec. 36.** The legislature finds that there are a
11 number of small water supply wells that currently exist in the state
12 for which water rights have been established pursuant to statute but
13 that have not been recorded with the state, nor has the holder of the
14 water right been issued a water right certificate.

15 The purpose of this section and section 37 of this act is to
16 establish a mechanism whereby a person who has established a water
17 right for a small well that is exempt from the ground water permit
18 process may obtain a certificate of water right and that the state may
19 obtain data and register the location of small water wells.

20 NEW SECTION. **Sec. 37.** A new section is added to chapter 90.44 RCW
21 to read as follows:

22 (1) A person or agency making a small withdrawal exempt under RCW
23 90.44.050 shall be entitled to a right equal to that established under
24 this chapter and may submit an application for a certificate of water
25 right to the department. The applicant shall pay a fee of one hundred
26 dollars at the time the application is submitted. The application must
27 include the location of the well and information sufficient to
28 establish that the person or agency has a valid claim to the water.
29 The department shall develop a simple application form to be used by
30 the applicant in meeting the requirements of this section. Information
31 that may be provided by the applicant includes: The date that the
32 water was first put to use; a well log, if one exists, prepared in
33 accordance with chapter 18.104 RCW; the date the dwelling was
34 constructed or first occupied and the date water from the well was
35 supplied to the dwelling; records of power usage; invoices of well
36 construction or of pump installation; or a sworn affidavit attesting to
37 the pertinent facts concerning the well.

1 (2) The department shall issue a certificate of water right and a
2 well identification tag to a person or agency who has provided
3 sufficient information to establish a use under this section. The
4 person or agency must affix the well identification tag to the well.
5 The department shall file a copy of the certificate of water right with
6 the department's data system.

7 (3) False representations under this section are subject to chapter
8 9A.72 RCW.

9 (4) A certificate under this section that is obtained through false
10 representations is void.

11 (5) Fees collected under this section shall be deposited into the
12 department's basic data fund, to be used specifically for data
13 processing and watershed planning and the expenses for verification and
14 processing of certificates and well tags.

15 (6) The department shall provide public notice of the application
16 process in this section through press releases, publicity campaigns,
17 public education, letters to adjoining landowners, and other media
18 actions.

19 (7) Nothing in this section shall authorize the impairment or
20 operate to impair any existing water rights.

21 (8) The department shall not accept applications under this section
22 after December 31, 2004.

23 NEW SECTION. **Sec. 38.** 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 for the amount of water actually necessary to
31 meet their needs.

32 NEW SECTION. **Sec. 39.** A new section is added to chapter 90.03 RCW
33 to read as follows:

34 (1) The department shall develop a general permit system for
35 appropriating small quantities of surface and ground water. This
36 system must be designed and used to streamline the consideration of
37 applications for small water uses. The general permit system may be

1 applicable state-wide or within a specified geographic area. For a
2 state-wide general permit, all waters of the state shall be eligible
3 for coverage under the system unless the department in consultation
4 with the affected county or counties determines that insufficient
5 waters are available in specific areas to allow additional allocations
6 based on concerns for (a) impairment of existing water rights, (b)
7 declining ground water levels, or (c) fish and wildlife habitat
8 impacts.

9 (2) The evaluation and report required for an application under RCW
10 90.03.290 are not required for applications processed under the general
11 permit system.

12 (3) The notice requirements of RCW 90.03.280, including the receipt
13 of protests of the application, apply for applications to acquire water
14 under a general permit. If a protest appears to have merit and cannot
15 be readily resolved, the department shall remove the application from
16 further consideration under the general permit and shall instead
17 process the application as a standard application to appropriate public
18 water.

19 (4) The fee for general permits authorized under chapter . . . ,
20 Laws of 1998 (this act) shall be the same as the fee charged for the
21 same quantity of water established under this chapter.

22 (5) The department's decision to approve, condition, or deny an
23 application under a general permit is appealable as provided in RCW
24 43.21B.110.

25 NEW SECTION. **Sec. 40.** A new section is added to chapter 90.03 RCW
26 to read as follows:

27 (1) For the purposes of this section:

28 (a) "Agricultural use" means a use of not more than one-tenth of
29 one cubic foot per second of ground or surface water for any purpose
30 generally accepted as integral to agricultural production;

31 (b) "Multiunit residential use" means a use of not more than one
32 thousand gallons of ground water per domestic living unit to provide
33 domestic water to housing developments of more than one unit;

34 (c) "Nonconsumptive, nonbypass use" means a use of water in which
35 water is diverted from a stream or withdrawn from an aquifer and
36 following its use is discharged, as determined by the department, back
37 to or near the point of diversion or withdrawal without diminishment in
38 quantity or quality; and

1 (d) "Without diminishment of quality" means that, before being
2 discharged back to its source, the water being discharged meets state
3 water quality standards adopted under chapter 90.48 RCW.

4 (2) The department shall immediately commence efforts to establish
5 state-wide general permits for nonconsumptive, nonbypass uses,
6 agricultural uses, and multiunit residential uses by adopting rules in
7 accordance with chapter 34.05 RCW. Before the adoption of rules for a
8 general permit system, the department shall consult with
9 representatives of the following groups: Agriculture; aquaculture;
10 home construction and development; county government; city government;
11 tribal governments; other local governmental entities with water system
12 authority; and the environmental and water recreation communities. At
13 least four public hearings must be held at various locations around the
14 state. The rules must identify criteria for proposed uses of water for
15 which applications will be processed under the system and must
16 establish procedures for filing and processing applications under the
17 general permit system.

18 (3) Before January 1, 1999, the department shall file a report with
19 the appropriate standing committees of the legislature regarding
20 progress made toward adoption of the rules required by this section.

21 NEW SECTION. **Sec. 41.** A new section is added to chapter 90.03 RCW
22 to read as follows:

23 (1) An application for appropriating water under a general permit
24 system established under chapter . . . , Laws of 1998 (this act) must be
25 made on a form adopted and provided by the department. Within sixty
26 days of the completion of the protest period, the department shall
27 determine whether the proposed use is eligible to be processed under
28 the general permit system. If the department determines that the
29 proposed use is eligible to be processed under the system, the
30 application must be processed under the system within the following
31 sixty days.

