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**ENGROSSED SUBSTITUTE HOUSE BILL 1791**

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**State of Washington**

**54th Legislature**

**1995 Regular Session**

**By** House Committee on Agriculture & Ecology (originally sponsored by Representatives Chandler, Mastin, McMorris, Sheldon, Delvin, Kremen, Clements, Chappell, Crouse, Scott, Costa, Horn, Robertson, Quall, Hankins, Skinner, Kessler, Schoesler, Grant, Sheahan, Brumsickle, Padden, Morris, Buck, Hatfield, Patterson, Cooke, Mulliken, Honeyford, Backlund and Basich)

Read first time 03/01/95.

1       AN ACT Relating to water resource management; amending RCW  
2 43.27A.020, 43.27A.090, 43.27A.130, 43.27A.190, 43.21A.020, 43.21A.067,  
3 90.54.040, 90.03.383, 43.21A.070, 34.05.425, 34.05.419, 34.05.461,  
4 34.05.514, 34.05.530, 34.05.534, 34.12.040, 43.21B.110, 43.21B.130,  
5 43.21B.240, 43.21B.300, 43.21B.310, 43.21B.320, 90.14.130, 90.14.190,  
6 90.14.200, 90.66.080, 43.27A.190, 90.03.380, 90.44.100, 90.03.290,  
7 90.44.445, 90.22.010, and 90.03.247; adding a new section to chapter  
8 43.21B RCW; adding new sections to chapter 90.03 RCW; adding new  
9 sections to chapter 90.44 RCW; adding a new section to chapter 34.05  
10 RCW; adding a new section to chapter 43.21A RCW; adding a new chapter  
11 to Title 43 RCW; creating new sections; recodifying RCW 43.21A.067;  
12 decodifying RCW 90.14.043; repealing RCW 90.22.020, 90.22.060,  
13 43.21A.064, and 90.54.030; providing an effective date; providing an  
14 expiration date; and declaring an emergency.

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

16

**PART I**

17

**WATER RESOURCE COMMISSIONS**

1        NEW SECTION.     **Sec. 1.**     The legislature finds that balanced  
2 administration and management of the state water resources is of  
3 paramount importance to the citizens of the state.     The legislature  
4 finds that regional differences in water resource conditions require  
5 greater consideration in the development and administration of water  
6 resource policy.     The legislature finds that to effectively take  
7 regional differences into consideration, the decision-making authority  
8 needs to be based on water resource plans developed by local elected  
9 officials and interested persons from various regions of the state.

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

14        It is further the intent of the legislature that all existing water  
15 rights be protected and not diminished by the actions of the state and  
16 that the principles of the prior appropriation doctrine of western  
17 water law remain unchanged by this enactment (chapter . . . , Laws of  
18 1995).

19        NEW SECTION.     **Sec. 2.**     The definitions in this section apply  
20 throughout this chapter.

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

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

26        (3) "State engineer" means the person hired by the commissions to  
27 administer the state engineer's office and the water resource programs  
28 and responsibilities assigned to that office.

29        (4) "WRIA" means a water resource inventory area established in WAC  
30 173-500-030, as it exists on January 1, 1995.

31        NEW SECTION.     **Sec. 3.**     (1) There is hereby created and established  
32 two state commissions to be known and designated jointly as the  
33 Washington water resources commissions, hereinafter referred to as the  
34 commissions.     One commission, to be known as the eastern Washington  
35 water resources commission, shall have jurisdiction throughout the area  
36 of the state east of the crest of the Cascade mountains and including  
37 all of Skamania county.     One commission, to be known as the western

1 Washington water resources commission, shall have jurisdiction  
2 throughout the area of the state west of the crest of the Cascade  
3 mountains, exclusive of Skamania county.

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

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

10 (a) The counties within the jurisdiction of the eastern Washington  
11 water resources commission are divided into two groups: (i) Benton,  
12 Chelan, Douglas, Franklin, Grant, Kittitas, Klickitat, Okanogan,  
13 Skamania, and Yakima counties; and (ii) the remaining counties within  
14 the jurisdiction of the commission. The counties assigned to a  
15 particular group shall collectively nominate six persons for  
16 appointment to the eastern Washington water resources commission and  
17 submit this list of nominations to the governor. The governor shall  
18 appoint four members of the commission from each of the two lists  
19 submitted in this manner.

20 (b) The counties within the jurisdiction of the western Washington  
21 water resources commission are divided into four groups: (i) King,  
22 Pierce, and Snohomish counties; (ii) Island, San Juan, Skagit, and  
23 Whatcom counties; (iii) Clallam, Jefferson, Kitsap, Mason, and Grays  
24 Harbor counties; and (iv) the remaining counties within the  
25 jurisdiction of the commission. Nominations for appointment to the  
26 western Washington water resources commission from each group shall be  
27 submitted to the governor.

