
SUBSTITUTE SENATE BILL 5289

State of Washington**56th Legislature****1999 Regular Session**

By Senate Committee on Environmental Quality & Water Resources (originally sponsored by Senators Fraser, Morton, Jacobsen, Winsley, Rasmussen, Patterson, Spanel, Haugen, Eide, Shin, Costa, Fairley, Heavey, Prentice, Gardner, Franklin, Kohl-Welles, Thibaudeau and Kline; by request of Governor Locke)

Read first time 03/03/99.

1 AN ACT Relating to water resource management and facilitating
2 fishery protection and recovery; amending RCW 90.54.020, 90.22.010,
3 90.22.020, 75.20.050, 90.42.080, 90.03.255, 90.44.055, 36.94.010,
4 36.94.020, 36.89.010, 36.89.030, 35.67.010, 85.38.180, 86.15.010,
5 86.15.100, 90.54.180, 90.03.290, 43.20.230, 90.48.495, 90.03.360,
6 90.44.450, 90.46.030, 90.46.040, 90.46.120, 90.46.130, 90.03.330,
7 58.17.110, 90.58.080, 90.82.070, 75.20.106, 77.15.300, 90.03.600,
8 43.21B.300, 90.08.040, 90.08.060, 90.03.070, 43.99E.015, and
9 43.99E.030; reenacting and amending RCW 90.54.050; adding new sections
10 to chapter 90.03 RCW; adding new sections to chapter 70.119A RCW;
11 adding a new section to chapter 58.17 RCW; adding a new section to
12 chapter 35.21 RCW; adding a new section to chapter 35A.21 RCW; adding
13 a new section to chapter 36.01 RCW; adding a new section to chapter
14 90.54 RCW; adding new sections to chapter 90.46 RCW; adding a new
15 section to chapter 90.44 RCW; adding a new section to chapter 36.70A
16 RCW; adding a new section to chapter 90.58 RCW; adding a new section to
17 chapter 43.27A RCW; adding a new section to chapter 90.42 RCW; creating
18 new sections; repealing RCW 90.22.060; prescribing penalties; making an
19 appropriation; and providing an expiration date.

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

1

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14 **PART I. FINDINGS, INTENT, AND FUNDAMENTALS**

15 NEW SECTION. **Sec. 101.** FINDINGS. (1) Many salmon and trout
 16 species are continuing a long-term decline, to the point where many are
 17 approaching extinction and, therefore, are now listed or being
 18 considered for listing as threatened or endangered by the federal
 19 government under the endangered species act.

20 (2) Historically abundant, harvestable levels of salmon and trout
 21 are fundamentally important to the people of the state of Washington
 22 because they are integral to our rich heritage of natural resources and
 23 our identity as a state, they are a key component of our traditional

1 economic base, they are an inspiration in our diverse cultures, and
2 they are a major stimulus for recreation.

3 (3) Citizens want to respond to the threat of extinction, as
4 represented by these actual and potential listings, in order to protect
5 and restore these fisheries and to avoid or minimize negative actions
6 by federal agencies as they implement their responsibilities under the
7 endangered species act.

8 (4) Many factors appear to be causing the decline and danger of
9 extinction, including insufficient water in streams, water quality
10 degradation, instream fish habitat losses, overharvest, past hatchery
11 practices, predation, ocean conditions, and community development
12 practices.

13 (5) This unprecedented situation provides an opportunity for the
14 state to review its laws concerning water, the essential habitat
15 requirement of salmon and trout, and out-of-stream activities that
16 affect water, to reassess the impact of these laws, and to revise and
17 update them as needed.

18 (6) Current state water law should be sufficiently adaptable and
19 flexible to improve our ability to meet the needs of fish protection
20 and recovery and the needs of a changing, growing population and
21 economy.

22 (7) Water law in its totality is exceptionally complex and involves
23 state statutes and rules, federal statutes and regulations, tribal
24 reserved and treaty rights, federal reserved rights, regulatory
25 decisions by the federal energy regulatory commission, case law
26 expressed in numerous state and federal court decisions, and negotiated
27 settlements.

28 (8) The Washington state water code is based on doctrines generally
29 referred to as Western water law, which include the following:

30 (a) All waters of the state are owned by the people in common;

31 (b) State-issued water rights are usufructuary rights, meaning that
32 they confer a right to use and not a right to own;

33 (c) State-issued water rights are assigned an order of priority for
34 use of available water, based on first in time, first in right;

35 (d) Water rights are held in perpetuity, unless the holder of the
36 right fails to put the water to beneficial use for five or more years;

37 (e) Water must be used for beneficial purposes, as defined in
38 statute; and

1 (f) State-issued water rights are issued for specific amounts,
2 specific locations, and specific uses.

3 (9) Beneficial uses of water, which are not ranked, include habitat
4 for fish. Instream flows are protected by state and federal law. Any
5 instream flows set by the state have a priority date as of their
6 enactment.

7 (10) Since territorial times, the people of Washington have enacted
8 laws intended to protect abundant fish runs.

9 (11) Numerous Native American tribes in Washington have treaty
10 rights to harvest fish, which rights imply that the waters will not be
11 used or degraded in a manner that threatens the health or survival of
12 fish. Many tribes manage fisheries and have developed a high level of
13 expertise in fisheries resource management.

14 (12) Citizens, local governments, tribes, and state and federal
15 agencies have taken innumerable, positive actions to protect and
16 restore fisheries resources throughout the state, with a growing
17 emphasis on local involvement and cooperation.

18 (13) Adequate streamflows and lake levels are necessary for
19 protecting and recovering salmon stocks and for achieving the state's
20 high standards for protecting perennial water systems, as declared in
21 the 1971 water resource fundamentals. Such flow levels must be
22 expeditiously adopted and be based upon methods employing the best
23 available science, with the highest priority being given to streams and
24 rivers in which salmon are in danger of extinction. Once levels are
25 established, measures must be implemented to ensure that flows are not
26 diminished below these levels, and that, where necessary, measures be
27 taken to restore streamflows to these established levels.

28 (14) Clearer law and more innovative approaches are needed for
29 reallocation of water use through transfers and changes, to provide
30 opportunities to address streamflow augmentation, salmon recovery, and
31 for water supply needs for growing communities and agriculture, and at
32 the same time, to protect all affected interests.

33 (15) Watershed-specific information is required to address water
34 use, planning, and management in each watershed, because each has
35 unique characteristics in terms of water resources, hydrological
36 characteristics, fish populations, other natural resources,
37 demographics, economic activity, and legal history.

1 NEW SECTION. **Sec. 102.** INTENT. Through this act, the legislature
2 intends to:

3 (1) Improve streamflow for fish;

4 (2) Provide improved tools and incentives to prevent extinction of
5 declining salmon and trout species and to better meet the water needs
6 of growing and changing communities;

7 (3) Provide an effective component of the state's response to
8 listings and potential listings under the federal endangered species
9 act;

10 (4) Promote greater efforts to conserve and reuse water;

11 (5) Begin the process of updating and clarifying the state's water
12 code to provide additional state authority and more policy guidance to
13 administrative agencies to:

14 (a) Establish priorities to address critical needs such as
15 restoration of depressed salmon and trout stocks;

16 (b) Provide improved mechanisms for responding to changing economic
17 and demographic characteristics of the state;

18 (c) Improve our ability to provide instream flows that meet fish
19 needs;

20 (d) Improve opportunities for innovative changes and transfers of
21 water rights;

22 (e) Make the water code more readable and understandable;

23 (f) Assure that recognized water rights and uses are protected;

24 (g) Improve enforcement; and

25 (h) Improve mitigation for negative consequences of diversions and
26 withdrawals;

27 (6) Retain the doctrines known as Western water law and provide for
28 better enforcement of them;

29 (7) Promote the spirit of cooperation and information sharing among
30 all who rely on common water resources, both for instream and out-of-
31 stream interests, and between tribal and nontribal entities;

32 (8) Encourage understanding of tribal reserved and treaty rights
33 relating to water and fish;

34 (9) Promote more public understanding and involvement in water
35 resource policy and its administration;

36 (10) Address special challenges and priorities for the agricultural
37 sector, urban growth water supply needs, and fisheries interests;

38 (11) Protect all existing water rights;

1 (12) Improve collection, management, and accessibility of
2 information relating to water resources, water rights, and water rights
3 transfers; and

4 (13) Encourage volunteer efforts to cooperate in achieving water
5 resources needs.

6 **Sec. 103.** RCW 90.54.020 and 1997 c 442 s 201 are each amended to
7 read as follows:

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

10 (1) Uses of water for domestic, stock watering, industrial,
11 commercial, agricultural, irrigation, hydroelectric power production,
12 mining, fish and wildlife maintenance and enhancement, recreational,
13 and thermal power production purposes, and preservation of
14 environmental and aesthetic values, and all other uses compatible with
15 the enjoyment of the public waters of the state, are declared to be
16 beneficial.

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

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

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

31 (b) Waters of the state shall be of high quality. Regardless of
32 the quality of the waters of the state, all wastes and other materials
33 and substances proposed for entry into said waters shall ~~((be provided~~
34 ~~with))~~ undergo, before entry, all known, available, and reasonable
35 methods of treatment ((prior to entry)) needed to prevent the pollution
36 of waters of the state. Notwithstanding that standards of quality
37 established for the waters of the state would not be violated, wastes
38 and other materials and substances shall not be allowed to enter such

1 waters which will reduce the existing quality thereof, except in those
2 situations where it is clear that overriding considerations of the
3 public interest will be served. Technology-based effluent limitations
4 or standards for discharges for municipal water treatment plants
5 located on the Chehalis, Columbia, Cowlitz, Lewis, or Skagit river
6 shall be adjusted to reflect credit for substances removed from the
7 plant intake water if:

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

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

13 (c) Protection and restoration of streamflows adequate to support
14 sustainable and harvestable populations of salmon and trout stocks
15 shall be a high priority in the planning and management of the state's
16 water resources.

17 (4) The development of multipurpose water storage facilities shall
18 be a high priority for programs of water allocation, planning,
19 management, and efficiency. The department, other state agencies,
20 local governments, and planning units formed under (~~section 107 or 108~~
21 ~~of this act~~) chapter 90.82 RCW shall evaluate the potential for the
22 development of new storage projects and the benefits and effects of
23 storage in reducing damage to stream banks and property, increasing the
24 use of land, providing water for municipal, industrial, agricultural,
25 power generation, and other beneficial uses, and improving (~~stream~~
26 ~~flow~~) streamflow regimes for fisheries and other instream uses.

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

29 (6) Multiple-purpose impoundment structures are to be preferred
30 over single-purpose structures. Due regard shall be given to means and
31 methods for protection of fishery resources in the planning for and
32 construction of water impoundment structures and other artificial
33 obstructions.

34 (7) In areas that have threatened or endangered species listed or
35 proposed for listing under the federal endangered species act or
36 salmonid stocks categorized as critical or depressed under the state
37 salmon and steelhead stock inventory and where water can be used to
38 protect or restore streamflows that are needed by such species or
39 stocks, or in urban growth areas, the state and local governments shall

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

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

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

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

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

25 **PART II. STREAMFLOW**

26 **Sec. 201.** RCW 90.22.010 and 1997 c 32 s 4 are each amended to read
27 as follows:

28 (1) The department of ecology ((may)) shall establish minimum water
29 flows or levels for streams, lakes or other public waters for the
30 purposes of protecting fish, game, birds or other wildlife resources,
31 or recreational or aesthetic values of said public waters whenever it
32 appears to be in the public interest to establish the same. In
33 addition, the department of ecology shall, when requested by the
34 department of fish and wildlife to protect fish, game or other wildlife
35 resources under the jurisdiction of the requesting state agency, or if
36 the department of ecology finds it necessary to preserve water quality,
37 establish such minimum flows or levels as are required to protect the

1 resource or preserve the water quality described in the request or
2 determination. Any request submitted by the department of fish and
3 wildlife shall include a statement setting forth the need for
4 establishing a minimum flow or level. When the department acts to
5 preserve water quality, it shall include a similar statement with the
6 proposed rule filed with the code reviser. This section shall not
7 apply to waters artificially stored in reservoirs, provided that in the
8 granting of storage permits by the department of ecology in the future,
9 full recognition shall be given to downstream minimum flows, if any
10 there may be, which have ~~((theretofore been established hereunder))~~
11 previously been established under this chapter or chapter 90.54 RCW.

12 (2) The department of ecology shall use instream flow evaluation
13 methods that incorporate the best available science appropriate for
14 each situation in establishing flows or levels under this section. In
15 developing and selecting methodologies for use in determining and
16 establishing flows or levels for the recovery of salmon and trout
17 populations, and in developing criteria to select methods to apply in
18 each situation, the department shall consult with the department of
19 fish and wildlife, Indian tribes, and the science panel created under
20 RCW 75.46.050, and shall consult periodically with them in updating
21 methodologies. The review of existing methodologies or consideration
22 of proposed revisions shall not be the basis for delay in proceeding to
23 comply with the priority establishment of flows or levels under
24 subsection (3) of this section. The department may select from among
25 several acceptable methodologies in establishing flows or levels for a
26 specific stream or lake, based upon considerations such as available
27 funding and staffing, the depletion of the streamflows, and the safety
28 of personnel conducting the evaluation.

29 (3) For the period beginning July 1, 1999, through June 30, 2003,
30 the department of ecology shall place a high priority in exercising the
31 authority under this section upon the adoption of flows or levels for
32 the recovery of depressed salmon and trout populations. To this end
33 and in consultation with the salmon recovery office and with Indian
34 tribes, the department shall establish a schedule for initiating and
35 completing the establishment of flows or levels for state waters that
36 support salmon and trout populations listed or proposed for listing
37 under the federal endangered species act or determined by the
38 department of fish and wildlife to be depressed or critical. The
39 schedule shall be consistent with the state's salmon recovery strategy

1 and shall establish a priority for early action on water bodies on
2 which such salmon or trout stocks are dependent and in which inadequate
3 flows or levels have been identified as a limiting factor on recovery.
4 Where planning units have elected to make recommendations regarding
5 streamflow setting as part of a watershed planning program authorized
6 in RCW 90.82.080, the department, before adoption or revision of a flow
7 rule, shall collaborate with the planning unit to develop a schedule
8 for finalizing those recommendations that is consistent with the goals
9 of the state's salmon recovery strategy and the goals of this
10 subsection. The schedule shall include the review and revision of
11 existing flows or levels when determined by the department to fail to
12 meet the standards of this section. The schedule shall adopt as a goal
13 the establishment or revision of flows or levels by June 30, 2001, for
14 all waters of the state that support salmon or trout populations that
15 as of July 1, 1999, are listed or proposed for listing under the
16 federal endangered species act or that the department of fish and
17 wildlife has determined are critical or depressed, and for which flows
18 or levels in such waters have been identified as a limiting factor on
19 recovery. In the event that insufficient resources have been provided
20 to act on all such water bodies within this timeframe, the schedule
21 shall place the highest priority upon those water bodies in watersheds
22 that are also characterized by high growth.