32 (2) The priority date of the water right established pursuant to
33 this section is the date that the application is submitted.

34 (3) If the department determines that the proposed use is not
35 eligible for the processing, the department shall explain to the
36 applicant in writing the reasons for its determination. For a proposed
37 use determined ineligible for the processing, if the department finds
38 that the information contained on the application form substantially

1 satisfies the information requirements for an application for a use
2 that would normally be filed for processing the application outside of
3 the general permit system, the department shall notify the applicant of
4 its finding and shall process the application as if it were filed for
5 processing outside of the system. If the department finds that the
6 information does not substantially satisfy the requirements, the
7 application must be considered to be incomplete for the processing and
8 the applicant must be notified of this consideration.

9 (4) Nothing in sections 39 and 40 of this act and this section is
10 intended to authorize the impairment or operate to impair any existing
11 water rights. A water right holder who establishes a right under the
12 provisions of sections 39 and 40 of this act and this section shall not
13 make withdrawals that impair a senior water right. A holder of a
14 senior water right who believes his or her water right is impaired may
15 file a complaint with the department. Where such complaints of
16 impairment have been received, the department shall make all reasonable
17 efforts to resolve them in a timely manner through agreement of the
18 parties or through available administrative remedies.

19 NEW SECTION. **Sec. 42.** A new section is added to chapter 70.119A
20 RCW to read as follows:

21 An individual well serving a group domestic use shall be allowed to
22 provide water service connections for up to a number equal to the
23 approved maximum daily withdrawal amount for the well as determined by
24 the water right divided by four hundred. The department may approve a
25 greater number of service connections based on a factor of less than
26 four hundred gallons per day delivered to each residence.

27 NEW SECTION. **Sec. 43.** (1) The water escrow account is established
28 in the state treasury. Funds in the water escrow account may be
29 expended, subject to appropriation in the 1997-98 and subsequent fiscal
30 biennia for the costs of basin-wide water rights adjudications.

31 (2) By June 30, 1998, the state treasurer shall transfer five
32 hundred thousand dollars from the state general fund to the water
33 escrow account.

34 **Sec. 44.** RCW 43.84.092 and 1997 c 218 s 5 are each amended to read
35 as follows:

1 (1) All earnings of investments of surplus balances in the state
2 treasury shall be deposited to the treasury income account, which
3 account is hereby established in the state treasury.

4 (2) The treasury income account shall be utilized to pay or receive
5 funds associated with federal programs as required by the federal cash
6 management improvement act of 1990. The treasury income account is
7 subject in all respects to chapter 43.88 RCW, but no appropriation is
8 required for refunds or allocations of interest earnings required by
9 the cash management improvement act. Refunds of interest to the
10 federal treasury required under the cash management improvement act
11 fall under RCW 43.88.180 and shall not require appropriation. The
12 office of financial management shall determine the amounts due to or
13 from the federal government pursuant to the cash management improvement
14 act. The office of financial management may direct transfers of funds
15 between accounts as deemed necessary to implement the provisions of the
16 cash management improvement act, and this subsection. Refunds or
17 allocations shall occur prior to the distributions of earnings set
18 forth in subsection (4) of this section.

19 (3) Except for the provisions of RCW 43.84.160, the treasury income
20 account may be utilized for the payment of purchased banking services
21 on behalf of treasury funds including, but not limited to, depository,
22 safekeeping, and disbursement functions for the state treasury and
23 affected state agencies. The treasury income account is subject in all
24 respects to chapter 43.88 RCW, but no appropriation is required for
25 payments to financial institutions. Payments shall occur prior to
26 distribution of earnings set forth in subsection (4) of this section.

27 (4) Monthly, the state treasurer shall distribute the earnings
28 credited to the treasury income account. The state treasurer shall
29 credit the general fund with all the earnings credited to the treasury
30 income account except:

31 (a) The following accounts and funds shall receive their
32 proportionate share of earnings based upon each account's and fund's
33 average daily balance for the period: The capitol building
34 construction account, the Cedar River channel construction and
35 operation account, the Central Washington University capital projects
36 account, the charitable, educational, penal and reformatory
37 institutions account, the common school construction fund, the county
38 criminal justice assistance account, the county sales and use tax
39 equalization account, the data processing building construction

1 account, the deferred compensation administrative account, the deferred
2 compensation principal account, the department of retirement systems
3 expense account, the drinking water assistance account, the Eastern
4 Washington University capital projects account, the education
5 construction fund, the emergency reserve fund, the federal forest
6 revolving account, the health services account, the public health
7 services account, the health system capacity account, the personal
8 health services account, the highway infrastructure account, the
9 industrial insurance premium refund account, the judges' retirement
10 account, the judicial retirement administrative account, the judicial
11 retirement principal account, the local leasehold excise tax account,
12 the local real estate excise tax account, the local sales and use tax
13 account, the medical aid account, the mobile home park relocation fund,
14 the municipal criminal justice assistance account, the municipal sales
15 and use tax equalization account, the natural resources deposit
16 account, the perpetual surveillance and maintenance account, the public
17 employees' retirement system plan I account, the public employees'
18 retirement system plan II account, the Puyallup tribal settlement
19 account, the resource management cost account, the site closure
20 account, the special wildlife account, the state employees' insurance
21 account, the state employees' insurance reserve account, the state
22 investment board expense account, the state investment board commingled
23 trust fund accounts, the supplemental pension account, the teachers'
24 retirement system plan I account, the teachers' retirement system plan
25 II account, the transportation infrastructure account, the tuition
26 recovery trust fund, the University of Washington bond retirement fund,
27 the University of Washington building account, the volunteer fire
28 fighters' relief and pension principal account, the volunteer fire
29 fighters' relief and pension administrative account, the Washington
30 judicial retirement system account, the Washington law enforcement
31 officers' and fire fighters' system plan I retirement account, the
32 Washington law enforcement officers' and fire fighters' system plan II
33 retirement account, the Washington state patrol retirement account, the
34 Washington State University building account, the Washington State
35 University bond retirement fund, the water escrow account, the water
36 pollution control revolving fund, and the Western Washington University
37 capital projects account. Earnings derived from investing balances of
38 the agricultural permanent fund, the normal school permanent fund, the
39 permanent common school fund, the scientific permanent fund, and the

1 state university permanent fund shall be allocated to their respective
2 beneficiary accounts. All earnings to be distributed under this
3 subsection (4)(a) shall first be reduced by the allocation to the state
4 treasurer's service fund pursuant to RCW 43.08.190.