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

33 (d) The counties in (b)(ii) of this subsection shall collectively  
34 nominate three persons for appointment to the commission and the  
35 governor shall appoint one member to the western Washington water  
36 resources commission from these nominations. The counties in (b)(iii)  
37 of this subsection shall collectively nominate three persons for  
38 appointment to the commission and the governor shall appoint one member  
39 to the western Washington water resources commission from these

1 nominations. The counties in (b)(iv) of this subsection shall  
2 collectively nominate three persons for appointment to the commission  
3 and the governor shall appoint one member to the western Washington  
4 water resources commission from these nominations.

5 (e) The members of the legislative authorities of the counties  
6 assigned to a group by (a) of this subsection or assigned to a group by  
7 (b) of this subsection shall convene to nominate persons for  
8 appointment to the eastern or western Washington water resources  
9 commission. The counties and the counties and cities in (c) of this  
10 subsection shall provide their lists of nominees to the governor not  
11 later than thirty days after the effective date of this section. If  
12 the counties assigned to a group do not provide nominations within the  
13 prescribed time, the governor may make the appointments allocated to  
14 the group without nominations. Each county assigned to a group by this  
15 subsection (3) for one or more collective nominations shall be entitled  
16 to three votes for each nomination and shall divide the votes equally  
17 among the members of the legislative authority of the county.  
18 Nominations shall be made by a majority vote of all of such members  
19 assigned to the group based on the votes allocated to them under this  
20 section. The governor shall make all appointments to the commissions  
21 within ninety days of the effective date of this section.

22 Nominations and appointments to fill vacancies on the commission  
23 shall be made as provided by this section for original appointments to  
24 the positions. Such nominations shall be made within sixty days of the  
25 date the vacancy is created or the appointment shall be made without  
26 nominations. The governor shall appoint a person to fill a vacancy  
27 within thirty days of the date the vacancy is created.

28 Nominations and appointments to fill expired terms of office of the  
29 members of the commission shall be made as prescribed for nominations  
30 and appointments for the initial membership of the commissions. The  
31 members of the county legislative authorities shall make nominations  
32 sixty days before the expiration of terms of office and the governor  
33 shall make appointments not later than the date of the expiration of  
34 the terms of office, which appointments shall take effect upon the  
35 expiration of those terms.

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

1 (5) No elective state official, state officer, or state employee  
2 shall be a member of a commission nor may a member of the commission  
3 have been such an official, officer, or employee within two years of  
4 being appointed to the commission. At the time of their appointment  
5 and thereafter during their respective terms of office, the members of  
6 the eastern commission shall reside within the eastern jurisdiction and  
7 the members of the western commission shall reside within the western  
8 jurisdiction. No more than two members of each commission shall reside  
9 in the same county.

10 (6) The governor may remove any member of a commission for  
11 malfeasance or misfeasance in office or for having at least five  
12 unexcused absences during the person's term of office which constitute  
13 twenty percent or more of the meetings that have been conducted by the  
14 commission during the term. A person's absence from a meeting may be  
15 excused: By the chair of the commission if a written request to do so  
16 is received by the chair before the meeting from which the member is to  
17 be absent; or by a majority vote of the members of the commission at  
18 the meeting during which the member is absent.

19 (7) Each member of the commissions may receive reimbursement for  
20 travel expenses incurred in the discharge of his or her duties in  
21 accordance with RCW 43.03.050 and 43.03.060. Commissions shall operate  
22 on a part-time basis and each member shall receive compensation  
23 pursuant to RCW 43.03.250. The principal office of each commission  
24 shall be located within the jurisdictional boundaries of each  
25 commission.

26 NEW SECTION. **Sec. 4.** For actions taken by the commissions  
27 jointly, a majority of all of the commissioners shall constitute a  
28 quorum. A majority of the members of a commission shall constitute a  
29 quorum of the commission for the transaction of any business, for the  
30 performance of any duty, or for the exercise of any power of the  
31 commission. Any investigation, inquiry, or hearing that a commission  
32 has power to undertake or to hold may be undertaken or held by or  
33 before any commissioner. All investigations, inquiries, and hearings  
34 of a commission, and all findings, orders, or decisions, made by a  
35 commissioner, when approved and confirmed by the commission and filed  
36 in its office, shall be and be deemed to be the orders or decisions of  
37 the commission. All actions of a commission, the commissions jointly,  
38 or of a commissioner acting individually under the authority of this

1 section shall be conducted in accordance with the administrative  
2 procedure act, chapter 34.05 RCW.