23 **Sec. 202.** RCW 90.22.020 and 1994 c 264 s 87 are each amended to
24 read as follows:

25 (1) The department shall consult regarding proposed minimum flows
26 or levels with the department of fish and wildlife, the national marine
27 fisheries service, the United States fish and wildlife service, and any
28 Indian tribes having adjudicated fishing rights to fish dependent upon
29 the stream or streams for which minimum flows are proposed to be
30 established under this chapter. The department shall take into full
31 account the recommendations of the consulted agencies and explain in
32 writing any departure from the recommendations of the consulted
33 agencies.

34 (2) Flows or levels authorized for establishment under RCW
35 90.22.010, or subsequent modification thereof by the department shall
36 be provided for through the adoption of rules. Before the
37 establishment or modification of a water flow or level for any stream
38 or lake or other public water, the department shall hold a public

1 hearing in the county in which the stream, lake, or other public water
2 is located. If it is located in more than one county the department
3 shall determine the location or locations therein and the number of
4 hearings to be conducted. Notice of the hearings shall be given by
5 publication in a newspaper of general circulation in the county or
6 counties in which the stream, lake, or other public waters is located,
7 once a week for two consecutive weeks before the hearing. The notice
8 shall include the following:

9 ~~((1))~~ (a) The name of each stream, lake, or other water source
10 under consideration;

11 ~~((2))~~ (b) The place and time of the hearing;

12 ~~((3))~~ (c) A statement that any person, including any private
13 citizen or public official, may present his or her views either orally
14 or in writing.

15 (3) Notice of the hearing shall also be served upon the
16 administrators of the state departments of social and health services,
17 natural resources, fish and wildlife, and transportation and upon the
18 administrators of the national marine fisheries service, the United
19 States fish and wildlife service, and any Indian tribes having
20 adjudicated fishing rights affected by the proposed rule.

21 **Sec. 203.** RCW 90.54.050 and 1997 c 439 s 2 and 1997 c 32 s 3 are
22 each reenacted and amended to read as follows:

23 (1) In conjunction with the programs provided for in RCW
24 90.54.040(1), whenever it appears necessary to the director in carrying
25 out the policy of this chapter, the department may by rule adopted
26 pursuant to chapter 34.05 RCW:

27 ~~((1))~~ (a) Establish base flows to preserve instream resources in
28 accordance with RCW 90.54.020(3)(a);

29 (b) Reserve and set aside waters for beneficial utilization in the
30 future~~((7))~~i and

31 ~~((2))~~ (c) When sufficient information and data are lacking to
32 allow for the making of sound decisions, withdraw various waters of the
33 state from additional appropriations until such data and information
34 are available.

35 (2) The department shall consult regarding proposed minimum flows
36 or levels with the department of fish and wildlife, the national marine
37 fisheries service, the United States fish and wildlife service, and any
38 Indian tribes having adjudicated fishing rights to fish dependent upon

1 the stream or streams for which minimum flows are proposed to be
2 established under this chapter. The department shall take into full
3 account the recommendations of the consulted agencies and explain in
4 writing any departure from the recommendations of the consulted
5 agencies.

6 (3) Before proposing the adoption of rules to withdraw waters of
7 the state from additional appropriation, the department shall consult
8 with the standing committees of the house of representatives and the
9 senate having jurisdiction over water resource management issues.

10 (4) Prior to the adoption of a rule under this section, the
11 department shall conduct a public hearing in each county in which
12 waters relating to the rule are located. The public hearing shall be
13 preceded by a notice placed in a newspaper of general circulation
14 published within each of said counties. Rules adopted hereunder shall
15 be subject to review in accordance with the provisions of RCW
16 34.05.240.

17 **Sec. 204.** RCW 75.20.050 and 1993 sp.s. c 2 s 29 are each amended
18 to read as follows:

19 It is the policy of this state that a flow of water sufficient to
20 support game fish and food fish populations be maintained at all times
21 in the streams of this state.

22 The director of ecology shall give the director of fish and
23 wildlife notice of each application for a permit to divert or store
24 water or for approval of a change or an amendment under RCW 90.03.380
25 or 90.44.100. The same notice shall be given to the director of the
26 office of salmon recovery when the application relates to a water
27 source included within the designated critical habitat of a fish stock
28 listed or proposed for listing under the federal endangered species
29 act. The directors ((has)) have thirty days after receiving the notice
30 to state his or her objections to the application. The permit shall
31 not be issued until the thirty-day period has elapsed.

32 The director of ecology may refuse to issue a permit if, in the
33 opinion of ((the)) a director, issuing the permit might result in
34 lowering the flow of water in a stream below the flow necessary to
35 adequately support food fish and game fish populations in the stream.
36 Alternatively, the director of ecology may issue the permit with
37 conditions, including flow level restrictions upon the season or
38 quantity of use, to prevent withdrawals under the permit from lowering

1 the flow below that flow necessary to adequately support food fish and
2 game fish populations in the stream.

3 The provisions of this section shall in no way affect existing
4 water rights.

5 NEW SECTION. Sec. 205. A new section is added to chapter 90.03
6 RCW to read as follows:

7 INSTREAM BENEFICIAL USE--HOLDERS OF RIGHT. A right to the instream
8 beneficial use of water may be held by any person or by a unit of state
9 or local government.

10 **Sec. 206.** RCW 90.42.080 and 1993 c 98 s 4 are each amended to read
11 as follows:

12 (1) The state may acquire all or portions of existing water rights,
13 by purchase, lease, gift, financing water conservation, reclaiming
14 water, or as a consequence of the artificial storage and discharge of
15 ground water or by other appropriate means other than by condemnation,
16 from any person or entity or combination of persons or entities. Once
17 acquired, such rights are trust water rights. A water right acquired
18 by the state that is expressly conditioned upon the use being limited
19 to instream purposes shall be administered as a trust water right in
20 compliance with that condition.

21 (2) The department may enter into leases, contracts, or such other
22 arrangements with other persons or entities as appropriate, to ensure
23 that trust water rights acquired in accordance with this chapter may be
24 exercised to the fullest possible extent.

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

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

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

32 NEW SECTION. Sec. 207. A new section is added to chapter 90.03
33 RCW to read as follows:

34 CONTRACTING FOR ACQUISITION OF RIGHTS. Using funds specifically
35 appropriated for the purpose of the acquisition of temporary or
36 permanent rights to divert or withdraw water, the department may

1 contract with any person or entity capable and willing to acquire such
2 rights, if the contract provides that for the term of the acquisition
3 the right will be maintained for the benefit of the public for the
4 maintenance and augmentation of streamflows.

5 **Sec. 208.** RCW 90.03.255 and 1997 c 360 s 2 are each amended to
6 read as follows:

7 The department shall, when evaluating an application for a water
8 right, transfer, or change filed pursuant to RCW ((90.03.250))
9 90.03.260 or 90.03.380 that includes provision for any water
10 impoundment, mitigation, or other resource management technique, take
11 into consideration the benefits and costs, including environmental
12 benefits and adverse effects, of any water impoundment, mitigation, or
13 other resource management technique that is included as a component of
14 the application. The department's consideration shall extend to any
15 increased water supply, or mitigation for any impairment to existing
16 rights or adverse environmental effects to habitat for salmon or trout
17 populations listed or proposed to be listed under the federal
18 endangered species act or determined by the department of fish and
19 wildlife to be depressed or critical, that results from the
20 impoundment, mitigation, or other resource management technique,
21 including but not limited to any recharge of ground water that may
22 occur, as a means of making water available or otherwise offsetting the
23 impact of the diversion of surface water proposed in the application
24 for the water right, transfer, or change. For applications that would
25 impair adopted minimum instream flows or otherwise adversely affect
26 habitat for salmon or trout populations listed or proposed to be listed
27 under the federal endangered species act or determined by the
28 department of fish and wildlife to be depressed or critical, the
29 department may consider and approve a provision in an application that
30 would provide mitigation unrelated to streamflows where such provisions
31 would, on balance, provide a net environmental benefit to fish
32 recovery. The department's approval shall be based on consideration of
33 any identified limiting factors for fish recovery and on accepted
34 scientific principles of natural resource management, and shall not
35 impair existing water rights. Provision for an impoundment,
36 mitigation, or other resource management technique in an application
37 shall be made solely at the discretion of the applicant and shall not

1 otherwise be made by the department as a condition for approving an
2 application that does not include such provision.

3 This section does not lessen, enlarge, or modify the rights of any
4 riparian owner, or any existing water right acquired by appropriation
5 or otherwise.

6 **Sec. 209.** RCW 90.44.055 and 1997 c 360 s 3 are each amended to
7 read as follows:

8 The department shall, when evaluating an application for a water
9 right or an amendment filed pursuant to RCW 90.44.050 or 90.44.100 that
10 includes provision for any water impoundment, mitigation, or other
11 resource management technique, take into consideration the benefits and
12 costs, including environmental effects, of any water impoundment,
13 mitigation, or other resource management technique that is included as
14 a component of the application. The department's consideration shall
15 extend to any increased water supply, or mitigation for any impairment
16 to existing rights or adverse environmental effects to habitat for
17 salmon or trout populations listed or proposed to be listed under the
18 federal endangered species act or determined by the department of fish
19 and wildlife to be depressed or critical, that results from the
20 impoundment or other resource management technique, including but not
21 limited to any recharge of ground water that may occur, as a means of
22 making water available or otherwise offsetting the impact of the
23 withdrawal of ground water proposed in the application for the water
24 right or amendment in the same water resource inventory area. For
25 applications that would impair adopted minimum instream flows or
26 otherwise adversely affect habitat for salmon or trout populations
27 listed or proposed to be listed under the federal endangered species
28 act or determined by the department of fish and wildlife to be
29 depressed or critical, the department may consider and approve a
30 provision in an application that would provide mitigation unrelated to
31 streamflows where such provisions would, on balance, provide a net
32 environmental benefit to fish recovery. The department's approval
33 shall be based on consideration of any identified limiting factors for
34 fish recovery and on accepted scientific principles of natural resource
35 management, and shall not impair existing water rights. Provision for
36 an impoundment or other resource management technique in an application
37 shall be made solely at the discretion of the applicant and shall not

1 be made by the department as a condition for approving an application
2 that does not include such provision.

3 This section does not lessen, enlarge, or modify the rights of any
4 riparian owner, or any existing water right acquired by appropriation
5 or otherwise.

6 **Sec. 210.** RCW 36.94.010 and 1997 c 447 s 10 are each amended to
7 read as follows:

8 As used in this chapter:

9 (1) A "system of sewerage" means and may include any or all of the
10 following:

11 (a) Sanitary sewage collection, treatment, and/or disposal
12 facilities and services, including without limitation on-site or off-
13 site sanitary sewerage facilities, inspection services and maintenance
14 services for private or public on-site systems, or any other means of
15 sewage treatment and disposal approved by the county;

16 (b) Combined sanitary sewage disposal and storm or surface water
17 drains and facilities;

18 (c) Natural or constructed storm or surface water drains, channels,
19 and facilities;

20 (d) Outfalls for storm drainage or sanitary sewage and works,
21 plants, and facilities for storm drainage or sanitary sewage treatment
22 and disposal, and rights and interests in property relating to the
23 system;

24 (e) Combined water and sewerage systems;

25 (f) Point and nonpoint water pollution monitoring programs that are
26 directly related to the sewerage facilities and programs operated by a
27 county;

28 (g) Public restroom and sanitary facilities;

29 (h) The facilities and services authorized in RCW 36.94.020; and

30 (i) Any combination of or part of any or all of such facilities.

31 (2) A "system of water" means and includes:

32 (a) A water distribution system, including dams, reservoirs,
33 aqueducts, plants, pumping stations, transmission and lateral
34 distribution lines and other facilities for distribution of water;

35 (b) A combined water and sewerage system;

36 (c) Any combination of or any part of any or all of such
37 facilities.

1 (3) A "sewerage and/or water general plan" means a general plan for
2 a system of sewerage and/or water for the county which shall be an
3 element of the comprehensive plan established by the county pursuant to
4 RCW 36.70.350(6) and/or chapter 35.63 RCW, if there is such a
5 comprehensive plan.

6 (a) A sewerage general plan shall include the general location and
7 description of treatment and disposal facilities, trunk and interceptor
8 sewers, pumping stations, monitoring and control facilities, channels,
9 local service areas and a general description of the collection system
10 to serve those areas, a description of on-site sanitary sewerage system
11 inspection services and maintenance services, and other facilities and
12 services as may be required to provide a functional and implementable
13 plan, including preliminary engineering to assure feasibility. The
14 plan may also include a description of the regulations deemed
15 appropriate to carrying out surface drainage plans.

16 (b) A water general plan shall include the general location and
17 description of water resources to be utilized, wells, treatment
18 facilities, transmission lines, storage reservoirs, pumping stations,
19 and monitoring and control facilities as may be required to provide a
20 functional and implementable plan.

21 (c) Water and/or sewerage general plans shall include preliminary
22 engineering in adequate detail to assure technical feasibility and, to
23 the extent then known, shall further discuss the methods of
24 distributing the cost and expense of the system and shall indicate the
25 economic feasibility of plan implementation. The plans may also
26 specify local or lateral facilities and services. The sewerage and/or
27 water general plan does not mean the final engineering construction or
28 financing plans for the system.

29 (4) "Municipal corporation" means and includes any city, town,
30 metropolitan municipal corporation, any public utility district which
31 operates and maintains a sewer or water system, any sewer, water,
32 diking, or drainage district, any diking, drainage, and sewerage
33 improvement district, and any irrigation district.

34 (5) A "private utility" means and includes all utilities, both
35 public and private, which provide sewerage and/or water service and
36 which are not municipal corporations within the definition of this
37 chapter. The ownership of a private utility may be in a corporation,
38 nonprofit or for profit, in a cooperative association, in a mutual
39 organization, or in individuals.

1 (6) "Board" means one or more boards of county commissioners and/or
2 the legislative authority of a home rule charter county.

3 **Sec. 211.** RCW 36.94.020 and 1997 c 447 s 11 are each amended to
4 read as follows:

5 The construction, operation, (~~and~~) maintenance, restoration, and
6 rehabilitation of a system of sewerage and/or water is a county
7 purpose. Subject to the provisions of this chapter, every county has
8 the power, individually or in conjunction with another county or
9 counties to adopt, provide for, accept, establish, condemn, purchase,
10 construct, add to, operate, (~~and~~) maintain, restore, and rehabilitate
11 a system or systems of sanitary and storm sewers, including outfalls,
12 interceptors, plans, and facilities and services necessary for sewerage
13 treatment and disposal, and/or system or systems of water supply within
14 all or a portion of the county. However, counties shall not have power
15 to condemn sewerage and/or water systems of any municipal corporation
16 or private utility.

17 Such county or counties shall have the authority to control,
18 regulate, operate, and manage such system or systems and to provide
19 funds therefor by general obligation bonds, revenue bonds, local
20 improvement district bonds, utility local improvement district or local
21 improvement district assessments, and in any other lawful fiscal
22 manner. Rates or charges for on-site inspection and maintenance
23 services may not be imposed under this chapter on the development,
24 construction, or reconstruction of property.