5 (b) The following accounts and funds shall receive eighty percent
6 of their proportionate share of earnings based upon each account's or
7 fund's average daily balance for the period: The aeronautics account,
8 the aircraft search and rescue account, the central Puget Sound public
9 transportation account, the city hardship assistance account, the
10 county arterial preservation account, the department of licensing
11 services account, the economic development account, the essential rail
12 assistance account, the essential rail banking account, the ferry bond
13 retirement fund, the gasohol exemption holding account, the grade
14 crossing protective fund, the high capacity transportation account, the
15 highway bond retirement fund, the highway construction stabilization
16 account, the highway safety account, the marine operating fund, the
17 motor vehicle fund, the motorcycle safety education account, the
18 pilotage account, the public transportation systems account, the Puget
19 Sound capital construction account, the Puget Sound ferry operations
20 account, the recreational vehicle account, the rural arterial trust
21 account, the safety and education account, the small city account, the
22 special category C account, the state patrol highway account, the
23 transfer relief account, the transportation capital facilities account,
24 the transportation equipment fund, the transportation fund, the
25 transportation improvement account, the transportation revolving loan
26 account, and the urban arterial trust account.

27 (5) In conformance with Article II, section 37 of the state
28 Constitution, no treasury accounts or funds shall be allocated earnings
29 without the specific affirmative directive of this section.

30 **Sec. 45.** RCW 90.03.470 and 1993 c 495 s 2 are each amended to read
31 as follows:

32 (~~Except as otherwise provided in subsection (15) of this~~
33 ~~section,~~) The following fees shall be collected by the department in
34 advance:

35 (1) (~~For the examination of an application for permit to~~
36 ~~appropriate water or on application to change point of diversion,~~
37 ~~withdrawal, purpose or place of use, a minimum of ten dollars, to be~~
38 ~~paid with the application. For each second foot between one and five~~

1 hundred second feet, two dollars per second foot; for each second foot
2 between five hundred and two thousand second feet, fifty cents per
3 second foot; and for each second foot in excess thereof, twenty cents
4 per second foot. For each acre foot of storage up to and including one
5 hundred thousand acre feet, one cent per acre foot, and for each acre
6 foot in excess thereof, one fifth cent per acre foot. The ten dollar
7 fee payable with the application shall be a credit to that amount
8 whenever the fee for direct diversion or storage totals more than ten
9 dollars under the above schedule and in such case the further fee due
10 shall be the total computed amount less ten dollars.

11 Within five days from receipt of an application the department
12 shall notify the applicant by registered mail of any additional fees
13 due under the above schedule and any additional fees shall be paid to
14 and received by the department within thirty days from the date of
15 filing the application, or the application shall be rejected.

16 (2) For filing and recording a permit to appropriate water for
17 irrigation purposes, forty cents per acre for each acre to be irrigated
18 up to and including one hundred acres, and twenty cents per acre for
19 each acre in excess of one hundred acres up to and including one
20 thousand acres, and ten cents for each acre in excess of one thousand
21 acres; and also twenty cents for each theoretical horsepower up to and
22 including one thousand horsepower, and four cents for each theoretical
23 horsepower in excess of one thousand horsepower, but in no instance
24 shall the minimum fee for filing and recording a permit to appropriate
25 water be less than five dollars. For all other beneficial purposes the
26 fee shall be twice the amount of the examination fee except that for
27 individual household and domestic use, which may include water for
28 irrigation of a family garden, the fee shall be five dollars.

29 (3) For filing and recording any other water right instrument, four
30 dollars for the first hundred words and forty cents for each additional
31 hundred words or fraction thereof.

32 (4) For making a copy of any document recorded or filed in his
33 office, forty cents for each hundred words or fraction thereof, but
34 when the amount exceeds twenty dollars, only the actual cost in excess
35 of that amount shall be charged.

36 (5) For certifying to copies, documents, records or maps, two
37 dollars for each certification.

1 ~~(6) For blueprint copies of a map or drawing, or, for such other~~
2 ~~work of a similar nature as may be required of the department, at~~
3 ~~actual cost of the work.~~

4 ~~(7)) For granting each extension of time for beginning~~
5 ~~construction work under a permit to appropriate water((, an amount~~
6 ~~equal to one half of the filing and recording fee, except that the~~
7 ~~minimum fee shall be not less than five dollars for each year that an~~
8 ~~extension is granted,)) and for granting an extension of time for~~
9 ~~completion of construction work or for completing application of water~~
10 ~~to a beneficial use, ((five)) one hundred dollars ((for each year that~~
11 ~~an extension is granted)).~~

12 ~~((8)) (2) For the inspection of any hydraulic works to insure~~
13 ~~safety to life and property, the actual cost of the inspection,~~
14 ~~including the expense incident thereto.~~

15 ~~((9)) (3) For the examination of plans and specifications as to~~
16 ~~safety of controlling works for storage of ten acre feet or more of~~
17 ~~water, a minimum fee of ((ten)) fifty dollars, or the actual cost.~~

18 ~~((10)) (4) For recording an assignment either of a permit to~~
19 ~~appropriate water or of an application for such a permit, a fee of~~
20 ~~((five)) one hundred dollars.~~

21 ~~((11) For preparing and issuing all water right certificates, five~~
22 ~~dollars.~~

23 ~~(12)) (5) For filing and recording a protest against granting any~~
24 ~~application, ((two)) fifty dollars.~~

25 ~~((13) The department shall provide timely notification by~~
26 ~~certified mail with return receipt requested to applicants that fees~~
27 ~~are due. No action may be taken until the fee is paid in full.~~
28 ~~Failure to remit fees within sixty days of the department's~~
29 ~~notification shall be grounds for rejecting the application or~~
30 ~~canceling the permit. Cash shall not be accepted. Fees must be paid~~
31 ~~by check or money order and are nonrefundable.~~

32 ~~(14)) (6) For filing an application for and authorizing a seasonal~~
33 ~~change or rotation, one hundred dollars.~~

34 (7) For filing an application for and authorizing a temporary or
35 short-term water use, one hundred dollars.