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

6 (a) Rule adoption for their joint operation;

7 (b) The commissions, acting jointly, shall appoint the state  
8 engineer. The state engineer shall serve at the pleasure of the  
9 commissions;

10 (c) The commissions, acting jointly, shall prepare and approve a  
11 proposed budget for the commissions and the office of the state  
12 engineer;

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

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

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

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

27 (3) The state engineer shall administer the state's water quantity  
28 programs on behalf of the commissions through an office of the state  
29 engineer which is hereby created. The state engineer shall be the  
30 administrator of the office and the supervisor of the employees of the  
31 office.

32 NEW SECTION. **Sec. 6.** All proceedings of a commission or of the  
33 commissions acting jointly are subject to the open public meetings act,  
34 chapter 42.30 RCW. All public records in possession of the commissions  
35 and the state engineer shall be subject to chapter 42.17 RCW regarding  
36 public records. The commissions shall jointly make and submit to the  
37 governor and the legislature a biennial report beginning January 1997

1 containing a statement of the transactions and proceedings of its  
2 office, together with the information gathered by the commissions and  
3 the state engineer and such other facts, suggestions, and  
4 recommendations as the governor may require or the legislature request.

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

11 Notwithstanding any provision of law transferred to the  
12 jurisdiction of the state engineer by chapter . . . , Laws of 1995 (this  
13 act), the commissions, a commission, or the state engineer may not:  
14 Initiate or conduct WRIA management planning activities except as  
15 expressly authorized under section 12 of this act; or establish an  
16 instream flow except as required by a WRIA plan adopted under section  
17 12 of this act.

18 NEW SECTION. **Sec. 8.** (1) It is the intent of the legislature that  
19 water resource planning be done locally, at the watershed level. Such  
20 local planning is not required, but may be conducted as provided in  
21 this chapter.

22 Of the counties located in whole or in part in a WRIA, the county  
23 with the largest population residing within the boundaries of the WRIA  
24 is the lead agency for any WRIA planning conducted for that WRIA under  
25 this chapter, except as provided in section 9 of this act. Such a  
26 county may choose to initiate water resource planning for the WRIA  
27 under this chapter and may convene a meeting of the members of the  
28 legislative authorities of the counties with territory within a WRIA  
29 for the appointment of a WRIA planning unit. If it convenes the  
30 counties in this manner, the county shall also notify the cities, water  
31 supply special purpose districts, and conservation districts with  
32 territory within the WRIA that these groups are to meet to appoint  
33 their members of the WRIA planning unit. For the purposes of this  
34 section and sections 9 and 12 of this act, a county is considered to  
35 have territory within a WRIA only if the territory of the county  
36 located in the WRIA constitutes at least fifteen percent of the area of  
37 the WRIA.

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

17           (b) In addition, for a WRIA located within Pierce, King, or  
18 Snohomish county, a representative of the largest water purveyor using  
19 water from the WRIA shall be an ex officio member of the planning unit  
20 whether the principal offices of the purveyor are or are not located  
21 within the WRIA.

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

33           (4) In voting to appoint the members of a WRIA planning unit, to  
34 approve a WRIA plan under section 12 of this act, or to elect to  
35 conduct multi-WRIA planning under section 9 of this act, each county  
36 with territory within the WRIA shall have three votes, divided equally  
37 among the members of the county's legislative authority and  
38 appointments shall be made by majority vote based on the votes  
39 allocated under this section. In voting to appoint members of a WRIA

1 planning unit: Each city with territory within the WRIA shall have one  
2 vote and appointments shall be made by majority vote of such cities;  
3 each water supply special purpose district with territory within the  
4 WRIA shall have one vote and appointments shall be made by majority  
5 vote of such districts; and each conservation district with territory  
6 within the WRIA shall have one vote and appointments shall be made by  
7 majority vote of such districts. All appointments shall be made within  
8 sixty days of the date the county acting as lead agency in the WRIA  
9 notifies the other appointing authorities to convene to make  
10 appointments or the appointments shall be made by the counties with  
11 territory in the WRIA in the same manner the counties make other  
12 appointments. A vacancy on the planning unit shall be filled by  
13 appointment in the same manner prescribed for appointing the position  
14 that has become vacant.

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

21 (a) The planning unit shall be composed of: Up to one member, as  
22 that number is determined by the counties jointly, for each county with  
23 territory in the multi-WRIA area representing the counties and  
24 appointed by the counties jointly; up to one member, as that number is  
25 determined by the cities jointly, for each county with territory in the  
26 multi-WRIA area, representing cities with territory in the multi-WRIA  
27 area and appointed jointly by those cities; up to three members, as  
28 that number is determined by the districts, representing all water  
29 supply special purpose districts with territory within the multi-WRIA  
30 area and appointed jointly by those districts; up to two members, as  
31 that number is determined by the districts, representing all  
32 conservation districts with territory within the multi-WRIA area and  
33 appointed jointly by those districts; four members representing the  
34 general citizenry, of which at least two shall be holders of water  
35 rights, appointed jointly by the counties with territory within the  
36 multi-WRIA area; and six members representing various special interest  
37 groups appointed jointly by the counties with territory within the  
38 multi-WRIA area.