25 Under this chapter, after July 1, 1998, any requirements for
26 pumping the septic tank of an on-site sewage system should be based,
27 among other things, on actual measurement of accumulation of sludge and
28 scum by a trained inspector, trained owner's agent, or trained owner.
29 Training must occur in a program approved by the state board of health
30 or by a local health officer.

31 Before adopting on-site inspection and maintenance utility
32 services, or incorporating residences into an on-site inspection and
33 maintenance or sewer utility under this chapter, notification must be
34 provided, prior to the applicable public hearing, to all residences
35 within the proposed service area that have on-site systems permitted by
36 the local health officer. The notice must clearly state that the
37 residence is within the proposed service area and must provide

1 information on estimated rates or charges that may be imposed for the
2 service.

3 A county shall not provide on-site sewage system inspection,
4 pumping services, or other maintenance or repair services under this
5 section using county employees unless the on-site system is connected
6 by a publicly owned collection system to the county's sewerage system,
7 and the on-site system represents the first step in the sewage disposal
8 process. Nothing in this section shall affect the authority of a state
9 or local health officer to carry out their responsibilities under any
10 other applicable law.

11 A county may, as part of a system of sewerage established under
12 this chapter, provide for, finance, and operate any of the facilities
13 and services and may exercise the powers expressly authorized for
14 county storm water, flood control, pollution prevention, and drainage
15 services and activities under chapters 36.89, 86.12, 86.13, and 86.15
16 RCW. A county also may provide for, finance, and operate the
17 facilities and services and may exercise any of the powers authorized
18 for aquifer protection areas under chapter 36.36 RCW; for lake
19 management districts under chapter 36.61 RCW; for diking districts, and
20 diking, drainage, and sewerage improvement districts under chapters
21 85.05, 85.08, 85.15, 85.16, and 85.18 RCW; and for shellfish protection
22 districts under chapter 90.72 RCW. Additionally, as part of a system
23 of sewerage or water, a county may provide for the acquisition,
24 protection, maintenance, restoration, and rehabilitation of aquatic
25 resources and fish habitat. However, if a county by reference to any
26 of those statutes assumes as part of its system of sewerage any powers
27 granted to such areas or districts and not otherwise available to a
28 county under this chapter, then (1) the procedures and restrictions
29 applicable to those areas or districts apply to the county's exercise
30 of those powers, and (2) the county may not simultaneously impose rates
31 and charges under this chapter and under the statutes authorizing such
32 areas or districts for substantially the same facilities and services,
33 but must instead impose uniform rates and charges consistent with RCW
34 36.94.140. By agreement with such an area or district that is not part
35 of a county's system of sewerage, a county may operate that area's or
36 district's services or facilities, but a county may not dissolve any
37 existing area or district except in accordance with any applicable
38 provisions of the statute under which that area or district was
39 created.

1 **Sec. 212.** RCW 36.89.010 and 1970 ex.s. c 30 s 1 are each amended
2 to read as follows:

3 The words "governmental agency" as used in this chapter mean the
4 United States of America, the state or any agency, subdivision, taxing
5 district or municipal or quasi municipal corporation thereof.

6 The word "highways" as used in this chapter means all public roads,
7 streets, expressways, parkways, scenic drives, bridges and other public
8 ways, including without limitation, traffic control facilities, special
9 lanes, turnouts or structures in, upon, over or under such public ways
10 for exclusive or nonexclusive use by public transit vehicles, and
11 landscaping, visual and sound buffers between such public ways and
12 adjacent properties.

13 The words "open space, park, recreation and community facilities"
14 as used in this chapter mean any public facility, improvement,
15 development, property or right or interest therein for public park,
16 recreational, green belt, arboretum, multi-purpose community center (as
17 defined in RCW 35.59.010), museum, zoo, aquarium, auditorium,
18 exhibition, athletic, historic, scenic, viewpoint, aesthetic,
19 ornamental or natural resource preservation purposes.

20 The words "public health and safety facilities" as used in this
21 chapter mean any public facility, improvement, development, property or
22 right or interest therein, made, constructed or acquired for the
23 purpose of protecting life from disease or injury, enforcing the
24 criminal and civil laws or protecting property from damage caused by
25 breach of law, including but not limited to public hospitals, health
26 laboratories, public health clinics or service centers, custodial,
27 correction or rehabilitation facilities, courtrooms, crime
28 laboratories, law enforcement equipment and facilities, training
29 facilities for specialized personnel, facilities for the collection,
30 storage, retrieval or communication of information, and mobile, support
31 or administrative facilities, all as necessary for the foregoing
32 purpose, or any combination of the facilities herein described.

33 The words "storm water control facilities" as used in this chapter
34 mean any facility, natural or constructed, improvement, development,
35 property or interest therein, made, constructed, used, or acquired for
36 the purpose of controlling, or protecting life, habitat, or property
37 from, any storm, waste, flood or surplus waters wherever located within
38 the county, and shall include but not be limited to the improvements

1 and authority described in RCW 86.12.020 and chapters 86.13 and 86.15
2 RCW.

3 The word "county" as used in this chapter shall mean any county of
4 the state of Washington.

5 **Sec. 213.** RCW 36.89.030 and 1984 c 7 s 42 are each amended to read
6 as follows:

7 Counties are authorized to establish, acquire, develop, construct,
8 maintain, protect, restore, rehabilitate, and improve open space, park,
9 recreation, and community facilities, public health and safety
10 facilities, storm water control facilities, and highways or any of them
11 pursuant to the provisions of this chapter within and without the
12 cities and towns of the county and for such purposes have the power to
13 acquire lands, buildings and other facilities by gift, grant, purchase,
14 condemnation, lease, devise, and bequest, to construct, improve, or
15 maintain buildings, structures, and facilities necessary for such
16 purposes, and to use and develop for such purposes the air rights over
17 and the subsurface rights under any highway. The approval of the state
18 department of transportation shall be first secured for such use and
19 development of any state highway. For visual or sound buffer purposes
20 the county shall not acquire by condemnation less than an owner's
21 entire interest or right in the particular real property to be so
22 acquired if the owner objects to the taking of a lesser interest or
23 right. Additionally, as part of a system of surface water control
24 facilities, a county may provide for the acquisition, protection,
25 maintenance, restoration, and rehabilitation of aquatic resources and
26 fish habitat.

27 **Sec. 214.** RCW 35.67.010 and 1997 c 447 s 7 are each amended to
28 read as follows:

29 A "system of sewerage" means and may include any or all of the
30 following:

31 (1) Sanitary sewage collection, treatment, and/or disposal
32 facilities and services, on-site or off-site sanitary sewerage
33 facilities, inspection services and maintenance services for public or
34 private on-site systems, or any other means of sewage treatment and
35 disposal approved by the city;

36 (2) Combined sanitary sewage disposal and storm or surface water
37 sewers;

1 (3) Natural or constructed storm or surface water (~~sewers~~)
2 facilities;

3 (4) Outfalls for storm drainage or sanitary sewage and works,
4 plants, and facilities for storm drainage or sanitary sewage treatment
5 and disposal, and rights and interests in property relating to the
6 system;

7 (5) Combined water and sewerage systems;

8 (6) Point and nonpoint water pollution monitoring programs that are
9 directly related to the sewerage facilities and programs operated by a
10 city or town;

11 (7) Public restroom and sanitary facilities; and

12 (8) Any combination of or part of any or all of such facilities.

13 The words "public utility" when used in this chapter has the same
14 meaning as the words "system of sewerage."

15 **Sec. 215.** RCW 85.38.180 and 1991 c 349 s 17 are each amended to
16 read as follows:

17 A special district may:

18 (1) Engage in flood control activities, and investigate, plan,
19 construct, acquire, repair, maintain, and operate improvements, works,
20 projects, programs, and facilities necessary to prevent inundation or
21 flooding from rivers, streams, tidal waters or other waters. Such
22 natural or constructed facilities include dikes, levees, dams, banks,
23 revetments, channels, canals, (~~and other works~~) ditches, other
24 facilities and water bodies, appliances, machinery, and equipment.

25 (2) Engage in drainage control, storm water control, and surface
26 water control activities, and investigate, plan, construct, acquire,
27 repair, maintain, and operate improvements, works, projects, and
28 facilities necessary to control, protect, manage, and treat storm
29 water, surface water, and flood water. Such natural or constructed
30 facilities include drains, ditches, canals, other water bodies,
31 nonsanitary sewers, pumps, and other (~~works~~) facilities, appliances,
32 machinery, and equipment.

33 (3) Engage in lake or river restoration, aquatic plant control, and
34 water quality enhancement activities, including providing for the
35 acquisition, protection, maintenance, restoration, and rehabilitation
36 of aquatic resources and fish habitat.

37 (4) Take actions necessary to protect life and property from
38 inundation or flow of flood waters, storm waters, or surface waters.

1 (5) Acquire, purchase, condemn by power of eminent domain pursuant
2 to chapters 8.08 and 8.25 RCW, or lease, in its own name, necessary
3 property, property rights, facilities, and equipment.

4 (6) Sell or exchange surplus property, property rights, facilities,
5 and equipment.

6 (7) Accept funds and property by loan, grant, gift, or otherwise
7 from the United States, the state of Washington, or any other public or
8 private source.

9 (8) Hire staff, employees, or services, or use voluntary labor.

10 (9) Sue and be sued.

11 (10) Cooperate with or join the United States, the state of
12 Washington, or any other public or private entity or person for
13 district purposes.

14 (11) Enter into contracts.

15 (12) Exercise any of the usual powers of a corporation for public
16 purposes.

17 **Sec. 216.** RCW 86.15.010 and 1983 c 315 s 11 are each amended to
18 read as follows:

19 The definitions set forth in this section apply through this
20 chapter.

21 (1) "Board" means the county legislative authority.

22 (2) "Flood control improvement" means any works, projects,
23 programs, or ((~~other~~)) facilities, both natural and constructed,
24 necessary ((~~for the~~)) to control ((~~of~~)), protect, manage, and treat
25 flood waters within the county or any zone or zones.

26 (3) "Flood waters" and "storm waters" means any storm waste or
27 surplus waters, including surface water, wherever located within the
28 county or a zone or zones where such waters endanger public highways,
29 streams and water courses, harbors, life, or property.

30 (4) "Participating zones" means two or more zones found to benefit
31 from a single flood control improvement or storm water control
32 improvement.

33 (5) "Storm water control improvement" means any works, projects,
34 programs, or ((~~other~~)) facilities, both natural and constructed,
35 necessary to control, protect, manage, and treat storm water within the
36 county or any zone or zones.

37 (6) "Supervisors" means the board of supervisors, or governing
38 body, of a zone.

1 (7) "Zones" means flood control zone districts which are quasi
2 municipal corporations of the state of Washington created by this
3 chapter.

4 **Sec. 217.** RCW 86.15.100 and 1983 c 315 s 14 are each amended to
5 read as follows:

6 The supervisors may authorize the construction, extension,
7 enlargement, repair, maintenance, provision, or acquisition of
8 necessary flood control or storm water control improvements within the
9 zone or any participating zones. The improvements may include, but
10 shall not be limited to the extension, enlargement, repair,
11 maintenance, construction, or acquisition of dikes and levees, drain
12 and drainage systems, dams and reservoirs, or other flood control or
13 storm water control improvements; widening, straightening, or
14 relocating of stream or water courses; and the acquisition, extension,
15 enlargement, repair, maintenance, or construction of any works
16 necessary for the protection, restoration, and rehabilitation of
17 aquatic resources, fish habitat, stream and water courses, channels,
18 harbors, life, and property.

19 **PART III. WATER CONSERVATION**

20 **Sec. 301.** RCW 90.54.180 and 1989 c 348 s 5 are each amended to
21 read as follows:

22 ~~((Consistent with the fundamentals of water resource policy set
23 forth in this chapter))~~ (1) In areas that have threatened or endangered
24 species listed or proposed for listing under the federal endangered
25 species act or salmonid stocks categorized as critical or depressed
26 under the state salmon and steelhead stock inventory and where water
27 can be used to protect or restore streamflows that are needed by such
28 species or stocks, or in urban growth areas, state and local
29 governments, individuals, corporations, groups, and other entities
30 shall ~~((be encouraged to))~~ carry out water use efficiency and
31 conservation programs and practices consistent with the fundamentals of
32 water resource policy set forth in this chapter and consistent with the
33 following:

34 ~~((1))~~ (a) Water efficiency and conservation programs ~~((should))~~
35 shall utilize an appropriate mix of economic incentives, cost share
36 programs, regulatory programs, and technical and public information

1 efforts. Programs which encourage voluntary participation are
2 preferred.

3 ~~((+2))~~ (b) Increased water use efficiency ~~((should receive~~
4 ~~consideration as))~~ and conservation, including reclaiming municipal and
5 industrial effluent, shall be considered a potential source of water in
6 state and local water resource planning processes. In determining the
7 cost-effectiveness of alternative water sources, consideration
8 ~~((should))~~ shall be given to the benefits of conservation, waste water
9 recycling, artificially stored ground water, transfers of water rights,
10 and impoundment of waters.

11 ~~((+3))~~ (c) In determining the cost-effectiveness of alternative
12 water sources, full consideration should be given to the benefits of
13 storage which can reduce the damage to stream banks and property,
14 increase the utilization of land, provide water for municipal,
15 industrial, agricultural, and other beneficial uses, provide for the
16 generation of electric power from renewable resources, and improve
17 ~~((stream flow))~~ streamflow regimes for fishery and other instream uses.

18 ~~((+4))~~ (d) Entities receiving state financial assistance for
19 construction of water source expansion ~~((or))~~, acquisition of new
20 sources, or rehabilitation and improvement of existing water supply
21 systems shall develop, and implement if cost-effective, a water use
22 efficiency and conservation element of a water supply plan pursuant to
23 RCW 43.20.230(1) and chapter 43.83B RCW.

24 ~~((+5))~~ (e) State programs to improve water use efficiency
25 ~~((should))~~ shall focus on those areas of the state in which water is
26 overappropriated; areas that experience diminished streamflows or
27 aquifer levels, including areas with declining fish stocks due to lack
28 of streamflow; and areas where current and projected water needs,
29 including those for instream flows, exceed available supplies.

30 ~~((+6))~~ (f) Existing and future generations of citizens of the
31 state of Washington ~~((should))~~ must be made aware of the importance of
32 the state's water resources and the need for wise and efficient use and
33 development of this vital resource. In order to increase this
34 awareness, state agencies ~~((should))~~ shall integrate public education
35 on increasing water use efficiency into existing public information
36 efforts. This effort shall be coordinated with other levels of
37 government, including local governments and Indian tribes.

38 (2) In all other areas of the state, state and local governments,
39 individuals, corporations, groups, and other entities shall be

1 encouraged to carry out water use efficiency and conservation programs
2 and practices consistent with the fundamentals of water resource policy
3 set forth in this chapter and consistent with subsection (1) of this
4 section.