36 (8) For a consolidated application covering multiple sources or
37 changes:

38 (a) The filing fee must be based upon either the total amount of
39 water or the total number of changes requested, or both;

1 (b) The examination fee is the total of the examination fees
2 calculated for the individual applications and changes; and

3 (c) The certificate fee is as is appropriate for the individual
4 certificates, since separate permits would issue and, therefore,
5 separate certificates would result.

6 For purposes of calculating fees for ground water filings, one
7 cubic foot per second shall be regarded as equivalent to four hundred
8 fifty gallons per minute.

9 ~~((15) For the period beginning July 1, 1993, and ending June 30,~~
10 ~~1994, there is imposed and the department shall collect a one hundred~~
11 ~~dollar surcharge on all water rights applications or changes filed~~
12 ~~under this section, and upon all water rights applications or changes~~
13 ~~pending as of July 1, 1993. This charge shall be in addition to any~~
14 ~~other fees imposed under this section.))~~

15 NEW SECTION. Sec. 46. A new section is added to chapter 90.03 RCW
16 to read as follows:

17 (1) The department shall collect the following fees in advance of
18 each of the three stages of the permitting process:

19 (a) Application filing fees for the following:

20 (i) Surface water and ground water applications:

21 (A) Greater than 0.0 and less than or equal	
22 to 0.02 cubic feet per second	\$ 100
23 (B) Greater than 0.02 and less than or equal to	
24 0.1 cubic feet per second	\$ 150
25 (C) Greater than 0.1 and less than or equal to	
26 0.2 cubic feet per second	\$ 200
27 (D) Greater than 0.2 and less than or equal to	
28 0.5 cubic feet per second	\$ 250
29 (E) Greater than 0.5 and less than or equal to 1	
30 cubic feet per second	\$ 300
31 (F) Greater than 1 and less than or equal to 3	
32 cubic feet per second	\$ 400
33 (G) Greater than 3 and less than or equal to 5	
34 cubic feet per second	\$ 1500
35 (H) Greater than 5 and less than or equal to 20	
36 cubic feet per second	\$ 1700
37 (I) Greater than 20 and less than or equal to 100	
38 cubic feet per second	\$ 2,000

1	(J) Greater than 100 cubic feet per second	\$ 2,200
2	(ii) Reservoir applications:	
3	(A) Greater than 0.0 and less than or equal to	
4	10 acre-feet	\$ 100
5	(B) Greater than 10 and less than or equal to	
6	100 acre-feet	\$ 200
7	(C) Greater than 100 and less than or equal to	
8	1,000 acre-feet	\$ 600
9	(D) Greater than 1,000 acre-feet	\$ 1,500
10	(iii) Change applications:	
11	(A) Changing a single element	\$ 150
12	(B) Changing multiple elements	\$ 250
13	(b) Examination fees for the following:	
14	(i) Surface water applications:	
15	(A) Greater than 0.0 and less than or equal to	
16	0.02 cubic feet per second	\$ 100
17	(B) Greater than 0.02 and less than or equal to	
18	0.1 cubic feet per second	\$ 200
19	(C) Greater than 0.01 and less than or equal to	
20	0.2 cubic feet per second	\$ 250
21	(D) Greater than 0.2 and less than or equal to	
22	0.5 cubic feet per second	\$ 300
23	(E) Greater than 0.5 and less than or equal to	
24	1 cubic feet per second	\$ 400
25	(F) Greater than 1 and less than or equal to 3	
26	cubic feet per second	\$ 500
27	(G) Greater than 3 and less than or equal to 5	
28	cubic feet per second	\$ 2,200
29	(H) Greater than 5 and less than or equal to 20	
30	cubic feet per second	\$ 2,500
31	(I) Greater than 20 and less than or equal to 100	
32	cubic feet per second	\$ 2,800
33	(J) Greater than 100 cubic feet per second	\$ 3,200
34	(ii) Ground water applications:	
35	(A) Greater than 0.0 and less than or equal to	
36	0.02 cubic feet per second	\$ 100
37	(B) Greater than 0.02 and less than or equal to	
38	0.1 cubic feet per second	\$ 250
39	(C) Greater than 0.1 and less than or equal to	

1	0.2 cubic feet per second	\$ 300
2	(D) Greater than 0.2 and less than or equal to	
3	0.5 cubic feet per second	\$ 400
4	(E) Greater than 0.5 and less than or equal to 1	
5	cubic feet per second	\$ 500
6	(F) Greater than 1 or less than or equal to 3	
7	cubic feet per second	\$ 600
8	(G) Greater than 3 and less than or equal to 5	
9	cubic feet per second	\$ 2,600
10	(H) Greater than 5 and less than or equal to 20	
11	cubic feet per second	\$ 3,000
12	(I) Greater than 20 and less than or equal to 100	
13	cubic feet per second	\$ 3,400
14	(J) Greater than 100 cubic feet per second	\$ 3,800
15	(iii) Reservoir applications:	
16	(A) Greater than 0.0 and less than or equal to 10	
17	acre-feet	\$ 100
18	(B) Greater than 10 and less than or equal to 100	
19	acre-feet	\$ 250
20	(C) Greater than 100 and less than or equal to	
21	1,000 acre-feet	\$ 900
22	(D) Greater than 1,000 acre-feet	\$ 2,200
23	(iv) Changes to permits and certificates:	
24	(A) Changing a single element	\$ 200
25	(B) Changing multiple elements	\$ 300
26	(c) Certificate fees:	
27	(i) Surface water and ground water applications:	
28	(A) Greater than 0.0 and less than or equal to	
29	0.02 cubic feet per second	\$ 100
30	(B) Greater than 0.02 and less than or equal to	
31	0.1 cubic feet per second	\$ 150
32	(C) Greater than 0.1 and less than or equal to	
33	0.2 cubic feet per second	\$ 200
34	(D) Greater than 0.2 and less than or equal to	
35	0.5 cubic feet per second	\$ 250
36	(E) Greater than 0.5 and less than or equal to 1	
37	cubic feet per second	\$ 300
38	(F) Greater than 1 and less than or equal to 3	
39	cubic feet per second	\$ 400