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

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

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

26 (3) A planning unit for a multi-WRIA area shall perform all of the  
27 functions assigned by this chapter to a WRIA planning unit and is  
28 subject to all of the provisions of this chapter that apply to a WRIA  
29 planning unit.

30 NEW SECTION. **Sec. 10.** The lead agency shall provide staff support  
31 for the work of the WRIA planning unit. Each WRIA planning unit may  
32 establish its own methods of operation that are consistent with this  
33 chapter and may establish methods for reviewing the operations of its  
34 lead agency. Each WRIA planning unit is encouraged to: Consider  
35 information and plans that may have been previously developed by other  
36 entities in establishing water resource management plans for the WRIA;  
37 consider existing data regarding water resources in the WRIA; and, for  
38 a WRIA that borders another state, cooperate with local government

1 counterparts in the adjacent state regarding water resource planning.  
2 Water resource plans developed under this chapter for a WRIA may not  
3 interfere in any manner with a general adjudication of water rights,  
4 completed or ongoing. Such a WRIA plan may not in any manner impair,  
5 diminish, or interfere with a water right that exists before the  
6 adoption of the plan by the appropriate commission under section 12 of  
7 this act.

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

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

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

33 (2) The plan must include the following:

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

37 (b) A quantitative estimation using existing sources of  
38 information, of how much surface and ground water is available for use,

1 both in-stream and out-of-stream, for agricultural, fisheries,  
2 recreational, environmental, industrial, municipal, and residential  
3 purposes;

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

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

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

14 (f) Instream flows established prior to January 1, 1995, by rule.  
15 Notwithstanding any other provisions of state law, the planning unit  
16 will set instream flows as part of the plan for the other rivers,  
17 streams, and lakes in the WRIA or combined WRIs for which flows have  
18 not been set and may make adjustments to flows that have already been  
19 set. Planning units are encouraged to set the flow levels as soon as  
20 is practicable;

21 (g) Management strategies for achieving present and future needs,  
22 including:

23 (i) Conservation measures;

24 (ii) Storage enhancements, including modifications to existing  
25 reservoirs and new reservoirs;

26 (iii) Market transfers;

27 (iv) In-stream flows;

28 (h) An estimation of hydraulic continuity between ground and  
29 surface waters that is to be taken into consideration for the  
30 allocation and use of water resources. This estimation shall be based  
31 on available data and any data the planning unit may secure with funds  
32 other than the funds provided to the unit by the state engineer for  
33 WRIA planning;

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

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

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

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

24 (3) The WRIA planning unit shall vote on each recommendation  
25 provided by the commission and on the commission's advice regarding any  
26 elements of the proposed WRIA plan the commission believed to be in  
27 conflict with state or federal law. The planning unit may adopt such  
28 a recommendation or provide changes to respond to the advice of the  
29 commission by a majority vote of the members of the planning unit.

30 The WRIA planning unit shall approve a water resource plan for the  
31 WRIA by a two-thirds majority vote of the members of the planning unit.  
32 An approved plan shall be submitted to the counties with territory  
33 within the WRIA for adoption. If a WRIA planning unit does not approve  
34 a plan for submission to the counties within three years of the date  
35 the planning unit receives its first funding from the state engineer  
36 for the planning process under section 13 of this act, the state  
37 engineer shall develop a proposed plan for the WRIA, submit the plan to

1 the commission with jurisdiction for the WRIA, and the commission shall  
2 adopt or amend and adopt such a water resource plan for the WRIA.

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

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

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

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

31 NEW SECTION. **Sec. 13.** Once a WRIA planning unit is organized and  
32 has established priorities under section 11 of this act, it may apply  
33 to the state engineer for funding assistance for developing a water  
34 resource plan for the WRIA. The state engineer shall provide five  
35 hundred thousand dollars per WRIA for each planning unit applying in  
36 this manner from appropriations made expressly for this purpose. The  
37 funding shall be provided on a first-come, first-served basis to the  
38 extent of the appropriations except that preference shall be given to

1 planning units requesting funding for multi-WRIA planning under section  
2 9 of this act. Funding provided under this section shall be considered  
3 to be a contractual obligation against the moneys appropriated for this  
4 purpose. No more than five hundred thousand dollars per WRIA may be  
5 provided by the state engineer to a planning unit.

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

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

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

1 applied for. Once the applicant responds to an information request,  
2 the stay of the time allowed for the permit decision shall end.