5 (3) When state or federal funds are used to finance a conservation
6 project, the person obtaining the funding shall agree in writing to
7 convey to the state of Washington a portion of the net water savings,
8 equivalent to the ratio of the state or federal funding to the overall
9 project cost, for the purpose of establishing a trust water right under
10 chapter 90.38 or 90.42 RCW as applicable.

11 **Sec. 302.** RCW 90.03.290 and 1994 c 264 s 84 are each amended to
12 read as follows:

13 (1) When an application complying with the provisions of this
14 chapter and with the rules ((and regulations)) of the department has
15 been filed, ((the same)) it shall be placed on record with the
16 department((, and it shall be its duty to)). The department shall
17 investigate the application, and determine what water, if any, is
18 available for appropriation, and find and determine to what beneficial
19 use or uses it can be applied.

20 (2) If it is proposed to appropriate water for irrigation purposes,
21 the department shall investigate, and find and determine ((and find))
22 what lands are capable of irrigation by means of water found available
23 for appropriation. If it is proposed to appropriate water for the
24 purpose of power development, the department shall investigate, and
25 find and determine ((and find)) whether the proposed development is
26 likely to prove detrimental to the public interest, having in mind the
27 highest feasible use of the waters belonging to the public.

28 (3) If the application does not contain, and the applicant does not
29 promptly furnish sufficient information on which to base such findings,
30 the department may issue a preliminary permit, for a period of not to
31 exceed three years, requiring the applicant to make such surveys,
32 investigations, studies, and progress reports, as in the opinion of the
33 department may be necessary. If the applicant fails to comply with the
34 conditions of the preliminary permit, it and the application or
35 applications on which it is based shall be automatically canceled and
36 the applicant so notified. If the holder of a preliminary permit
37 shall, before its expiration, file with the department a verified
38 report of expenditures made and work done under the preliminary permit,

1 which, in the opinion of the department, establishes the good faith,
2 intent and ability of the applicant to carry on the proposed
3 development, the preliminary permit may, with the approval of the
4 (~~governor~~) director, be extended, but not to exceed a maximum period
5 of five years from the date of the issuance of the preliminary permit.

6 (4) The department shall make and file as part of the record in the
7 matter, written findings of fact concerning all things investigated,
8 and if it shall find that there is water available for appropriation
9 for a beneficial use, and the appropriation thereof as proposed in the
10 application will not impair existing rights or be detrimental to the
11 public welfare, it shall issue a permit stating the amount of water to
12 which the applicant shall be entitled and the beneficial use or uses to
13 which it may be applied(~~(:—PROVIDED, That where)~~). If the water
14 applied for is to be used for irrigation purposes, it shall become
15 appurtenant only to such land as may be reclaimed thereby to the full
16 extent of the soil for agricultural purposes. But where there is no
17 unappropriated water in the proposed source of supply, or where the
18 proposed use conflicts with existing rights(~~(-)~~) or threatens to prove
19 detrimental to the public interest, or where an alternative source of
20 water, including, but not limited to, water acquired by a change or
21 transfer of an existing water right or from a feasible source of
22 reclaimed water, would better serve the public interest, having due
23 regard to the highest feasible development of the use of the waters
24 belonging to the public, it shall be the duty of the department to
25 reject such application and to refuse to issue the permit asked for.
26 If the permit is refused because of conflict with existing rights and
27 such applicant shall acquire the same by purchase or condemnation under
28 RCW 90.03.040, the department may thereupon grant such permit. Any
29 application may be approved for a less amount of water than that
30 applied for, if there exists substantial reason therefor, and in any
31 event shall not be approved for more water than can be applied to
32 beneficial use for the purposes named in the application.

33 (5) In determining whether or not a permit shall issue upon any
34 application, it shall be the duty of the department to investigate all
35 facts relevant and material to the application. The department shall
36 make a summary of the record of investigation and the proposed permit
37 available to the public and provide a period of at least sixty days for
38 the public to submit comments on it. The department shall consider the
39 comments received and the entire record.

1 (6) After the department approves said application in whole or in
2 part and before any permit shall be issued thereon to the applicant,
3 such applicant shall pay the fee provided in RCW 90.03.470(~~(:—PROVIDED~~
4 ~~FURTHER, That in the event)~~). If a permit is issued by the department
5 upon any application, it shall be its duty to notify the director of
6 fish and wildlife of such issuance.

7 NEW SECTION. **Sec. 303.** A new section is added to chapter 70.119A
8 RCW to read as follows:

9 (1) Each public water system with fifteen or more service
10 connections shall:

11 (a) Implement a water conservation program promotion targeted at
12 system customers; and

13 (b) Implement other cost-effective water conservation measures
14 identified in approved water conservation plans required under RCW
15 43.20.230.

16 (2) Public water systems with one thousand or more service
17 connections shall also:

18 (a) Implement a leak detection and repair program, and shall repair
19 leaks if the system's unaccounted for water is ten percent or more of
20 total system water usage;

21 (b) Conduct water audits to identify internal water distribution
22 and associated opportunities for improved water use efficiency; and

23 (c) Use commodity-based inclining block water rates, and not use
24 declining block rate structures. Commodity-based inclining block rate
25 structures are based, at least in part, upon increasing the rate for
26 water as larger volumes of water used. Declining block rate structures
27 separate consumption levels into two or more blocks, with rates per
28 unit of water decreasing as the total volume of consumption by a
29 customer increases. Systems are not precluded from including a base
30 amount of water use in fixed charges or meter charges that apply
31 regardless of volume of water use.

32 (3) Public water systems that have completed a conservation plan
33 within six years before the effective date of this section in
34 accordance with the requirements of the department need not create a
35 new plan, but shall address any of the elements in this section that
36 have not been previously addressed in the next scheduled update of the
37 water system plan and conservation plan.

1 **Sec. 304.** RCW 43.20.230 and 1993 sp.s. c 4 s 9 are each amended to
2 read as follows:

3 Consistent with the water resource planning process of the
4 department of ecology, the department of health shall:

5 (1) ~~Develop ((procedures and guidelines relating to water use~~
6 ~~efficiency, as defined in section 4(3), chapter 348, Laws of 1989, to~~
7 ~~be included in the development and approval of cost efficient water~~
8 ~~system plans required under RCW 43.20.050)) comprehensive water~~
9 ~~conservation planning requirements for public water systems based upon~~
10 ~~system size, to be included in water system plans and small water~~
11 ~~system management programs required under RCW 43.20.050. Conservation~~
12 ~~plans approved under this section shall meet the water conservation~~
13 ~~planning requirements of the department of ecology for the purposes of~~
14 ~~water right permit processing. As part of these comprehensive planning~~
15 ~~requirements water systems shall:~~

16 (a) Demonstrate compliance with the conservation requirements in
17 section 303 of this act;

18 (b) Evaluate whether to install service meters;

19 (c) Evaluate conservation measures and implement those that are
20 cost-effective;

21 (d) Evaluate development and implementation of a leak detection and
22 repair program; and

23 (e) Use water use efficiency performance standards developed under
24 section 311 of this act for conservation planning, water demand
25 forecasting, and other water system planning purposes;

26 (2) Review and approve water conservation plans, and monitor plan
27 implementation to ensure compliance with comprehensive conservation
28 planning requirements under subsection (1) of this section;

29 (3) Develop criteria, with input from technical experts, with the
30 objective of encouraging the cost-effective reuse of greywater and
31 other water recycling practices, consistent with protection of public
32 health and water quality;

33 ~~((+3))~~ (4) Provide advice and technical assistance upon request in
34 the development of water use efficiency plans. This includes
35 development of model landscape ordinances, assistance to public water
36 systems and local governments regarding water conservation, and general
37 public education on water conservation and efficiency; ((and

38 ~~(+4))~~ (5) Provide advice and technical assistance on request for
39 development of model conservation rate structures for public water

1 systems(~~(. Subsections (1), (2), and (3) of this section are subject~~
2 ~~to the availability of funding))); and~~

3 (6) Adopt rules as necessary through the state board of health to
4 implement any provisions of this section.

5 NEW SECTION. Sec. 305. A new section is added to chapter 70.119A
6 RCW to read as follows:

7 Public water systems with fifteen or more service connections shall
8 collect monthly water diversion and withdrawal data from all water
9 sources used to serve the system. Data collected under this section
10 shall be submitted annually to the department in a form and manner
11 prescribed by the department and shall be coordinated with water data
12 management requirements of the department of ecology.

13 NEW SECTION. Sec. 306. A new section is added to chapter 58.17
14 RCW to read as follows:

15 In determining whether a proposed short plat, short subdivision, or
16 subdivision meets the requirements for potable water supplies as
17 required under RCW 58.17.060 or 58.17.110, and otherwise serves the
18 public use and interest, the city, town, or county shall require:

19 (1) Conformance to any water conservation ordinances or plans
20 adopted by the city, town, or county;

21 (2) Use of water conservation measures consistent with any regional
22 watershed plan adopted under chapter 90.82 RCW; and

23 (3) Use of reclaimed water where feasible in accordance with
24 criteria established under section 404 of this act and where potable
25 water is not required consistent with any local ordinance adopted on
26 water reuse requirements.

27 NEW SECTION. Sec. 307. A new section is added to chapter 35.21
28 RCW to read as follows:

29 (1) Any city or town may adopt a water conservation program by
30 ordinance or other legal authority. This includes ordinances to
31 implement the provisions of any regional watershed plan adopted under
32 chapter 90.82 RCW. Such a program may include the following
33 requirements:

34 (a) Use of water conservation measures consistent with specific
35 provisions of regional watershed plans adopted under chapter 90.82 RCW;

1 (b) Use of water conservation measures that may be in addition to
2 those required by either the department of health or the department of
3 ecology, including landscape irrigation requirements, public fixture
4 retrofit and rebate programs, and commercial and industrial
5 conservation programs; and

6 (c) Use of any opportunities for using reclaimed water where
7 potable water is not required.

8 (2) The provisions of any water conservation program shall be
9 implemented by the city or town through development of any
10 comprehensive plan, development regulations, issuance of permits and
11 other approvals, development of any sewerage or water general plan
12 under RCW 36.94.030, operation of any sewerage or water systems under
13 chapter 36.94 RCW, or as otherwise allowed by law.

14 NEW SECTION. **Sec. 308.** A new section is added to chapter 35A.21
15 RCW to read as follows:

16 (1) Any city or town may adopt a water conservation program by
17 ordinance or other legal authority. This includes ordinances to
18 implement the provisions of any regional watershed plan adopted under
19 chapter 90.82 RCW. Such a program may include the following
20 requirements:

21 (a) Use of water conservation measures consistent with specific
22 provisions of regional watershed plans adopted under chapter 90.82 RCW;

23 (b) Use of water conservation measures that may be in addition to
24 those required by either the department of health or the department of
25 ecology, including landscape irrigation requirements, public fixture
26 retrofit and rebate programs, and commercial and industrial
27 conservation programs; and

28 (c) Use of any opportunities for using reclaimed water where
29 potable water is not required.

30 (2) The provisions of any water conservation program shall be
31 implemented by the city or town through development of any
32 comprehensive plan, development regulations, issuance of permits and
33 other approvals, development of any sewerage or water general plan
34 under RCW 36.94.030, operation of any sewerage or water systems under
35 chapter 36.94 RCW, or as otherwise allowed by law.

36 NEW SECTION. **Sec. 309.** A new section is added to chapter 36.01
37 RCW to read as follows:

1 (1) Any county may adopt a water conservation program by ordinance
2 or other legal authority. This includes ordinances to implement the
3 provisions of any regional watershed plan adopted under chapter 90.82
4 RCW. Such a program may include the following requirements:

5 (a) Use of water conservation measures consistent with specific
6 provisions of regional watershed plans adopted under chapter 90.82 RCW;

7 (b) Use of water conservation measures that may be in addition to
8 those required by either the department of health or the department of
9 ecology, including landscape irrigation requirements, public fixture
10 retrofit and rebate programs, and commercial and industrial
11 conservation programs; and

12 (c) Use of any opportunities for using reclaimed water where
13 potable water is not required.

14 (2) The provisions of any water conservation program shall be
15 implemented by the county through development of any comprehensive
16 plan, development regulations, issuance of permits and other approvals,
17 development of any sewerage or water general plan under RCW 36.94.030,
18 operation of any sewerage or water systems under chapter 36.94 RCW, or
19 as otherwise allowed by law.

20 **Sec. 310.** RCW 90.48.495 and 1989 c 348 s 10 are each amended to
21 read as follows:

22 The department of ecology shall require sewer plans that propose an
23 expansion of treatment capacity to include a discussion of water
24 conservation measures considered or underway and their anticipated
25 impact on public sewer service. The plans shall evaluate the cost-
26 effectiveness of funding water conservation programs as an alternative
27 to expanding sewage treatment capacity.

28 NEW SECTION. **Sec. 311.** A new section is added to chapter 90.54
29 RCW to read as follows:

30 (1) Except as provided in subsection (5) of this section, the
31 department of ecology, in consultation with the department of health,
32 shall adopt rules establishing water use efficiency performance
33 standards for various water uses by December 31, 2000. The department
34 shall engage in a negotiated rule-making process involving
35 representatives of interested parties. However, if the participants do
36 not reach consensus by July 1, 2000, the department shall proceed with
37 the adoption of rules using the advice and guidance of the participants

1 to the extent possible. The standards shall be based on the quantity
2 of water required for reasonable and beneficial use of water without
3 waste. The rules shall also address standards for reasonable
4 conveyance loss of water for various means of water conveyance. Basin
5 management plans adopted under this chapter or watershed plans adopted
6 under chapter 90.82 RCW may specify water use efficiency performance
7 standards for the basin or watershed that vary from and supersede those
8 adopted by the department under this section if Washington state
9 government is a participant in the planning process and agrees with the
10 local standards. The department shall adopt rules implementing such
11 local standards.

12 (2) The state-wide or local standards adopted under this section
13 shall be used for developing water conservation plans, water demand
14 forecasting, public water system planning, evaluating proposed
15 transfers, changes, and amendments to existing water rights, and
16 assessing whether new water rights are needed. In addition, the
17 standards shall be used to guide the development and evaluation of
18 water conservation plans developed under chapter 43.99E RCW and RCW
19 43.20.230.

20 (3) Any person claiming a water right or a need for the use of
21 water in excess of the standards adopted under this section carries the
22 burden of showing that special circumstances require a variance from
23 the standards.

24 (4) The department shall consult with the Washington State
25 University cooperative extension service, the department of
26 agriculture, and the United States natural resource conservation
27 service regarding normal water duties for irrigation water uses.

28 (5) By December 31, 2001, the department shall adopt rules to
29 establish the water use efficiency performance standards and water
30 conservation planning requirements for agricultural water uses that are
31 contained in the water resource management system developed under
32 section 1005 of this act. However, if such standards are not completed
33 by July 1, 2001, the department shall proceed with adoption of rules
34 using the advice and guidance of the negotiating group under section
35 1005 of this act to the extent possible.