1	(G) Greater than 3 and less than or equal to 5	
2	cubic feet per second	\$ 1,500
3	(H) Greater than 5 and less than or equal to 20	
4	cubic feet per second	\$ 1,700
5	(I) Greater than 20 and less than or equal to 100	
6	cubic feet per second	\$ 2,000
7	(J) Greater than 100 cubic feet per second	\$ 2,200
8	(ii) Reservoir applications:	
9	(A) Greater than 0.0 and less than or equal to 10	
10	acre-feet	\$ 200
11	(B) Greater than 10 and less than or equal to 100	
12	acre-feet	\$ 300
13	(C) Greater than 100 and less than or equal to	
14	1,000 acre-feet	\$ 1,000
15	(D) Greater than 1,000 acre-feet	\$ 1,500
16	(iii) Changes to permits and certificates:	
17	(A) Changing a single element	\$ 150
18	(B) Changing multiple elements	\$ 250

19 The department shall provide timely notification by certified mail
20 with return receipt requested to applicants that fees are due. No
21 action may be taken until the fee is paid in full. Failure to remit
22 fees within sixty days of the department's notification shall be
23 grounds for rejecting the application or canceling the permit. Cash
24 shall not be accepted. Fees must be paid by check or money order and
25 are nonrefundable.

26 For purposes of calculating fees for ground water filings, one
27 cubic foot per second shall be regarded as equivalent to four hundred
28 fifty gallons per minute.

29 (2) The water right permit processing account is created in the
30 state treasury. All receipts collected under RCW 90.03.470 and this
31 section shall be deposited into the account. Moneys in the account may
32 be spent only after appropriation. Expenditures from the account may
33 be used only for functions of the department related to: Filing,
34 examination, and certification of water right permits, changes to water
35 right permits, and transfer of water rights; and a proportionate share
36 of indirect costs allocated to these functions necessary to fund the
37 general administrative functions of the department. The department may
38 expend funds from the water right permit processing account in an

1 amount that is substantially equal to the amount expended of funds
2 appropriated from the general fund for water right permit processing.

3 **Sec. 47.** RCW 90.03.340 and 1987 c 109 s 90 are each amended to
4 read as follows:

5 After January 1, 1999, the priority date of the right acquired by
6 appropriation (~~((shall relate back to))~~) is the date (~~((of filing of))~~) the
7 (~~((original))~~) completed application form for the right is filed with the
8 department. For the purposes of this section and RCW 90.03.270, a
9 completed application form is one that contains all of the information
10 requested on the form and is accompanied by the application fee.

11 **Sec. 48.** RCW 90.03.270 and 1987 c 109 s 85 are each amended to
12 read as follows:

13 Upon receipt of (~~((an))~~) a completed water right application form, it
14 shall be the duty of the department to (~~((make an endorsement thereon of~~
15 ~~the))~~) date (~~((of its receipt))~~), stamp, and (~~((to))~~) keep a record of
16 (~~((same))~~) it. If (~~((upon examination,))~~) an application form is filed
17 with the department but the information requested on the application
18 form is (~~((found to be defective,))~~) not complete or the form is not
19 accompanied by the proper application fee, the form and any application
20 fee filed with it shall be returned to the applicant (~~((for correction~~
21 ~~or completion,))~~) and the date and the reasons for the return thereof
22 shall be (~~((endorsed thereon and made a record in his office. No~~
23 ~~application shall lose its priority of filing on account of such~~
24 ~~defects, provided acceptable maps, drawings and such data as is~~
25 ~~required by the department shall be filed with the department within~~
26 ~~such reasonable time as it shall require))~~) noted in the department's
27 records and in a letter returning the form. The department may not
28 require an applicant to provide information in support of an
29 application for a water right permit that is not necessary for the
30 department's investigations, determinations, or findings regarding that
31 particular application.

32 **Sec. 49.** RCW 90.03.280 and 1994 c 264 s 83 are each amended to
33 read as follows:

34 Upon receipt of a (~~((proper))~~) completed application, the department
35 shall instruct the applicant to publish notice (~~((thereof))~~) in a form
36 and within a time prescribed by the department in a newspaper of

1 general circulation published in the county or counties in which the
2 storage, diversion or withdrawal, and use is to be made, and in such
3 other newspapers as the department may direct, once a week for two
4 consecutive weeks. The notice shall include information pertinent to
5 the proposed appropriation, including the location, the source, the
6 purpose or purposes of use, and the quantity proposed to be diverted or
7 withdrawn. The notice shall state that persons wishing to protest the
8 proposed appropriation must do so in writing to the department within
9 thirty days of the last date of publication of the notice. In order to
10 be considered by the department, a protest must be received by the
11 department within thirty days of the last date of publication of the
12 notice. Upon receipt by the department of an application it shall send
13 notice thereof containing pertinent information to the director of fish
14 and wildlife.

15 NEW SECTION. Sec. 50. A new section is added to chapter 43.21B
16 RCW to read as follows:

17 Only a person with standing as defined in RCW 34.05.530 may appeal
18 to the pollution control hearings board or a superior court a decision
19 of the department of ecology to issue, condition, transfer, amend, or
20 deny a water right under Title 90 RCW.

21 NEW SECTION. Sec. 51. A new section is added to chapter 90.03 RCW
22 to read as follows:

23 A water right applicant may appeal to the pollution control
24 hearings board or a superior court a determination by the department
25 regarding the nature and extent of the information needed to make
26 determinations regarding the application for or the processing of a
27 water right permit.