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

4 **PART II**  
5 **TRANSFER OF POWER**

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

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

10 (1) "~~((Department))~~ Commission" means the ~~((department—of~~  
11 ~~ecology;))~~ water resources commissions.

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

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

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

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

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

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

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

31 (2) To prepare the views and recommendations of the state of  
32 Washington on any project, plan, or program relating to the planning,  
33 development, administration, management, conservation, and preservation  
34 of any waters located in or affecting the state of Washington,  
35 including any federal permit or license proposal, and appear on behalf  
36 of, and present views and recommendations of the state at any

1 proceeding, negotiation or hearing conducted by the federal government,  
2 interstate agency, state or other agency.

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

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

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

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

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

32 (~~((8))~~) (7) To assemble and correlate state, local and federal  
33 laws, regulations, plans, programs, and policies affecting the  
34 beneficial use, (~~(disposal, pollution)~~) control, or conservation of  
35 water, river basin development, flood prevention, parks, reservations,  
36 forests, wildlife refuges, drainage (~~(and sanitary)~~) systems, (~~(waste  
37 disposal)~~) water works, watershed protection and development, instream  
38 flows, soil conservation, power facilities and area and municipal water  
39 supply needs, and recommend suitable legislation or other action to the

1 legislature, the congress of the United States, or any city,  
2 municipality, or to responsible state, local or federal executive  
3 departments or agencies.

4 ~~((+9))~~ (8) To cooperate with federal, state, regional, interstate  
5 and local public and private agencies in the making of plans for  
6 drainage, flood control, use, conservation, allocation and distribution  
7 of existing water supplies and the development of new water resource  
8 projects.

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

14 ~~((+11))~~ (10) To ~~((promulgate))~~ adopt such rules ~~((and~~  
15 ~~regulations))~~ as are necessary to carry out the purposes of this  
16 chapter.

17 ~~((+12))~~ (11) To hold public hearings, and make such  
18 investigations, studies and surveys as are necessary to carry out the  
19 purposes of the chapter.

20 ~~((+13))~~ (12) To subpoena witnesses, compel their attendance,  
21 administer oaths, take the testimony of any person under oath and  
22 require the production of any books or papers when the ~~((department))~~  
23 commission deems such measures necessary in the exercise of its rule-  
24 making power or in determining whether or not any license, certificate,  
25 or permit shall be granted or extended.

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

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

33 **Sec. 19.** RCW 43.27A.190 and 1987 c 109 s 11 are each amended to  
34 read as follows:

35 Notwithstanding and in addition to any other powers granted to the  
36 ~~((department of ecology))~~ state engineer, whenever it appears to the

1 ((department)) engineer that a person is violating or is about to  
2 violate any of the provisions of the following:

3 (1) Chapter 90.03 RCW; or

4 (2) Chapter 90.44 RCW; or

5 (3) ~~((Chapter 86.16 RCW; or~~

6 ~~(4) Chapter 43.37 RCW; or~~

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

8 ~~((6))~~ (4) Any other law relating to water resources administered  
9 by the ((department)) engineer; or

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

35 **Sec. 20.** RCW 43.21A.020 and 1970 ex.s. c 62 s 2 are each amended  
36 to read as follows:

37 In recognition of the responsibility of state government to carry  
38 out the policies set forth in RCW 43.21A.010, it is the purpose of this

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

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

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

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

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

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

32 (1) The ~~((department))~~ commissions, through the adoption of  
33 appropriate rules, ~~((is))~~ are directed ~~((, as a matter of high priority~~  
34 ~~to insure that the waters of the state are utilized for the best~~  
35 ~~interests of the people,))~~ to develop and implement in accordance with  
36 the policies of this chapter a ~~((comprehensive state))~~ water resources  
37 program ~~((which will provide a process for making decisions))~~ that

1 implements policies on future water resource allocation and use. ((The  
2 department may develop the program in segments so that immediate  
3 attention may be given to waters of a given physioeconomic region of  
4 the state or to specific critical problems of water allocation and use.

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

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

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

36 NEW SECTION. Sec. 23. (1) On the effective date of this section,  
37 all powers, duties, and functions of the department of ecology  
38 pertaining to water resource quantity are transferred to the western

1 Washington and eastern Washington water resources commissions or the  
2 state engineer. The authority to adopt rules regarding those powers,  
3 duties, and functions is transferred to the commissions and the  
4 administration of those powers, duties, and functions is transferred to  
5 the state engineer. All references to the director or the department  
6 of ecology in the Revised Code of Washington shall be construed to mean  
7 the western Washington and eastern Washington water resources  
8 commissions or the state engineer when referring to the functions  
9 transferred in this section.