36 **Sec. 312.** RCW 90.03.360 and 1994 c 264 s 85 are each amended to
37 read as follows:

1 (1) The owner or owners of any water diversion shall maintain, to
2 the satisfaction of the department (~~(of ecology)~~), substantial
3 controlling works and a measuring device constructed and maintained to
4 permit accurate measurement and practical regulation of the flow of
5 water diverted. Every owner or manager of a reservoir for the storage
6 of water shall construct and maintain, when required by the department,
7 any measuring device necessary to ascertain the natural flow into and
8 out of said reservoir.

9 (~~(Metering of diversions or)~~) Measurement (~~(by other approved~~
10 ~~methods)~~) of diversions shall be required as a condition for all new
11 surface water right permits, and except as provided in subsection (2)
12 of this section, may be required as a condition for all (~~(previously)~~)
13 existing surface water rights or claims. (~~(The department may also~~
14 ~~require, as a condition for all water rights, metering of diversions,~~
15 ~~and reports regarding such metered diversions as to the amount of water~~
16 ~~being diverted. Such reports shall be in a form prescribed by the~~
17 ~~department.)~~)

18 (2) Where water diversions are from waters (~~(in which the salmonid~~
19 ~~stock status is depressed or critical, as determined by the department~~
20 ~~of fish and wildlife)~~) that support threatened or endangered species
21 listed or proposed for listing under the federal endangered species act
22 or salmonid stocks categorized as critical or depressed under the state
23 salmon and steelhead stock inventory and where water can be used to
24 protect or restore streamflows that are needed by such species or
25 stocks, or in urban growth areas, or where the volume of water being
26 diverted exceeds one cubic foot per second, the department shall
27 require (~~(metering or)~~) measurement (~~(by other approved methods)~~) as a
28 condition for all new and previously existing water rights or claims.
29 The department shall attempt to integrate the requirements of this
30 subsection into its existing compliance workload priorities, but shall
31 prioritize the requirements of this subsection ahead of the existing
32 compliance workload where a delay may cause the decline of wild
33 salmonids. The department shall notify the department of fish and
34 wildlife of the status of fish screens associated with these
35 diversions.

36 This subsection (2) shall not apply to diversions for public or
37 private hatcheries or fish rearing facilities if the diverted water is
38 returned directly to the waters from which it was diverted.

1 (3) By rule, the department shall prescribe approved methods of
2 measuring, any reporting requirements and methods of reporting, and any
3 exemptions to this subsection.

4 **Sec. 313.** RCW 90.44.450 and 1989 c 348 s 7 are each amended to
5 read as follows:

6 (1) The department ((of ecology may)) shall require withdrawals of
7 ground water to be ((metered, or)) measured ((by other approved
8 methods,)) as a condition for a new water right permit. ((The
9 department may also require, as a condition for such permits, reports
10 regarding such withdrawals as to the amount of water being withdrawn.
11 These reports shall be in a form prescribed by the department.))

12 (2) The department shall require withdrawals of ground water under
13 an existing water right permit to be measured, where the ground water
14 is interrelated with surface water that supports threatened or
15 endangered species listed or proposed for listing under the federal
16 endangered species act or salmonid stocks categorized as critical or
17 depressed under the state salmon and steelhead stock inventory and
18 where water can be used to protect or restore streamflows that are
19 needed by such species or stocks, or in urban growth areas.

20 (3) By rule, the department shall prescribe approved methods of
21 measuring, any reporting requirements and methods of reporting, and any
22 exemptions to this subsection.

23 **PART IV. RECLAIMED WATER**

24 NEW SECTION. **Sec. 401.** A new section is added to chapter 90.46
25 RCW to read as follows:

26 (1) In areas that have threatened or endangered species listed or
27 proposed for listing under the federal endangered species act or
28 salmonid stocks categorized as critical or depressed under the state
29 salmon and steelhead stock inventory and where water can be used to
30 protect or restore streamflows that are needed by such species or
31 stocks, or in urban growth areas, when reclaimed water is a feasible
32 replacement source of water in accordance with criteria adopted under
33 section 404 of this act, it shall be used for nonpotable water uses in
34 lieu of using potable water for those uses.

35 (2) The department of ecology is the lead agency for reclaimed
36 water permitting and design approval, and the department of health

1 shall provide public health input and assessment on all department of
2 ecology reclaimed water permit decisions.

3 **Sec. 402.** RCW 90.46.030 and 1992 c 204 s 4 are each amended to
4 read as follows:

5 (1) The department of ((health)) ecology shall, in coordination
6 with the department of ((ecology)) health, adopt ~~((a single set of
7 standards, procedures, and guidelines on or before August 1, 1993))
8 rules by December 31, 2000, for the industrial and commercial use of
9 reclaimed water.~~

10 (2) The department of ((health)) ecology may issue a reclaimed
11 water permit under chapter 90.48 RCW to the generator of reclaimed
12 water for industrial and commercial uses of reclaimed water to the
13 generator of reclaimed water who may then distribute the water, subject
14 to provisions in the permit governing the location, rate, water
15 quality, and purposes of use.

16 (3) The department of ((health)) ecology in consultation with the
17 advisory committee established in RCW 90.46.050, shall develop
18 recommendations for a fee structure for permits issued under subsection
19 (2) of this section. Fees shall be established in amounts to fully
20 recover, and not exceed, expenses incurred by the department of health
21 and the department of ecology in processing permit applications and
22 modifications, monitoring and evaluating compliance with permits, and
23 conducting inspections and supporting the reasonable overhead expenses
24 that are directly related to these activities. ~~((Permit fees may not
25 be used for research or enforcement activities. The department of
26 health shall not issue permits under this section until a fee structure
27 has been established.))~~

28 (4) A permit under this section for use of reclaimed water may be
29 issued only to a municipal, quasi-municipal, or other governmental
30 entity or to the holder of a waste discharge permit issued under
31 chapter 90.48 RCW.

32 (5) The authority and duties created in this section are in
33 addition to any authority and duties already provided in law with
34 regard to sewage and wastewater collection, treatment, and disposal for
35 the protection of health and safety of the state's waters. Nothing in
36 this section limits the powers of the state or any political
37 subdivision to exercise such authority.

1 **Sec. 403.** RCW 90.46.040 and 1992 c 204 s 5 are each amended to
2 read as follows:

3 (1) The department of ecology shall, in coordination with the
4 department of health, adopt (~~(a single set of standards, procedures,~~
5 ~~and guidelines, on or before August 1, 1993)) rules by December 31,~~
6 2000, for land applications of reclaimed water.

7 (2) A permit is required for any land application of reclaimed
8 water. The department of ecology may issue a reclaimed water permit
9 under chapter 90.48 RCW to the generator of reclaimed water who may
10 then distribute the water, subject to provisions in the permit
11 governing the location, rate, water quality, and purpose of use. The
12 department of ecology shall not issue more than one permit for any
13 individual land application of reclaimed water to a single generator.

14 (3) In cases where the department of ecology determines, in land
15 applications of reclaimed water, that a (~~(significant))~~ risk to the
16 public health exists, the department shall refer the application to the
17 department of health for review and consultation and the department of
18 health may require fees appropriate for review and consultation from
19 the applicant pursuant to RCW 43.70.250.

20 (4) A permit under this section for use of reclaimed water may be
21 issued only to a municipal, quasi-municipal, or other governmental
22 entity or to the holder of a waste discharge permit issued under
23 chapter 90.48 RCW.

24 (5) The authority and duties created in this section are in
25 addition to any authority and duties already provided in law. Nothing
26 in this section limits the powers of the state or any political
27 subdivision to exercise such authority.

28 NEW SECTION. **Sec. 404.** A new section is added to chapter 90.46
29 RCW to read as follows:

30 (1) The department of ecology, in consultation with the department
31 of health, producers of reclaimed water, and water purveyors, shall
32 adopt rules by December 31, 2000, establishing criteria for determining
33 when the use of reclaimed water is feasible to replace potable water
34 supplied for nonpotable water use. Nonpotable water use includes, but
35 is not limited to, golf course irrigation, landscape irrigation, sewer
36 main flushing, street cleaning, dust control, industrial processing,
37 and other appropriate uses. Local governments may adopt ordinances

1 requiring the use of reclaimed water for nonpotable uses when
2 determined feasible according to the established criteria.

3 (2) The departments of ecology and health may adopt rules as
4 necessary to carry out the intent of this chapter. If rules are
5 adopted, the rules shall identify permit and design approval
6 requirements under chapters 43.20, 70.116, 70.119A, 70.142, 90.03,
7 90.44, and 90.48 RCW applicable to the generation and distribution of
8 reclaimed water.

9 **Sec. 405.** RCW 90.46.120 and 1997 c 444 s 1 are each amended to
10 read as follows:

11 (~~The owner of a wastewater treatment facility that is reclaiming~~
12 ~~water with a permit issued under this chapter has the exclusive right~~
13 ~~to any reclaimed water generated by the wastewater treatment facility.~~
14 ~~Use and distribution of the reclaimed water by the owner of the~~
15 ~~wastewater treatment facility is exempt from the permit requirements of~~
16 ~~RCW 90.03.250 and 90.44.060.)) Revenues derived from the reclaimed
17 water facility shall be used only to offset the cost of operation of
18 the wastewater utility fund or other applicable source of system-wide
19 funding.~~

20 If the proposed use or uses of reclaimed water are intended to
21 augment or replace potable water supplies or will create the potential
22 for the development of additional potable water supplies, such use or
23 uses shall be considered in the development of the regional water
24 supply plan or plans addressing potable water supply service by
25 multiple water purveyors. This may include water system plans and
26 coordinated water system plans under chapters 43.20 and 70.116 RCW.
27 The owner of a wastewater treatment facility that proposes to reclaim
28 water shall be included as a participant in the development of such
29 regional water supply (~~plan or~~) plans and water system plans. The
30 water supply planning activities shall be developed and coordinated to
31 ensure that opportunities for reclaimed water are evaluated and that
32 proposals for construction in public rights of way delineated within
33 the plan consider infrastructure needed to distribute reclaimed water.
34 Wastewater plans adopted under chapter 90.48 RCW shall include a
35 statement of certification that reclamation and reuse elements in
36 applicable regional water supply plans and water system plans have been
37 fully considered and accounted for with regard to the need for future
38 distribution of reclaimed water.

1 **Sec. 406.** RCW 90.46.130 and 1997 c 444 s 4 are each amended to
2 read as follows:

3 (1) Except as provided in subsection (2) of this section, the owner
4 of a wastewater treatment facility that is reclaiming water with a
5 permit issued under this chapter has the exclusive right, subject to
6 the terms of the permit and as otherwise provided in this chapter, to
7 any reclaimed water generated by the wastewater treatment facility.
8 Upon securing a permit under this chapter, the use and distribution of
9 the reclaimed water by the owner of the wastewater treatment facility
10 is exempt from the requirements to obtain a permit to appropriate water
11 under RCW 90.03.250 and 90.44.060 and the requirements to obtain
12 approval of a change or amendment of a water right under RCW 90.03.380,
13 90.03.383, 90.03.390, 90.44.100, or 90.44.105.

14 (2) If the state of Washington or the United States provides
15 funding for the construction of reclaimed water facilities, the state
16 shall establish a trust water right under chapter 90.38 or 90.42 RCW
17 for the fraction of the reclaimed water attributable to such funding.
18 The priority of use for the state's share of reclaimed water is
19 instream flow restoration and enhancement. The department may accept
20 an alternate water right from the reclaimed water project owner in lieu
21 of reclaimed project water if the alternate water right is more
22 advantageous for instream flow restoration.

23 (3) Facilities that reclaim water under this chapter shall not
24 impair streamflow and shall not impair any existing water right
25 ((downstream from any freshwater discharge points of such facilities
26 unless compensation or mitigation for such impairment is agreed to by
27 the holder of the affected water right)) unless the holder of the water
28 right is equitably compensated. The reclamation of water from a
29 wastewater facility that discharges to marine waters does not impair
30 any existing water right and does not require compensation.

31 **PART V. WATER RIGHT TRANSFERS**

32 NEW SECTION. Sec. 501. A new section is added to chapter 90.03
33 RCW to read as follows:

34 PRIORITY PROCESSING OF TRANSFERS. (1) The department shall accord
35 priority to the processing of applications for transfers and changes in
36 water rights. The department shall adopt a goal of processing all
37 water right transfer and change applications pending on the effective

1 date of this section by June 30, 2003. After meeting this goal, the
2 department shall adopt a goal of making decisions upon applications for
3 changes limited to a single season to within sixty days of the date the
4 public notice period expires, and for other changes, within ninety days
5 of the date the public notice period expires.

6 (2) The department in its discretion may process applications for
7 transfers or changes regarding water uses in a basin independently of
8 the order of processing or priority placed upon processing applications
9 for new withdrawals within the same basin, and independently of the
10 order of processing or priority placed upon any applications regarding
11 water use in other basins.

12 **PART VI. PUBLIC WATER SYSTEMS**

13 **Sec. 601.** RCW 90.03.330 and 1987 c 109 s 89 are each amended to
14 read as follows:

15 (1) Upon a showing satisfactory to the department that any
16 appropriation has been perfected in accordance with the provisions of
17 this chapter, it shall be the duty of the department to issue to the
18 applicant a certificate stating such facts in a form ~~((to be))~~
19 prescribed by ~~((him))~~ the department, and such certificate shall
20 ~~((thereupon))~~ be recorded with the department. Upon the request of a
21 public water system, the department shall issue incremental
22 certificates of water right, not more than once every six years, that
23 reflect either instantaneous or annual quantities of water, or both,
24 perfected by actual beneficial use. Pumping or diversion records,
25 meter data, or other reasonable information showing the extent of
26 actual beneficial use of water shall accompany the request. Any
27 original water right certificate issued, as provided by this chapter,
28 shall be recorded with the department and thereafter, at the expense of
29 the party receiving the ~~((same))~~ certificate, be transmitted by the
30 department ~~((transmitted))~~ to the county auditor of the county or
31 counties where the distributing system or any part thereof is
32 located~~((, and))~~. The certificate shall be recorded in the office of
33 such county auditor, and thereafter be transmitted to the ~~((owner~~
34 thereof)) certificate holder.

35 (2) Certificates of water right held by public water systems that
36 document a combination of water that has been put to beneficial use and
37 water that has never been put to use, that have department of health

1 approval for the source associated with the right, and for which the
2 entity holding the certificate has constructed facilities in place to
3 use the water authorized by the water right, shall be administered in
4 the following manner:

5 (a) Any instantaneous or annual quantity of water that has been
6 perfected by actual beneficial use of water before the effective date
7 of this section shall remain a certificated right in good standing.
8 The actual beneficial use of water must be shown by pumping or
9 diversion records, meter data, or other reasonable information showing
10 the extent of actual water use.

11 (b) Any instantaneous or annual quantity of water not perfected by
12 beneficial use before the effective date of this section is reinstated
13 as a water right permit within the meaning of this chapter and the
14 holder of the permit is authorized to continue development and use of
15 water under the permit. The reinstated permit shall be administered by
16 the department as an inchoate right in permit status in good standing,
17 with a priority date as of the original application, subject to the
18 requirements of sections 603 and 604 of this act.