28 **Sec. 52.** RCW 90.03.320 and 1997 c 445 s 3 are each amended to read
29 as follows:

30 (1) Actual construction work shall be commenced on any project for
31 which permit has been granted within such reasonable time as shall be
32 prescribed by the department, and shall thereafter be prosecuted with
33 diligence and completed within the time prescribed by the department.
34 The department, in fixing the time for the commencement of the work, or
35 for the completion thereof and the application of the water to the
36 beneficial use prescribed in the permit, shall take into consideration

1 the cost and magnitude of the project and the engineering and physical
2 features to be encountered, and shall allow such time as shall be
3 reasonable and just under the conditions then existing, having due
4 regard for the public welfare and public interests affected: and, for
5 good cause shown, it shall extend the time or times fixed as aforesaid,
6 and shall grant such further period or periods as may be reasonably
7 necessary, having due regard to the good faith of the applicant and the
8 public interests affected.

9 (2) For the purposes of this section, "good cause" includes but is
10 not limited to the following circumstances that prevent work completion
11 within the prescribed period:

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

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

15 (c) The operation of legal proceedings;

16 (d) Delays in securing other permits necessary to proceed with the
17 development;

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

19 (f) Implementation of water efficiency measures, including
20 conservation and reclaimed water use;

21 (g) Encountering unanticipated physical impediments to
22 construction; and

23 (h) Encountering generally depressed economic conditions.

24 (3) In fixing construction schedules and the time, or extension of
25 time, for application of water to beneficial use for municipal water
26 supply purposes, the department shall also take into consideration the
27 term and amount of financing required to complete the project, delays
28 that may result from planned and existing conservation and water use
29 efficiency measures implemented by the public water system, and the
30 supply needs of the public water system's service area, consistent with
31 an approved comprehensive plan under chapter 36.70A RCW, or in the
32 absence of such a plan, a county-approved comprehensive plan under
33 chapter 36.70 RCW or a plan approved under chapter 35.63 RCW, and
34 related water demand projections prepared by public water systems in
35 accordance with state law. An existing comprehensive plan under
36 chapter 36.70A or 36.70 RCW, plan under chapter 35.63 RCW, or demand
37 projection may be used.

38 (4) If the terms of the permit or extension thereof(~~(7)~~) are not
39 complied with, the department shall give notice by (~~registered~~)

1 certified mail that (~~such~~) the permit will be canceled unless the
2 (~~holders thereof shall~~) permittee shows cause within sixty days why
3 the (~~same~~) permit should not be (~~so~~) canceled. If cause is not
4 shown, the permit shall be canceled.

5 **Sec. 53.** RCW 90.03.260 and 1987 c 109 s 84 are each amended to
6 read as follows:

7 (~~Each application for permit to appropriate water shall set forth
8 the name and post office address of the applicant, the source of water
9 supply, the nature and amount of the proposed use, the time during
10 which water will be required each year, the location and description of
11 the proposed ditch, canal, or other work, the time within which the
12 completion of the construction and the time for the complete
13 application of the water to the proposed use. If for agricultural
14 purposes, it shall give the legal subdivision of the land and the
15 acreage to be irrigated, as near as may be, and the amount of water
16 expressed in acre feet to be supplied per season. If for power
17 purposes, it shall give the nature of the works by means of which the
18 power is to be developed, the head and amount of water to be utilized,
19 and the uses to which the power is to be applied. If for construction
20 of a reservoir, it shall give the height of the dam, the capacity of
21 the reservoir, and the uses to be made of the impounded waters. If for
22 municipal water supply, it shall give the present population to be
23 served, and, as near as may be, the future requirement of the
24 municipality. If for mining purposes, it shall give the nature of the
25 mines to be served and the method of supplying and utilizing the water;
26 also their location by legal subdivisions. All applications shall be
27 accompanied by such maps and drawings, in duplicate, and such other
28 data, as may be required by the department, and such accompanying data
29 shall be considered as a part of the application.)) The department
30 shall adopt rules in accordance with chapter 34.05 RCW by January 1,
31 1999, that specify the contents of completed water right application
32 forms. The rules shall include specific timelines for the department
33 to follow in making a determination as to whether an application is
34 complete and notifying the applicant of its determination. The rules
35 shall also identify the kinds of inaccuracies that render an
36 application incomplete.~~

1 **Sec. 54.** RCW 90.44.060 and 1987 c 109 s 109 are each amended to
2 read as follows:

3 Applications for permits for appropriation of underground water
4 shall be made in the same form and manner provided in RCW 90.03.250
5 through 90.03.340, as amended, the provisions of which sections are
6 hereby extended to govern and to apply to ground water, or ground water
7 right certificates and to all permits that shall be issued pursuant to
8 such applications, and the rights to the withdrawal of ground water
9 acquired thereby shall be governed by RCW 90.03.250 through 90.03.340,
10 inclusive(~~(: PROVIDED, That each application to withdraw public ground~~
11 ~~water by means of a well or wells shall set forth the following~~
12 ~~additional information: (1) the name and post office address of the~~
13 ~~applicant; (2) the name and post office address of the owner of the~~
14 ~~land on which such well or wells or works will be located; (3) the~~
15 ~~location of the proposed well or wells or other works for the proposed~~
16 ~~withdrawal; (4) the ground water area, sub-area, or zone from which~~
17 ~~withdrawal is proposed, provided the department has designated such~~
18 ~~area, sub-area, or zone in accord with RCW 90.44.130; (5) the amount of~~
19 ~~water proposed to be withdrawn, in gallons a minute and in acre feet a~~
20 ~~year, or millions of gallons a year; (6) the depth and type of~~
21 ~~construction proposed for the well or wells or other works: AND~~
22 ~~PROVIDED FURTHER, That)).~~ The department shall adopt rules in
23 accordance with chapter 34.05 RCW by January 1, 1999, that specify the
24 contents of completed water right application forms. The rules shall
25 include specific timelines for the department to follow in making a
26 determination as to whether an application is complete and notifying
27 the applicant of its determination. The rules shall also identify the
28 kinds of inaccuracies that render an application incomplete. Any
29 permit issued pursuant to an application for constructing a well or
30 wells to withdraw public ground water may specify an approved type and
31 manner of construction for the purposes of preventing waste of said
32 public waters and of conserving their head.