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

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

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

35 (3) All employees classified under chapter 41.06 RCW, the state  
36 civil service law, of the department of ecology engaged in performing  
37 the powers, functions, and duties transferred are transferred to the  
38 jurisdiction of the western Washington and eastern Washington water  
39 resources commissions and the state engineer. The employees are

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

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

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

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

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

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

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

- 1 (1) Water regulation, management, and development;
- 2 (2) Permitting authority regarding appropriation, diversion, and  
3 use of water;
- 4 (3) Data collection and other hydrographic information duties;
- 5 (4) Technical assistance powers and duties regarding water  
6 quantity;
- 7 (5) Authority regarding the water resource aspects of international  
8 issues, such as Lake Osoyoos;
- 9 (6) Participation with the federal government in development of the  
10 Columbia basin project and the Yakima enhancement project;
- 11 (7) Duties and powers regarding irrigation districts and  
12 reclamation districts;
- 13 (8) Reclamation authority for agricultural lands;
- 14 (9) Powers and duties, both enforcement and administrative  
15 authority over water quantity aspects of water resources, including:  
16 (a) The water codes;  
17 (b) Stream patrolmen and watermasters;  
18 (c) Water rights, including but not limited to registration,  
19 relinquishment, waiver, and transfer;  
20 (d) Appropriation of water for public and industrial purposes;  
21 (e) Minimum flows and levels;  
22 (f) Regulation of outflow of lakes;  
23 (g) Yakima river basin water rights;  
24 (h) Water resource management;  
25 (i) Regulation of public ground waters; and  
26 (j) Water well construction.

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

33 **PART III**  
34 **INTERTIES**

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

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

18 (2) For the purposes of this section, the following definitions  
19 shall apply:

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

32 (b) "Service area" is the area designated as the wholesale and/or  
33 retail area in a water system plan or a coordinated water system plan  
34 pursuant to chapter 43.20 or 70.116 RCW respectively. When a public  
35 water system does not have a designated service area subject to the  
36 approval process of those chapters, the service area shall be the  
37 designated place of use contained in the water right permit or  
38 certificate, or contained in the claim filed pursuant to chapter 90.14  
39 RCW.

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

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

1 shall not be inconsistent with state-approved plans such as water  
2 system plans or other plans which include specific proposals for  
3 construction of interties. Interties approved and commencing use after  
4 January 1, 1991, shall not be inconsistent with regional water resource  
5 plans developed pursuant to chapter 90.54 RCW.

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

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

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

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

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

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

PART IV

WATER-RELATED ACTIONS AND APPEALS

1  
2  
3       **Sec. 27.** RCW 43.21A.070 and 1970 ex.s. c 62 s 7 are each amended  
4 to read as follows:

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

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

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

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

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

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

34       **Sec. 28.** RCW 34.05.425 and 1989 c 175 s 14 are each amended to  
35 read as follows:

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

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

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

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

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

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

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

25 ~~((+4))~~ (5) Any party may petition for the disqualification of an  
26 individual promptly after receipt of notice indicating that the  
27 individual will preside or, if later, promptly upon discovering facts  
28 establishing grounds for disqualification.

29 ~~((+5))~~ (6) The individual whose disqualification is requested  
30 shall determine whether to grant the petition, stating facts and  
31 reasons for the determination.

32 ~~((+6))~~ (7) When the presiding officer is an administrative law  
33 judge, the provisions of this section regarding disqualification for  
34 cause are in addition to the motion of prejudice available under RCW  
35 34.12.050.

36 ~~((+7))~~ (8) If a substitute is required for an individual who  
37 becomes unavailable as a result of disqualification or any other  
38 reason, the substitute must be appointed by the appropriate appointing  
39 authority.

1       (~~(8)~~) (9) Any action taken by a duly appointed substitute for an  
2 unavailable individual is as effective as if taken by the unavailable  
3 individual.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 (2) For proceedings involving institutions of higher education, the  
37 petition shall be filed either in the county in which the principal

1 office of the institution involved is located or in the county of a  
2 branch campus if the action involves such branch.

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

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

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

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

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

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

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

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

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

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

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

- 1 (a) The remedies would be patently inadequate;
- 2 (b) The exhaustion of remedies would be futile; or
- 3 (c) The grave irreparable harm that would result from having to
- 4 exhaust administrative remedies would clearly outweigh the public
- 5 policy requiring exhaustion of administrative remedies; or
- 6 (4) A petitioner for judicial review of a final order issued by an
- 7 administrative law judge acting pursuant to RCW 34.05.425(3) need not
- 8 exhaust any other administrative remedy.