19 (3) For a permit held by a public water system reinstated by this
20 section that has a department of health-approved number of connections
21 and for which the original water right application filing was for a
22 discrete number of connections, water use by up to the department of
23 health-approved number of connections as of the effective date of this
24 section is allowed within the existing water service area of the public
25 water system. If the public water system does not have an existing
26 service area established under chapter 43.20 or 70.116 RCW, the place
27 of use as authorized under the original certificate shall be the place
28 of use for water that is reinstated to permit status under this
29 section.

30 (4) For a permit held by a public water system reinstated by this
31 section that has a department of health-approved number of equivalent
32 residential units and for which the original water right application
33 filing was made for a discrete number of connections, or for then-
34 current population and future requirements of the municipality or
35 community, water service shall be allowed up to the number of
36 equivalent residential units approved by the department of health as of
37 the effective date of this section for the existing service area of the
38 public water system as established under chapter 43.20 or 70.116 RCW.

1 Water service provided through interties must comply with RCW
2 90.03.383.

3 (5) For a permit held by a public water system reinstated by this
4 section that has an unspecified number of connections in its department
5 of health-approved water system plan and for which the original
6 application filing was made for then-current population and future
7 requirements of the municipality or community, water service shall be
8 allowed to satisfy the existing retail service area as established
9 under chapter 43.20 or 70.116 RCW. Water service provided through
10 interties must comply with RCW 90.03.383.

11 (6) The department shall process requests made under this section
12 generally in the order in which received. The departments of ecology,
13 health, and fish and wildlife shall process only those requests for
14 issuance of superseding certificates, issuance of reinstated permits,
15 and adoption of performance standards and entry of interlocal
16 agreements, under this section and sections 602 through 605 of this
17 act, for which adequate staffing and other resources relating to such
18 requests are available within funds specifically appropriated to the
19 departments of ecology, health, and fish and wildlife for this purpose.

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

22 (1) Any public water system asserting that it holds a certificate
23 that documents a combination of water put to beneficial use and water
24 not yet put to beneficial use shall provide evidence to the department
25 demonstrating that the criteria in RCW 90.03.330(2) are met such that
26 a superseding certificate and water right permit should be issued. If
27 the department, upon reviewing a public water system plan or other
28 applicable information, determines that the system has an inchoate
29 water right as provided in RCW 90.03.330, the department shall issue a
30 superseding certificate for the portion of the right that has been put
31 to beneficial use and shall issue a permit for the inchoate portion of
32 the water right that is reinstated to permit status. The department
33 shall condition permits reinstated by RCW 90.03.330 with the
34 performance standards created by section 603 of this act and a
35 development schedule. The development schedule shall be twenty years
36 from the effective date of this section with the option to extend if
37 good cause is shown under RCW 90.03.320, except that the department
38 may:

1 (a) Authorize a development schedule longer than twenty years, but
2 not more than fifty years, if a planned need is demonstrated, and (i)
3 a withdrawal facility with a hydraulic capacity beyond that needed for
4 twenty years was constructed, or (ii) debt service requirements extend
5 for such a period;

6 (b) Authorize a development schedule of less than twenty years if
7 the permittee, with reasonable diligence, can perfect the permit in a
8 shorter period of time; or

9 (c) Deny any time for further development if there is no
10 demonstrated need for the water based on the water system plan or other
11 applicable information.

12 (2) Upon any determination of noncompliance with the performance
13 standards created by section 603 of this act, the permittee shall be
14 granted, by written notice, a reasonable period of time to comply. If
15 the permittee receiving such a notification disagrees with the
16 department's determination of a reasonable time for compliance, it may,
17 at its election, initiate nonbinding mediation with the department to
18 resolve the dispute. After mediation, if the dispute is not resolved,
19 the state shall issue an order to effect the performance standards.
20 The order is appealable to the pollution control hearings board.

21 (3) At the end of the construction schedule authorized in the
22 permit, the permittee may request an extension of time only as provided
23 in RCW 90.03.320.

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

26 (1) Any permittee with a water right permit reinstated under RCW
27 90.03.330 must meet the performance standards of this section.
28 Demonstration of compliance with performance standards shall be through
29 existing planning programs and processes of the departments of health
30 or ecology to the extent practicable. All permittees shall initially
31 document compliance with the performance standards not less than two
32 years and not more than eight years from the effective date of this
33 section to the department of ecology and then in its water system plan
34 update, if a water system plan is required. Any permittee not required
35 to complete a water system plan shall demonstrate compliance in a
36 reasonable, written format once every six years. If the permittee
37 complies with the performance standards, it will be considered in
38 compliance with RCW 90.03.320. The performance standards are:

1 (a) Evidence demonstrating a need for the water within the
2 development schedule specified by the permit consistent with demand
3 forecasts prepared in accordance with the demand forecasting methods
4 specified by the departments of ecology and health;

5 (b) Evidence that the water system's use of water is fully
6 consistent with approved local land use planning within the constraints
7 of water availability and cost;

8 (c) Evidence that water use meets state conservation and water use
9 efficiency requirements existing at the time the documentation is
10 submitted;

11 (d) Current information on how the utility's recent and proposed
12 beneficial use of water under the permit is consistent with state and
13 federal laws legally applicable to water use under the permit;

14 (e) Evidence of participation by the permittee, to the extent
15 practicable, in watershed planning under chapter 90.82 RCW, coordinated
16 water system planning under chapter 70.119 RCW, or other collaborative
17 watershed planning efforts, if initiated; and

18 (f) Evidence of participation in and implementation of agreements
19 under section 604 of this act.

20 (2) For the performance standards in subsection (1) of this
21 section, the department of health is responsible for ensuring
22 compliance with subsection (1)(a) through (c) of this section and the
23 department of ecology is responsible for ensuring compliance with
24 subsection (1)(d) through (f) of this section when compliance with the
25 performance standards is identified in a water system plan. If no
26 water system plan is required, the department of ecology is responsible
27 for ensuring compliance with all performance standards.

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

30 (1) Where the source of water is either a surface water source or
31 a ground water source that is interconnected with a surface water body
32 that provides habitat for salmon or trout populations listed or
33 proposed for listing under the federal endangered species act or
34 determined by the department of fish and wildlife to be depressed or
35 critical, and where water can be used to protect and restore
36 streamflows that are needed by such species and stocks, or in urban
37 growth areas, the public water system shall enter into and implement a
38 binding agreement with the departments of ecology and fish and wildlife

1 to specify how inchoate water is developed to protect and restore
2 streamflow for the recovery of such fish species.

3 (2) In developing interlocal agreements with permittees under this
4 section, the departments of fish and wildlife and ecology shall give
5 priority to water systems having more than one thousand service
6 connections. Agreements with water systems having fewer than one
7 thousand service connections shall be a priority, if the system's water
8 source is identified as a priority by the department of fish and
9 wildlife in consultation with other concerned state agencies. Public
10 water systems are encouraged to join together for purposes of
11 concluding agreements under this section and to do so on a watershed or
12 multiwatershed basis to promote the recovery of fish stocks and
13 efficient delivery of public water supply.

14 (3) The purpose of the interlocal agreement is to identify and make
15 mutual commitments to:

16 (a) Take immediate actions to arrest the further decline in fish
17 stocks;

18 (b) Establish, protect, and restore an instream flow that is
19 sufficient to restore and maintain properly functioning habitat
20 conditions to support a harvestable supply of fish. Any instream flows
21 that are established in connection with an interlocal agreement for a
22 water resource inventory area, as defined by chapter 173-500 WAC,
23 overlaying the same geographic areas that received a grant from the
24 department under chapter 90.82 RCW shall be interim until such planning
25 for instream flow, if applicable, is complete under chapter 90.82 RCW.
26 Interim instream flows established shall be conservative with regard to
27 preserving instream values. Before establishing an instream flow under
28 this section, the department shall engage in government to government
29 consultation with affected tribes regarding the setting of such flows;

30 (c) Define a strategy to restore streamflows to the established
31 instream flow;

32 (d) Establish benchmarks or milestones that can be used to
33 objectively measure the success in the recovery and maintenance of the
34 listed salmonid stocks; and

35 (e) Establish provisions for an adaptive management approach to
36 modify the interlocal agreement to effect its goal.

37 (4) If an interlocal agreement is not developed and signed by the
38 departments of ecology and fish and wildlife and the permittee within
39 two years of initiating negotiations on the interlocal agreement, the

1 permittee's use of water from the effective date of this section under
2 the permit shall be subject to applicable source instream flows created
3 by rule existing as of the effective date of this section. If instream
4 flows have not been established by rule or the rule's instream flow is
5 insufficient, an instream flow shall be specified by the department in
6 consultation with the department of fish and wildlife under RCW
7 75.20.050 by permit proviso, and the permit shall be subject to any
8 future instream flows adopted or amended by the department.

9 (5) Within four years of the effective date of an interlocal
10 agreement, and every three years thereafter, the department in
11 consultation with the department of fish and wildlife, shall review the
12 interlocal agreement and its implementation to determine its
13 effectiveness in contributing to the recovery and maintenance of the
14 listed salmonid stocks and review the actions of all parties to
15 implement the agreement. If the department of ecology determines by
16 written findings that a permittee who is party to the interlocal
17 agreement has failed to abide by the agreement, it shall condition the
18 use of water under the permit, from the effective date of this section,
19 to applicable instream flows created by rule existing as of the
20 effective date of this section. If instream flows have not been
21 established by rule or the rule's instream flow is insufficient, an
22 instream flow shall be specified by the department in consultation with
23 the department of fish and wildlife under RCW 75.20.050 by permit
24 proviso, and the permit shall be subject to any future instream flows
25 adopted or amended by the department.

26 (6) If any permittee who is party to the interlocal agreement
27 disagrees with any determinations made by the department under this
28 section, the permittee may, at its election, initiate nonbinding
29 mediation with the department to resolve a dispute. After mediation,
30 if the dispute is not resolved, the permittee may appeal any findings
31 made by the department to the pollution control hearings board.

32 (7) This section does not waive any other requirement of the law
33 related to the use of water.

34 NEW SECTION. **Sec. 605.** A new section is added to chapter 90.03
35 RCW to read as follows:

36 Nothing in RCW 90.03.330 or sections 602 through 604 of this act
37 may impair any existing water right.

1 **PART VII. INTEGRATED WATER SUPPLY MANAGEMENT**

2 NEW SECTION. **Sec. 701.** A new section is added to chapter 90.03
3 RCW to read as follows:

4 The legislature finds that it is in the public interest to
5 encourage municipal water supply management to occur on a regionally
6 coordinated basis, where practicable, in a fashion that balances the
7 use of currently developed and future municipal water resources with
8 protection of the natural environment and instream resources, including
9 fisheries. Such integrated water supply management will promote the
10 proper use and stewardship of the invaluable water resources of the
11 state, and ensure that water resources are protected and fully used for
12 the greatest benefit to the people of the state. In light of these
13 benefits, it is appropriate that integrated management programs should
14 be used and encouraged as alternative means to achieve many of the
15 objectives of this act.

16 The objectives of preserving and enhancing the natural environment,
17 including fishery resources, and of providing reliable and efficient
18 water supplies to expanding populations, especially in urban areas, can
19 be met in a complementary manner through the use of integrated water
20 supply management agreements.

21 **PART VIII. LAND USE**

22 NEW SECTION. **Sec. 801.** A new section is added to chapter 90.44
23 RCW to read as follows:

24 Where the department of fish and wildlife and the department of
25 ecology find that ground water withdrawals exempt from the permit
26 requirement of RCW 90.44.050 are contributing materially to the capture
27 of water from a surface water body that provides habitat for salmon or
28 trout populations listed or proposed to be listed under the federal
29 endangered species act or determined by the department of fish and
30 wildlife to be depressed or critical and where water can be used to
31 protect and restore streamflows that are needed by such species and
32 stocks, or in urban growth areas, the departments shall document such
33 findings and provide them to the general purpose local governments,
34 relevant watershed planning groups, the governor, and the appropriate
35 water resource committees of the senate and the house of
36 representatives.

1 **Sec. 802.** RCW 58.17.110 and 1995 c 32 s 3 are each amended to read
2 as follows:

3 (1) The city, town, or county legislative body shall inquire into
4 the public use and interest proposed to be served by the establishment
5 of the subdivision and dedication. It shall determine: (a) If
6 appropriate provisions are made for, but not limited to, the public
7 health, safety, and general welfare, for open spaces, drainage ways,
8 streets or roads, alleys, other public ways, transit stops, potable
9 water supplies adequate for the intended uses within the subdivision,
10 sanitary wastes, parks and recreation, playgrounds, schools and
11 schoolgrounds, and shall consider all other relevant facts, including
12 sidewalks and other planning features that assure safe walking
13 conditions for students who only walk to and from school; and (b)
14 whether the public interest will be served by the subdivision and
15 dedication.

16 (2) A proposed subdivision and dedication shall not be approved
17 unless the city, town, or county legislative body makes written
18 findings that: (a) Appropriate provisions are made for the public
19 health, safety, and general welfare and for such open spaces, drainage
20 ways, streets or roads, alleys, other public ways, transit stops,
21 potable water supplies adequate for the intended uses within the
22 subdivision, sanitary wastes, parks and recreation, playgrounds,
23 schools and schoolgrounds and all other relevant facts, including
24 sidewalks and other planning features that assure safe walking
25 conditions for students who only walk to and from school; and (b) the
26 public use and interest will be served by the platting of such
27 subdivision and dedication. If it finds that the proposed subdivision
28 and dedication make such appropriate provisions and that the public use
29 and interest will be served, then the legislative body shall approve
30 the proposed subdivision and dedication. Dedication of land to any
31 public body, provision of public improvements to serve the subdivision,
32 and/or impact fees imposed under RCW 82.02.050 through 82.02.090 may be
33 required as a condition of subdivision approval. Dedications shall be
34 clearly shown on the final plat. No dedication, provision of public
35 improvements, or impact fees imposed under RCW 82.02.050 through
36 82.02.090 shall be allowed that constitutes an unconstitutional taking
37 of private property. The legislative body shall not as a condition to
38 the approval of any subdivision require a release from damages to be
39 procured from other property owners.

1 (3) If the preliminary plat includes a dedication of a public park
2 with an area of less than two acres and the donor has designated that
3 the park be named in honor of a deceased individual of good character,
4 the city, town, or county legislative body must adopt the designated
5 name.

6 NEW SECTION. Sec. 803. A new section is added to chapter 36.70A
7 RCW to read as follows:

8 In addition to the requirements of RCW 36.70A.210(3), by September
9 1, 2002, the county-wide planning policies shall include policies to
10 ensure that an adequate water supply is available for planned growth.
11 The policies shall include provisions for coordination with public
12 water and sewer providers. If the county has participated in either a
13 coordinated water system planning process under chapter 70.116 RCW or
14 a watershed planning process under chapter 90.82 RCW and a coordinated
15 water system plan or watershed plan has been approved under chapter
16 70.116 RCW or RCW 90.82.130, respectively, the policies adopted under
17 this section and such approved plans must be consistent. If the county
18 is not participating in either a coordinated water system planning
19 process under chapter 70.116 RCW or a watershed planning process under
20 chapter 90.82 RCW, or if a plan has not yet been approved under either
21 chapter 70.116 or 90.82 RCW, the county-wide planning policies required
22 under this section shall be consistent with state law and rules adopted
23 under state law.