33 NEW SECTION. **Sec. 55.** A new section is added to chapter 90.03 RCW
34 to read as follows:

35 (1) The department shall establish streamlined procedures for its
36 processing of applications for de minimis appropriations of surface
37 water, but only if the department has reserved and set aside the water
38 for future beneficial use under RCW 90.54.050.

1 (2) Applications for appropriating water under this section shall
2 be made on a form provided by the department. Within sixty days of the
3 publication of a notice in accordance with RCW 90.03.280, the
4 department shall issue or deny a permit for the requested
5 appropriation. If the department denies the application, it shall
6 explain its determination in writing.

7 (3) The department shall waive the evaluation and report
8 requirements of RCW 90.03.290 if during the establishment of the
9 reservation it was conclusively determined that water is available and
10 that no impairment of existing water rights or the public interest will
11 occur.

12 (4) This section may not be used in areas that are within urban
13 growth areas as designated under RCW 36.70A.110 or within the service
14 areas of a public water system as defined in chapter 70.119A RCW that
15 has an available water supply.

16 (5) Unless the context clearly requires otherwise, as used in this
17 chapter, "de minimis appropriation" means diversion and use of surface
18 water in an amount not exceeding four hundred fifty gallons per day and
19 not exceeding an instantaneous diversion rate of two one-hundredths
20 cubic feet per second.

21 (6) The department shall develop, in cooperation with the
22 department of health, informational materials regarding the risks of
23 drinking untreated surface water. This informational material may be
24 provided to prospective applicants. The department shall attach the
25 informational materials to any permit that is approved under this
26 section.

27 NEW SECTION. **Sec. 56.** A new section is added to chapter 90.03 RCW
28 to read as follows:

29 (1) The department may authorize short-term uses of water without
30 publication of the notice required under RCW 90.03.280 and without the
31 report required under RCW 90.03.290. However, before approving a
32 short-term use, the department shall determine to its satisfaction that
33 the substantive criteria in RCW 90.03.290 are met and that a stream
34 affected by a short-term use will be retained with sufficient flows to
35 maintain instream uses and to protect existing water rights. The
36 department shall adopt and provide application forms for persons
37 applying for a short-term use and shall expedite its consideration of
38 short-term use requests to the extent practicable.

1 (2) For the purposes of this chapter, "short-term use" means a use
2 of water that will not exceed one year in duration. Short-term uses
3 include but are not limited to use in construction, dust control,
4 dewatering, and short-term planned fire suppression activities.

5 NEW SECTION. **Sec. 57.** A new section is added to chapter 90.03 RCW
6 to read as follows:

7 The department shall establish a register that identifies, by water
8 resource inventory area, applications for new water rights and
9 applications for water right transfers and changes. The applications
10 appearing in the register shall be limited to those requesting a new
11 appropriation or change or transfer of more than three cubic feet per
12 second of water. The register shall identify: The location of the
13 proposed use, change, or transfer; whether the application is for
14 surface or ground water; and, for surface water applications, the water
15 source. The department shall produce the register once every two weeks
16 and shall make the register available to interested parties for a fee
17 that is based on the cost of producing and mailing the register. One
18 year after the effective date of this act, the department may cease
19 production of the register if the number of requests for the register
20 are not adequate to cover the costs of producing and mailing it.

21 NEW SECTION. **Sec. 58.** (1) The department shall in conjunction
22 with the task force created in section 3, chapter 495, Laws of 1993
23 develop a budget process for its water rights administration program
24 that accomplishes the following:

- 25 (a) Identifies targets for permitting activities for the biennium;
- 26 (b) Identifies workload standards;
- 27 (c) Prepares a draft budget;
- 28 (d) Provides for timely public review of the draft budget; and
- 29 (e) Circulates a final budget.

30 (2) The water rights programs review task force shall, in
31 conjunction with the department, establish and periodically review the
32 following:

33 (a) Workload standards and proposed incentives to improve such
34 standards;

35 (b) Program expenditure categories to account for and track costs
36 related to the water rights administration program; and

1 (c) Success measures based upon programmatic results designed to
2 evaluate program effectiveness and standards for defining the measures.

3 In establishing the initial workload standards, the legislature has
4 an expectation that the department will process a simple, basic
5 application in six months and an application of intermediate difficulty
6 in one year. The department shall report to the task force, within
7 fifteen days of the end of each calendar quarter, the number of
8 applications that were not processed within this time frame and the
9 reasons for the delay.

10 (3) The task force shall report annually to the legislature on the
11 success measures established, the number of water right permit
12 decisions made, and the associated costs of administering the water
13 rights program.

14 (4) The legislature may provide for another state entity or an
15 independent contractor to conduct periodic performance audits or
16 evaluations of the effectiveness and efficiency of the department in
17 meeting its workload standards and achieving programmatic success.

18 (5) This section expires December 31, 2001.

19 **Sec. 59.** 1993 c 495 s 3 (uncodified) is amended to read as
20 follows:

21 (1) There is created a water rights ~~((fees))~~ programs review task
22 force. The task force shall be comprised of ~~((fourteen))~~ sixteen
23 members, who are appointed as follows:

24 (a) Two members of the Washington state house of representatives,
25 one from each major caucus, to be appointed by the speaker of the house
26 of representatives;

27 (b) Two members of the Washington state senate, one from each major
28 caucus, to be appointed by the president of the senate;

29 (c) ~~((Ten))~~ Twelve members, to be appointed jointly by the speaker
30 of the house of representatives and the president of the senate, to
31 represent the following interests: Agriculture, aquaculture, business,
32 cities, counties, the state department of ecology, environmentalists,
33 water recreation interests, water utilities, federally recognized
34 Indian tribes, rural residential interests, and hydropower interests.
35 ~~((The task force may establish technical advisory committees as
36 necessary to complete its tasks.))~~

37 (2) In addition to the functions established in section 58 of this
38 act, the task force shall conduct a ~~((comprehensive))~~ review ~~((of water~~

1 rights fees. The task force's tasks shall include)), including but not
2 ((be)) limited to the following matters:

3 (a) ~~((Identification of the costs associated with the various
4 activities and services provided by the water rights program and
5 examination of how these costs compare with the fees charged for these
6 activities and services;~~

7 (b) ~~Identification of appropriate accountability measures for the
8 department of ecology to employ in administration of the water rights
9 program. Recommendations of accountability requirements and
10 measurements shall take into account the distinctive characteristics of
11 the water rights program, that is, that the department receives a large
12 number of applications on a one-time basis and that the department of
13 ecology must meet its legal obligations under the doctrine of prior
14 appropriation;~~

15 (c) ~~Identification of which program activities should be eligible
16 for cost recovery from fees, as well as which direct and indirect costs
17 of program administration;~~

18 (d) ~~Review of the application, examination, and water rights permit
19 requirements for marine water users to determine if these users should
20 receive special fee consideration;~~

21 (e) ~~Review of the definition and treatment of nonconsumptive water
22 uses to determine if special fee consideration should be given to these
23 users;~~

24 (f) ~~Review of the fees and accounting methods for the dam safety
25 program;~~

26 (g) ~~Identification of the appropriate distribution of
27 responsibility between the applicant and the department of ecology for
28 provision of technical information and analysis; and~~

29 (h) ~~Establishment of a reasonable time framework for completion of
30 new and pending water rights applications, and an analysis of the staff
31 and funding levels required to meet the established time framework))~~

32 Implementation of the development and maintenance of the water resource
33 data management system, monitored on an annual basis;

34 (b) The use and amount of funds available for the water right
35 permit processing and data management programs;

36 (c) The water rights programs review task force will conduct a
37 study to determine potential savings and efficiencies attainable by
38 integrating all water resource data management functions among natural
39 resource management agencies into a single data management system

1 compared with the savings and efficiencies currently realized by each
2 natural resource management agency maintaining independent water
3 resource information. In reviewing this matter, the task force will
4 work with the natural resource management agencies to determine the
5 nature and extent of each natural resource management agency's:

6 (i) Existing water resource data;

7 (ii) Existing water resource data management system or systems;

8 (iii) Dependence on water resource data to fulfill agency
9 responsibilities;

10 (iv) Types of water resource data unique to that agency;

11 (v) Types of water resource data common to all natural resource
12 agencies;

13 (vi) Method of managing water resources information, including an
14 assessment of the compatibility of information management systems
15 between natural resource management agencies, and the obstacles
16 inhibiting integration and subsequent free exchange of water resource
17 data between natural resource management agencies; and

18 (vii) Biennial cost of acquiring and maintaining each type of water
19 resource data used by the agency.

20 For the purposes of this section, a "natural resource management
21 agency" includes any of the following state agencies: Department of
22 ecology, department of natural resources, department of fish and
23 wildlife, local conservation districts, and department of health.

24 The report shall be presented to the legislature on or before
25 December 1, 1998; and

26 (d) In conjunction with the review required in (a) and (b) of this
27 subsection, the task force shall recommend, by December 1, 1998,
28 appropriate future funding sources for data management development.

29 (3) On June 1, 2001, the task force shall be reactivated in
30 accordance with subsection (1) of this section. Before December 1,
31 ((1993)) 2001, the task force shall provide recommendations to the
32 legislature regarding:

33 (a) ((Provide recommendations to the department of ecology on ways
34 to improve the efficiency and accountability of the water rights
35 program;

36 (b) Provide recommendations to the legislature on statutory changes
37 necessary to make these efficiency and accountability improvements; and

38 (c) Propose a new fee schedule for the water rights program which
39 incorporates the results of the task force's work and which funds

1 through fees fifty percent of the cost of the activities and services
2 provided by the program)) The efficiency and accountability of the
3 water right permit processing program and the need for change to the
4 level of funding in fiscal year 2003; and

5 (b) The future direction of the water resource data management
6 program and the need for changes to the level of funding in fiscal year
7 2003.

8 (4) The department of ecology and the legislature shall jointly
9 provide for the staff support of the task force.

10 (5) The task force shall convene as soon as possible upon the
11 appointment of its members. Task force members shall elect a chair and
12 adopt rules for conducting the business of the task force. The task
13 force shall expire on June 30, ((1994)) 2002.

14 **Sec. 60.** RCW 89.30.001 and 1933 c 149 s 1 are each amended to read
15 as follows:

16 Reclamation districts including an area of not less than one
17 million acres of land may be created and maintained in this state, as
18 herein provided, for the reclamation and improvement of arid and
19 semiarid lands situated in such districts, and for the generation
20 and/or sale of hydroelectric energy(~~(:—PROVIDED, That no~~
21 ~~appropriation, license, filing, recording, examination or other fee or~~
22 ~~fees, as provided in RCW 90.16.050 through 90.16.090 or in RCW~~
23 ~~90.03.470 shall be applicable to a district or districts created under~~
24 ~~this chapter)).~~

25 NEW SECTION. **Sec. 61.** Sections 6 through 14 of this act are each
26 added to chapter 43.27A RCW.

27 NEW SECTION. **Sec. 62.** RCW 43.21A.067 shall be recodified as a
28 section in chapter 43.27A RCW.

29 NEW SECTION. **Sec. 63.** RCW 90.14.043 is decodified.

30 NEW SECTION. **Sec. 64.** RCW 43.21A.064 and 1997 c 443 s 2, 1995 c
31 8 s 3, 1977 c 75 s 46, & 1965 c 8 s 43.21.130 are each repealed.

32 NEW SECTION. **Sec. 65.** RCW 90.03.471 and 1987 c 109 s 99 & 1925
33 ex.s. c 161 s 3 are each repealed.

1 NEW SECTION. **Sec. 66.** Section 47 of this act takes effect January
2 2, 1999.

3 NEW SECTION. **Sec. 67.** The sum of five hundred thousand dollars,
4 or as much thereof as may be necessary, is appropriated for the
5 biennium ending June 30, 1999, from the water escrow account to the
6 department of ecology for the purposes of costs of any basin-wide water
7 rights adjudications cases in existence on the effective date of this
8 act.

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