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

10 as follows:

11 Whenever a state agency conducts a hearing which is not presided

12 over by officials of the agency who are to render the final decision,

13 the hearing shall be conducted by an administrative law judge assigned

14 under this chapter. In any adjudicative proceeding commenced under

15 chapter 34.05 RCW in response to a water quantity decision, as defined

16 in RCW 43.21A.070, the hearing shall be conducted by an administrative

17 law judge assigned under this chapter according to procedural rules

18 developed by the chief administrative law judge. The chief

19 administrative law judge shall ensure that hearings pertaining to water

20 quantity decisions by the department of ecology will be conducted in

21 the general area where the petitioner resides, or provide for the

22 hearings to be conducted by telephone. In assigning administrative law

23 judges, the chief administrative law judge shall wherever practical (1)

24 use personnel having expertise in the field or subject matter of the

25 hearing, and (2) assign administrative law judges primarily to the

26 hearings of particular agencies on a long-term basis.

27 **Sec. 35.** RCW 43.21B.110 and 1993 c 387 s 22 are each amended to

28 read as follows:

29 (1) The pollution control hearings board shall only have

30 jurisdiction to hear and decide appeals from the following decisions of

31 the department, the director, the administrator of the office of marine

32 safety, and the air pollution control boards or authorities as

33 established pursuant to chapter 70.94 RCW, or local health departments:

34 (a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431,

35 70.105.080, 70.107.050, 88.46.090, (~~(90.03.600)~~) 90.48.144, 90.56.310,

36 and 90.56.330.

1 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,  
2 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,  
3 (~~90.14.130~~) and 90.48.120.

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

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

12 (e) Decisions of local health departments regarding the issuance  
13 and enforcement of permits to use or dispose of biosolids under RCW  
14 70.95J.080.

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

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

20 (a) The hearings board shall have no jurisdiction whatsoever to  
21 review water quantity decisions as defined in RCW 43.21A.070, to review  
22 orders pertaining to the relinquishment of a water right under RCW  
23 90.14.130, or to review proceedings regarding general adjudications of  
24 water rights conducted under chapter 90.03 or 90.44 RCW.

25 (b) The following hearings shall not be conducted by the hearings  
26 board:

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

29 (~~(b)~~) (ii) Hearings conducted by the department pursuant to RCW  
30 70.94.332, 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and  
31 90.44.180.

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

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

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

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

3       The administrative procedure act, chapter 34.05 RCW, shall apply to  
4 the appeal of rules and regulations adopted by the board to the same  
5 extent as it applied to the review of rules and regulations adopted by  
6 the directors and/or boards or commissions of the various departments  
7 whose powers, duties and functions were transferred by section 6,  
8 chapter 62, Laws of 1970 ex. sess. to the department. Except with  
9 regard to water quantity decisions by the department, as defined in RCW  
10 43.21A.070, which are appealable to a superior court or to an  
11 administrative law judge under section 45 of this act, and orders  
12 pertaining to the relinquishment of a water right under RCW 90.14.130,  
13 all other decisions and orders of the director and all decisions of air  
14 pollution control boards or authorities established pursuant to chapter  
15 70.94 RCW shall be subject to review by the hearings board as provided  
16 in this chapter.

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

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

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

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

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

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

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

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

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

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

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

36 (5) All penalties recovered shall be paid into the state treasury  
37 and credited to the general fund except those penalties imposed  
38 pursuant to RCW 18.104.155, which shall be credited to the reclamation  
39 account as provided in RCW 18.104.155(7), RCW 70.94.431, the

1 disposition of which shall be governed by that provision, RCW  
2 70.105.080, which shall be credited to the hazardous waste control and  
3 elimination account, created by RCW 70.105.180, and RCW 90.56.330,  
4 which shall be credited to the coastal protection fund created by RCW  
5 90.48.390.

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

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

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

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

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

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

29 ~~((+b))~~ (ii) The date and docket number of the order, permit, or  
30 license appealed;

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

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

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

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

1       (~~(5)~~) (d) Upon failure to comply with any final order of the  
2 department or the administrator or the administrative law judge acting  
3 pursuant to RCW 34.05.425(3), the attorney general, on request of the  
4 department or the administrator, may bring an action in the superior  
5 court of the county where the violation occurred or the potential  
6 violation is about to occur to obtain such relief as necessary,  
7 including injunctive relief, to insure compliance with the order. The  
8 air authorities may bring similar actions to enforce their orders.

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

13       (2) Water quantity decisions, as defined in RCW 43.21A.070, may not  
14 be appealed to the hearings board; they may be appealed either to an  
15 administrative law judge or to a superior court as provided in section  
16 45 of this act. Appeals of orders pertaining to the relinquishment of  
17 a water right shall be filed in a superior court as provided by RCW  
18 90.14.130.