24 **Sec. 804.** RCW 90.58.080 and 1995 c 347 s 305 are each amended to
25 read as follows:

26 (1) Local governments shall develop or amend(~~(, within twenty-four~~
27 months after the adoption of guidelines as provided in RCW 90.58.060,))
28 a master program for regulation of uses of the shorelines of the state
29 consistent with the required elements of the guidelines adopted by the
30 department. Except as provided in subsection (2) of this section,
31 master programs shall be reviewed for compliance with the guidelines
32 and adopted or amended as necessary within twenty-four months after the
33 adoption of guidelines as provided in RCW 90.58.060.

34 (2) Consistent with the priority salmon recovery regions and WRIA's
35 map, as defined in the state-wide strategy to recover salmon volume 1,
36 page V.95, and population growth data provided by the office of
37 financial management, the following master program development or

1 amendment schedule applies for guidelines adopted by the department
2 before December 31, 2000:

3 (a) For King, Snohomish, Pierce, Clark, and Kitsap counties and the
4 cities and towns therein with shorelines of the state, master programs
5 shall be reviewed for compliance with the guidelines and adopted or
6 amended as necessary within thirty-six months after the adoption of
7 guidelines as provided in RCW 90.58.060;

8 (b) For Thurston, Whatcom, Benton, Yakima, Skagit, Cowlitz,
9 Clallam, Chelan, Mason, Lewis, Jefferson, and Okanogan counties and the
10 cities and towns therein with shorelines of the state, master programs
11 shall be reviewed for compliance with the guidelines and adopted or
12 amended as necessary within forty-eight months after the adoption of
13 guidelines as provided in RCW 90.58.060;

14 (c) For all other counties, cities, and towns with shorelines of
15 the state, master programs shall be reviewed for compliance with the
16 guidelines and adopted or amended as necessary within sixty months
17 after the adoption of guidelines amendments as provided in RCW
18 90.58.060.

19 (3) Local governments failing to meet the schedule provided in
20 subsection (2) of this section shall not be eligible for grant moneys
21 from the department pursuant to implementation of this section.

22 **Sec. 805.** RCW 90.82.070 and 1998 c 247 s 3 are each amended to
23 read as follows:

24 Watershed planning under this chapter shall address water quantity
25 in the management area by undertaking an assessment of water supply and
26 use in the management area and developing strategies for future use.

27 (1) The assessment shall include:

28 (a) An estimate of the surface and ground water present in the
29 management area;

30 (b) An estimate of the surface and ground water available in the
31 management area, taking into account seasonal and other variations;

32 (c) An estimate of the water in the management area represented by
33 claims in the water rights claims registry, water use permits,
34 certificated rights, existing minimum instream flow rules, federally
35 reserved rights, and any other rights to water;

36 (d) An estimate of the surface and ground water actually being used
37 in the management area;

1 (e) An estimate of the water needed in the future for use in the
2 management area;

3 (f) An identification of the location of areas where aquifers are
4 known to recharge surface bodies of water and areas known to provide
5 for the recharge of aquifers from the surface; ((and))

6 (g) An estimate of the surface and ground water available for
7 further appropriation, taking into account the minimum instream flows
8 adopted by rule or to be adopted by rule under this chapter for streams
9 in the management area including the data necessary to evaluate
10 necessary flows for fish;

11 (h) An estimate of ground water withdrawn from the management area
12 by the use of individual and group domestic wells installed under the
13 exemption provisions of RCW 90.44.050; and

14 (i) An estimate of physical characteristics of the management area
15 that could provide increased water supplies through the use of
16 additional water storage and water storage enhancements.

17 (2) Strategies for increasing water supplies in the management
18 area, which may include, but are not limited to, increasing water
19 supplies through water conservation, water reuse, the use of reclaimed
20 water, voluntary water transfers, aquifer recharge and recovery,
21 additional water allocations, or additional water storage and water
22 storage enhancements. The objective of these strategies is to supply
23 water in sufficient quantities to satisfy the minimum instream flows
24 for fish and to provide water for future out-of-stream uses for water
25 identified in subsection (1)(e) and (g) of this section and to ensure
26 that adequate water supplies are available for agriculture, energy
27 production, and population and economic growth under the requirements
28 of the state's growth management act, chapter 36.70A RCW. These
29 strategies, in and of themselves, shall not be construed to confer new
30 water rights. The watershed plan must address the strategies required
31 under this subsection.

32 **PART IX. ENFORCEMENT**

33 **Sec. 901.** RCW 75.20.106 and 1993 sp.s. c 2 s 35 are each amended
34 to read as follows:

35 ~~((The department may levy civil penalties of up to one hundred~~
36 ~~dollars per day for violation of any provisions of RCW 75.20.100 or~~
37 ~~75.20.103. The penalty provided shall be imposed by notice in writing,~~

1 either by certified mail or personal service to the person incurring
2 the penalty, from the director or the director's designee describing
3 the violation. Any person incurring any penalty under this chapter may
4 appeal the same under chapter 34.05 RCW to the director. Appeals shall
5 be filed within thirty days of receipt of notice imposing any penalty.
6 The penalty imposed shall become due and payable thirty days after
7 receipt of a notice imposing the penalty unless an appeal is filed.
8 Whenever an appeal of any penalty incurred under this chapter is filed,
9 the penalty shall become due and payable only upon completion of all
10 review proceedings and the issuance of a final order confirming the
11 penalty in whole or in part.

12 If the amount of any penalty is not paid within thirty days after
13 it becomes due and payable the attorney general, upon the request of
14 the director shall bring an action in the name of the state of
15 Washington in the superior court of Thurston county or of any county in
16 which such violator may do business, to recover such penalty. In all
17 such actions the procedure and rules of evidence shall be the same as
18 an ordinary civil action. All penalties recovered under this section
19 shall be paid into the state's general fund.))

20 (1) If any person or government agency fails to follow the
21 requirements of obtaining hydraulic project approval under this chapter
22 or fails to carry out any of the requirements or conditions of a
23 hydraulic project approval issued under this chapter, the department
24 may issue an order to that person or government agency. The order may
25 require the person or government agency to stop work on any or all of
26 the activities subject to the hydraulic project approval, to correct or
27 to restore the nonconforming site, or to both stop work and to correct
28 or to restore the nonconforming site. Within twenty days of service of
29 such an order or as provided by rule of the department extending such
30 time, the person may file a written petition with the department
31 appealing the order, and this petition shall be treated as an
32 application for an adjudicative proceeding under chapter 34.05 RCW. In
33 the event of an appeal, a person or government agency may seek interim
34 relief from an order under this section as provided in chapter 34.05
35 RCW.

36 (2) The department may adopt rules to designate that certain
37 violations of the terms or conditions of hydraulic project approval are
38 an infraction to be punished as provided by RCW 77.15.160. Any

1 punishment under chapter 77.15 RCW shall be supplemental to the remedy
2 provided by subsection (1) of this section.

3 **Sec. 902.** RCW 77.15.300 and 1998 c 190 s 52 are each amended to
4 read as follows:

5 (1) A person is guilty of unlawfully undertaking hydraulic project
6 activities if the person:

7 (a) Constructs any form of hydraulic project or performs other work
8 on a hydraulic project and((÷

9 (a))) fails to have a hydraulic project approval required under
10 chapter 75.20 RCW for such construction or work; ((✕))

11 (b) Violates any requirements or conditions of the hydraulic
12 project approval for such construction or work;

13 (c) Violates any stop work or other order issued under RCW
14 75.20.106 if that order has been either served on the person or posted
15 at the site of the violation, except if the person acts in accordance
16 with any relief under chapter 34.05 RCW pursuant to a timely appeal or
17 timely relief from the department order; or

18 (d) Violates any rule governing small scale mining adopted under
19 RCW 75.20.330, except if such a rule violation has been designated as
20 an infraction by rule of the department.

21 (2) Unlawfully undertaking hydraulic project activities is a gross
22 misdemeanor.

23 NEW SECTION. **Sec. 903.** A new section is added to chapter 90.58
24 RCW to read as follows:

25 If there are terms or conditions of the permit that are required to
26 be completed after occupancy or use commences, or carried out as an
27 ongoing part of occupancy or use, the local government may require the
28 posting of a bond or other demonstration of financial responsibility as
29 a condition of approval with regard to compliance with any one or all
30 terms and conditions of approval. A local government may include
31 compliance reporting requirements in any permit authorizing development
32 under this chapter. Submittal of a report that makes false claims
33 regarding the compliance of the project with permit requirements may be
34 considered grounds for revocation of the permit and may be considered
35 a separate violation of this chapter.

1 **Sec. 904.** RCW 90.03.600 and 1995 c 403 s 635 are each amended to
2 read as follows:

3 (1) Except as provided in RCW 43.05.060 through 43.05.080 and
4 43.05.150, the power is granted to the department (~~(of ecology)~~) to
5 levy civil penalties (~~(of up to)~~) from one to five hundred dollars per
6 day for violation of any of the provisions of this chapter and chapters
7 43.83B, 90.22, (~~(and)~~) 90.44, 90.54, and 90.66 RCW, and rules, permits,
8 (~~(and similar documents)~~) certificates, and regulatory orders of the
9 department (~~(of ecology)~~) adopted or issued pursuant to such chapters.
10 Each and every violation is a separate and distinct offense. Every act
11 of commission or omission that results in, aids, or abets in the
12 violation shall be considered a violation under this section and
13 subject to the penalty as provided for in this section.

14 (2) A minor violation is a violation that does not seriously
15 threaten public health, safety, or the environment and shall be subject
16 to a penalty of no more than one hundred dollars. Minor violations
17 include paperwork violations such as failure to provide metering
18 records or other required water use records upon request.

19 (3) The procedures of RCW 90.48.144 shall be applicable to all
20 phases of the levying of a penalty as well as review and appeal of the
21 same.

22 **Sec. 905.** RCW 43.21B.300 and 1993 c 387 s 23 are each amended to
23 read as follows:

24 (1) Any civil penalty provided in RCW 18.104.155, 70.94.431,
25 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.48.144, 90.56.310, and
26 90.56.330 shall be imposed by a notice in writing, either by certified
27 mail with return receipt requested or by personal service, to the
28 person incurring the penalty from the department, the administrator of
29 the (~~(office of marine safety)~~) integrated oil spill prevention and
30 response program, or the local air authority, describing the violation
31 with reasonable particularity. Within fifteen days after the notice is
32 received, the person incurring the penalty may apply in writing to the
33 department, the administrator, or the authority for the remission or
34 mitigation of the penalty. Upon receipt of the application, the
35 department, the administrator, or authority may remit or mitigate the
36 penalty upon whatever terms the department, the administrator, or the
37 authority in its discretion deems proper. The department or the
38 authority may ascertain the facts regarding all such applications in

1 such reasonable manner and under such rules as it may deem proper and
2 shall remit or mitigate the penalty only upon a demonstration of
3 extraordinary circumstances such as the presence of information or
4 factors not considered in setting the original penalty.

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

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

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

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

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

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

30 (5) All penalties recovered shall be paid into the state treasury
31 and credited to the general fund except those penalties imposed
32 pursuant to RCW 18.104.155, which shall be credited to the reclamation
33 account as provided in RCW 18.104.155(7), RCW 70.94.431, the
34 disposition of which shall be governed by that provision, RCW
35 70.105.080, which shall be credited to the hazardous waste control and
36 elimination account, created by RCW 70.105.180, ~~((and))~~ RCW 90.56.330,
37 which shall be credited to the coastal protection fund created by RCW
38 90.48.390, and RCW 90.03.600, which shall be credited to the streamflow
39 restoration account created by section 1104 of this act.

1 **Sec. 906.** RCW 90.08.040 and 1977 c 22 s 1 are each amended to read
2 as follows:

3 (1) Where water rights of a stream or ground water source have been
4 adjudicated a stream ((patrolman)) patroller shall be appointed by the
5 director of the department of ecology upon application of water users
6 having adjudicated water rights in each particular water resource
7 making a reasonable showing of the necessity therefor~~((, which~~
8 ~~application shall have been approved by the district water master if~~
9 ~~one has been appointed,)) or upon determination by the department of~~
10 ecology at such time, for such ((stream)) water source, and for such
11 periods of service as local conditions may indicate to be necessary to
12 provide the most practical supervision and to secure to water users and
13 owners the best protection in their rights.

14 (2) The department may appoint a stream patroller for any area,
15 regardless of whether it has been adjudicated, if required to assure
16 proper supervision and protection of water rights, enforcement of
17 minimum or base flows or other rules, or in response to a general
18 decline in ground water levels.

19 (3) The stream ((patrolman)) patroller shall have the same powers
20 as a water master appointed under RCW 90.03.060, but ((his)) the
21 patroller's district shall be confined to the regulation of waters of
22 a designated ((stream or streams)) source or sources. ((Such
23 ~~patrolman)) The patroller shall be under the supervision of the~~
24 director or ((his)) the director's designated representative~~((. He))~~
25 and shall also enforce such special rules ((and regulations)) as the
26 director may prescribe from time to time.

27 **Sec. 907.** RCW 90.08.060 and 1977 c 22 s 3 are each amended to read
28 as follows:

29 (1) Where the water rights of a stream or ground water source have
30 been adjudicated, the salary of the stream ((patrolman)) patroller
31 shall be borne by the water users receiving the benefits and shall be
32 paid to the county or counties in the following manner:

33 The county or counties ((may)) shall assess each water user for
34 ((his)) the user's proportionate share of the total stream
35 ((patrolman)) patroller expense in the same ratio that the amount of
36 water authorized by a permit or certificate to be diverted or withdrawn
37 or the amount of water claimed to be a water right by ((him)) the user
38 bears to the total amount of water authorized by permits and

1 certificates to be diverted or withdrawn plus the total amount claimed
2 to be water rights from the ((stream during each season,)) water source
3 on an annual basis, to recover all such county expenses. The stream
4 ((patrolman)) patroller shall keep an accurate record of the amount of
5 water authorized to be diverted or withdrawn by permits and
6 certificates or the amount claimed by each water user coming under
7 ((his)) the patroller's supervision. ((On the first of each month the
8 stream patrolman)) Before the start of the irrigation season, the
9 stream patroller shall present ((his)) the record of water diversion
10 and withdrawal quantities to the county or counties for the ((preceding
11 month)) purpose of billing the water users for their proportional share
12 of stream patroller expenses. Where the water users are organized into
13 an irrigation district or water users' association, such organization
14 may enter into an agreement with the county or counties for direct
15 payment to the stream ((patrolman)) patroller in order to minimize
16 administrative costs.

17 (2) Where water rights of a stream or ground water source have not
18 been adjudicated, stream patroller expenses may be funded and paid as
19 provided in subsection (1) of this section, subject to the approval of
20 the legislative body of the affected county or counties, or may be
21 funded and paid by the department.

22 **Sec. 908.** RCW 90.03.070 and 1987 c 109 s 70 are each amended to
23 read as follows:

24 It shall be the duty of the water master, acting under the
25 direction of the department, to divide in whole or in part, the water
26 supply of ((his)) the water master's designated district among the
27 several water conduits and reservoirs using ((said)) the supply,
28 according to the right and priority of each, respectively. ((He)) The
29 water master shall divide, regulate, and control the use of water
30 within ((his)) the district by such regulation of headgates, conduits,
31 and reservoirs as shall be necessary to prevent the use of water in
32 excess of the amount to which the owner of the right is lawfully
33 entitled. The regulation shall be carried out in accordance with
34 section 909 of this act. The water master shall also enforce instream
35 flow levels established by rule and instream flow conditions imposed on
36 water right permits and certificates. Whenever, in the pursuance of
37 his or her duties, the water master regulates a headgate of a water
38 conduit or the controlling works of a reservoir, he or she shall attach

1 to such headgate or controlling works a written notice, properly dated
2 and signed, stating that such headgate or controlling works has been
3 properly regulated and is wholly under his or her control and such
4 notice shall be a legal notice to all parties. In addition to dividing
5 the available waters and supervising the stream (~~((patrolmen))~~)
6 patrollers in (~~((his))~~) the district, (~~((he))~~) the water master shall
7 enforce such rules (~~((and regulations))~~) as the department shall from
8 time to time prescribe.

9 The county or counties in which water master districts are created
10 shall deputize the water masters appointed hereunder, and may without
11 charge provide to each water master suitable office space, supplies,
12 equipment and clerical assistance as are necessary to the water master
13 in the performance of his or her duties.

14 NEW SECTION. Sec. 909. A new section is added to chapter 43.27A
15 RCW to read as follows:

16 REGULATORY POWERS. (1) The purpose of this section is to set forth
17 the powers of the department to regulate the withdrawal or diversion of
18 public waters and water or water rights related thereto, including
19 regulation based on dates of priority or other pertinent factors.
20 Regulatory actions taken under this section shall be based on
21 examination and determination by the department of the various water
22 rights involved according to the department's records and other records
23 and pertinent facts. The powers set forth in this section may be
24 exercised whether or not a general adjudication relating to the water
25 rights involved has been conducted.

26 (2) In a regulatory situation (a) where a water right or all water
27 rights proposed for regulation by the department, as well as any right
28 or rights of a senior priority that the proposed regulation is designed
29 to protect, is or are embodied in a certificate or certificates issued
30 under RCW 90.03.240, 90.03.330, 90.38.040, 90.42.040, or 90.44.060 or
31 a permit or permits issued under RCW 90.03.290 or 90.44.060; (b) where
32 a flow or level has been established by rule under chapter 90.22 or
33 90.54 RCW; or (c) where it appears to the department that public waters
34 are being withdrawn without any right or other appropriate authority
35 whatsoever, the department in its discretion may regulate the right or
36 rights under RCW 43.27A.190.

37 (3) This section does not amend, revise, or repeal RCW 90.14.130 or
38 90.14.200.

1 (4) This section does not in any way modify regulatory powers
2 previously placed with the department except as provided in subsection
3 (2) of this section.

4 NEW SECTION. **Sec. 910.** A new section is added to chapter 90.03
5 RCW to read as follows:

6 The department may establish and maintain a stream keeper volunteer
7 program. Stream keeper volunteers shall be appointed by the director
8 to assist with administration of the water code and be assigned to any
9 water resource in the state, including but not limited to designated
10 water master districts. The duties of stream keeper volunteers shall
11 be limited to providing information and assistance regarding water use,
12 facilitating cooperative arrangements among water right holders during
13 periods of shortage, and other nonregulatory duties as determined by
14 the department. The department may consult with the Washington State
15 University cooperative extension service and other suitable entities
16 regarding recruitment of stream keeper volunteers, as well as enter
17 into agreements for education and training of volunteers.

18 **PART X. FUTURE ACTION**

19 NEW SECTION. **Sec. 1001.** The attorney general shall perform a
20 study and prepare two reports to the legislature on water law issues.
21 One report shall include a summary of the current statutory and case
22 law on water and water rights in the state of Washington, a discussion
23 of the major water policy issues currently pending in this state, and
24 an identification of those areas in which further legislation would be
25 helpful. In a separate report, the attorney general shall identify and
26 discuss specific recommendations for the use of alternative dispute
27 resolution and other out-of-court processes to resolve disputes
28 concerning water rights. The attorney general's recommendations may
29 include proposed legislation. The two reports shall be transmitted to
30 the legislature not later than October 1, 1999.

31 NEW SECTION. **Sec. 1002.** WATER RESOURCE MANAGEMENT TASK FORCE. A
32 water resource management task force is established to examine: (1)
33 The present water allocation and management system for the state of
34 Washington; (2) alternative means for managing water resources among

1 competing interests; and (3) additional tools for meeting competing
2 demands, including water storage opportunities.

3 The task force shall consist of eight members, two from each major
4 caucus of the senate, appointed by the president of the senate; and two
5 from each major caucus of the house of representatives, appointed by
6 the co-speakers of the house of representatives. The task force shall
7 use legislative staff and facilities. All expenses of the task force,
8 including travel shall be paid jointly by the senate and the house of
9 representatives.

10 The task force shall reports its findings and recommendations to
11 the legislature by December 31, 2000.

12 This section expires January 10, 2000.

13 NEW SECTION. **Sec. 1003.** WATER RIGHTS INFORMATION. (1) The water
14 resource management task force shall review the following subjects
15 related to water rights information:

16 (a) Methods to create and maintain a water rights and water
17 transfer registry that would update records of ownership of water
18 rights, would be publicly accessible and integrated with data
19 management systems maintained at the county level, and would
20 incorporate other water rights-related information;

21 (b) Methods to ensure that purchasers of land with associated water
22 rights receive pertinent information about the rights and that county
23 land title records include such information;

24 (c) Methods to ensure that general stream adjudication decrees are
25 kept current with information on new water rights, and water rights
26 changes and transfers, including the sale of land with associated water
27 rights, occurring since the original entry of the decree; and

28 (d) Recommendations on other measures to implement a comprehensive
29 water rights data management system easily accessible by the public and
30 by other governmental entities administering water-related programs.

31 (2) The water resource management task force shall submit its
32 review and recommendations to the appropriate standing committees of
33 the legislature no later than July 1, 2000.

34 NEW SECTION. **Sec. 1004.** CAPTURE OF SURFACE WATER BY WELLS. The
35 department of ecology shall convene a group consisting of
36 representatives from major stakeholder groups concerned with water
37 resources management as well as scientists recognized for their

1 expertise in the fields of hydrology, hydrogeology, fish biology,
2 stream ecology, and stream restoration to review, assess, and recommend
3 methods for mitigating the effects caused by proposed ground water
4 withdrawals. The group shall consider all types of mitigation
5 measures. The group shall make recommendations to the department of
6 ecology for rules to implement the findings of the group and shall
7 report on the group's progress, findings, and any recommendations for
8 rule making to the legislature by December 31, 1999.

9 NEW SECTION. **Sec. 1005.** WATER RESOURCE MANAGEMENT SYSTEM FOR
10 AGRICULTURE. (1) The governor shall convene a new negotiating group,
11 or charge an existing negotiating group, to address the management of
12 water resources that support both agriculture and fish, focusing on
13 areas that have threatened and endangered species listed or proposed
14 for listing under the federal endangered species act or salmonid stocks
15 categorized as critical or depressed under the state salmon and
16 steelhead stock inventory, but not limited to such areas. The group
17 shall include, but not be limited to, the following interests:
18 Agriculture, irrigation districts, water districts, environmental
19 groups, local government, Indian tribes, the department of fish and
20 wildlife, the department of ecology, conservation districts, and the
21 department of agriculture. The process shall also include the national
22 marine fisheries service, the United States fish and wildlife service,
23 and other appropriate federal agencies.

24 (2) By July 1, 2001, the negotiating group shall develop a water
25 resource management system that will sustain and perpetuate fish,
26 habitat, and water resources, and shall identify administrative and
27 statutory revisions required to implement the management system,
28 including agricultural water use efficiency performance standards as
29 required in section 311 of this act and other recommendations for rule
30 making and for legislation.

31 (3) The water resource management system shall address agricultural
32 water use efficiency performance standards; water conservation plans,
33 programs, and methods needed to achieve the performance standards;
34 eligibility criteria for use of state funding for drought preparedness;
35 and use of existing water rights to irrigate additional acres or serve
36 additional purposes. The management system may include criteria for
37 grants and loans to public bodies engaged in irrigation water supply,
38 management of ground water sources in hydraulic continuity with surface

1 water, storage of water, management of water rights to protect
2 streamflows, changes and transfers of water rights, and the
3 establishment and operation of agricultural water markets.

4 **PART XI. FUNDING**

5 NEW SECTION. **Sec. 1101.** The sum of one hundred thousand dollars,
6 or as much thereof as may be necessary, is appropriated for the fiscal
7 year ending June 30, 2000, from the general fund to the attorney
8 general's office solely for the purpose of section 1001 of this act.

9 **Sec. 1102.** RCW 43.99E.015 and 1990 1st ex.s. c 15 s 8 are each
10 amended to read as follows:

11 For the purpose of providing funds for the planning, acquisition,
12 construction, and improvement of water supply facilities within the
13 state and water conservation within those facilities, the state finance
14 committee is authorized to issue general obligation bonds of the state
15 of Washington in the sum of sixty-five million dollars, or so much
16 thereof as may be required, to finance the improvements defined in this
17 chapter and all costs incidental thereto. These bonds shall be paid
18 and discharged within thirty years of the date of issuance in
19 accordance with Article VIII, section 1 of the state Constitution. No
20 bonds authorized by this chapter may be offered for sale without prior
21 legislative appropriation of the proceeds of the bonds to be sold.

22 **Sec. 1103.** RCW 43.99E.030 and 1996 c 320 s 21 are each amended to
23 read as follows:

24 As used in this chapter, the term "water supply facilities" means
25 domestic, municipal, industrial, and agricultural (and any associated
26 fishery, recreational, or other beneficial use) water supply or
27 distribution systems including but not limited to all equipment,
28 utilities, structures, real property, and interests in and improvements
29 on real property necessary for or incidental to the acquisition,
30 construction, installation, or use of any such water supply or
31 distribution system.

32 As used in this chapter, the term "public body" means the state of
33 Washington or any agency, political subdivision, taxing district, local
34 improvement district, or municipal or public corporation thereof; a
35 board of joint control; an agency of the federal government; and those

1 Indian tribes which may constitutionally receive grants or loans from
2 the state of Washington.

3 NEW SECTION. **Sec. 1104.** A new section is added to chapter 90.42
4 RCW to read as follows:

5 The streamflow restoration account is created in the state
6 treasury. All receipts from penalties under RCW 43.21B.300 and
7 90.03.600 must be deposited into the account. Expenditures from the
8 account may be used only for the department of ecology to purchase or
9 lease water rights for placement in the trust water rights program
10 created in this chapter and chapter 90.38 RCW. Moneys in the
11 streamflow restoration account may be spent only after appropriation.

12 NEW SECTION. **Sec. 1105.** If specific funding for the departments
13 of ecology and fish and wildlife for the purposes of section 201 of
14 this act, referencing this act by bill or chapter and section number,
15 is not provided by June 30, 1999, in the omnibus appropriations act,
16 section 201 of this act is null and void.

17 NEW SECTION. **Sec. 1106.** If specific funding for the departments
18 of ecology and health for the purposes of sections 301 through 305 of
19 this act, referencing this act by bill or chapter and section numbers,
20 is not provided by June 30, 1999, in the omnibus appropriations act,
21 sections 301 through 305 of this act are null and void.

22 NEW SECTION. **Sec. 1107.** If specific funding for the departments
23 of ecology and health for the purposes of section 311 of this act,
24 referencing this act by bill or chapter and section number, is not
25 provided by June 30, 1999, in the omnibus appropriations act, section
26 311 of this act is null and void.

27 NEW SECTION. **Sec. 1108.** If specific funding for the departments
28 of ecology and health for the purposes of sections 401 through 406 of
29 this act, referencing this act by bill or chapter and section numbers,
30 is not provided by June 30, 1999, in the omnibus appropriations act,
31 sections 401 through 406 of this act are null and void.

32 NEW SECTION. **Sec. 1109.** If specific funding for the department of
33 ecology for the purposes of section 501 of this act, referencing this

1 act by bill or chapter and section number, is not provided by June 30,
2 1999, in the omnibus appropriations act, section 501 of this act is
3 null and void.

4 NEW SECTION. **Sec. 1110.** If specific funding for the departments
5 of ecology and health, and fish and wildlife, for the purposes of
6 sections 601 through 605 of this act, referencing this act by bill or
7 chapter and section numbers, is not provided by June 30, 1999, in the
8 omnibus appropriations act, sections 601 through 605 of this act are
9 null and void.

10 NEW SECTION. **Sec. 1111.** If specific funding for the department of
11 fish and wildlife for the purposes of sections 901 and 902 of this act,
12 referencing this act by bill or chapter and section numbers, is not
13 provided by June 30, 1999, in the omnibus appropriations act, sections
14 901 and 902 of this act are null and void.

15 NEW SECTION. **Sec. 1112.** If specific funding for the department of
16 ecology for the purposes of sections 904 through 910 of this act,
17 referencing this act by bill or chapter and section numbers, is not
18 provided by June 30, 1999, in the omnibus appropriations act, sections
19 904 through 910 of this act are null and void.

20 NEW SECTION. **Sec. 1113.** If specific funding for the Washington
21 water resources review commission for the purposes of section 1002 of
22 this act, referencing this act by bill or chapter and section number,
23 is not provided by June 30, 1999, in the omnibus appropriations act,
24 section 1002 of this act is null and void.

25 NEW SECTION. **Sec. 1114.** If specific funding for the purposes of
26 section 1003 of this act, referencing this act by bill or chapter and
27 section number, is not provided by June 30, 1999, in the omnibus
28 appropriations act, section 1003 of this act is null and void.

29 NEW SECTION. **Sec. 1115.** If specific funding for the purposes of
30 section 1004 of this act, referencing this act by bill or chapter and
31 section number, is not provided by June 30, 1999, in the omnibus
32 appropriations act, section 1004 of this act is null and void.

1 NEW SECTION. **Sec. 1116.** If specific funding for the office of the
2 governor for the purposes of section 1005 of this act, referencing this
3 act by bill or chapter and section number, is not provided by June 30,
4 1999, in the omnibus appropriations act, section 1005 of this act is
5 null and void.

6 **PART XII. MISCELLANEOUS**

7 NEW SECTION. **Sec. 1201.** RCW 90.22.060 (Instream flow
8 evaluations--State-wide list of priorities--Salmon impact) and 1998 c
9 245 s 172 & 1993 sp.s. c 4 s 13 are each repealed.

10 NEW SECTION. **Sec. 1202.** TABLE OF CONTENTS, PART HEADINGS, AND
11 SECTION CAPTIONS NOT LAW. The table of contents, part headings, and
12 section captions used in this act are not any part of the law.

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