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

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

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

36       (3) The applicant may make a prima facie case for stay if the  
37 applicant demonstrates either a likelihood of success on the merits of  
38 the appeal or irreparable harm. Upon such a showing, the hearings

1 board or administrative law judge shall grant the stay unless the  
2 department or authority demonstrates either (a) a substantial  
3 probability of success on the merits or (b) likelihood of success on  
4 the merits and an overriding public interest which justifies denial of  
5 the stay.

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

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

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

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

1 order may be appealed to (~~the pollution control hearings board~~) a  
2 superior court. Any person aggrieved by such an order may appeal it to  
3 (~~the pollution control hearings board pursuant to RCW 43.21B.310~~) the  
4 superior court in the county where the land is located upon which the  
5 water was used. Any such appeal to a superior court shall be de novo.  
6 The order shall be served by registered or certified mail to the last  
7 known address of the person and be posted at the point of division or  
8 withdrawal. The order by itself shall not alter the recipient's right  
9 to use water, if any.

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

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

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

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

1 superior court in accordance with ((chapter 43.21B RCW)) section 45 of  
2 this act.

3 (2) RCW 90.14.130 provides nonexclusive procedures for determining  
4 a relinquishment of water rights under RCW 90.14.160, 90.14.170, and  
5 90.14.180. RCW 90.14.160, 90.14.170, and 90.14.180 may be applied in,  
6 among other proceedings, general adjudication proceedings initiated  
7 under RCW 90.03.110 or 90.44.220: PROVIDED, That nothing herein shall  
8 apply to litigation involving determinations of the department of  
9 ecology under RCW 90.03.290 relating to the impairment of existing  
10 rights.

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

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

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

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

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

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

- 33 (1) Chapter 90.03 RCW; or
- 34 (2) Chapter 90.44 RCW; or
- 35 (3) Chapter 86.16 RCW; or
- 36 (4) Chapter 43.37 RCW; or

1 (5) Chapter 43.27A RCW; or  
2 (6) Any other law relating to water resources administered by the  
3 department; or  
4 (7) A rule or regulation adopted, or a directive or order issued by  
5 the department relating to subsections (1) through (6) of this section;  
6 the department may cause a written regulatory order to be served upon  
7 said person either personally, or by registered or certified mail  
8 delivered to addressee only with return receipt requested and  
9 acknowledged by him. The order shall specify the provision of the  
10 statute, rule, regulation, directive or order alleged to be or about to  
11 be violated, and the facts upon which the conclusion of violating or  
12 potential violation is based, and shall order the act constituting the  
13 violation or the potential violation to cease and desist or, in  
14 appropriate cases, shall order necessary corrective action to be taken  
15 with regard to such acts within a specific and reasonable time. The  
16 regulation of a headgate or controlling works as provided in RCW  
17 90.03.070, by a watermaster, stream patrolman, or other person so  
18 authorized by the department shall constitute a regulatory order within  
19 the meaning of this section. A regulatory order issued hereunder shall  
20 become effective immediately upon receipt by the person to whom the  
21 order is directed, except for regulations under RCW 90.03.070 which  
22 shall become effective when a written notice is attached as provided  
23 therein. Any person aggrieved by such order may appeal the order  
24 pursuant to RCW 43.21B.310 unless the order is a water quantity  
25 decision as defined in RCW 43.21A.070, in which case it may be appealed  
26 to an administrative law judge or to a superior court as provided in  
27 section 45 of this act.

28  
29

**PART V**  
**TRANSFERS AND SPREADING**

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

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

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

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

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

36 (4) Subsections (1), (2), and (3) of this section do not apply to  
37 a change regarding a portion of the water governed by a water right  
38 that is made surplus to the beneficial uses exercised under the right  
39 through the implementation of practices or technologies, including but

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

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

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

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

35 If a portion of the water governed by a water right is made surplus  
36 to the beneficial uses exercised under the right through the  
37 implementation of practices or technologies, including but not limited  
38 to conveyance practices or technologies, which are more efficient or

1 more water use efficient than those under which the right was perfected  
2 or through a change in the crops grown under the water right, the right  
3 to use the surplus water may be changed to use on other lands owned by  
4 the holder of the water right that are contiguous to the lands upon  
5 which the use of the water was authorized by the right before such a  
6 change. Such a change shall be made without loss of priority of the  
7 right. The holder of the water right shall notify the department of  
8 such a change. The notification provides a change in the holder's  
9 water right and, upon receiving the notification, the department shall  
10 revise its records for the water right to reflect the change.

11 This section does not apply to water supplied by an irrigation  
12 district.

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

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

36 (2) This section does not apply to a change in use of a portion of  
37 the water governed by a ground water right that is made surplus to the  
38 beneficial uses exercised under the right through the implementation of

1 practices or technologies, including but not limited to conveyance  
2 practices or technologies, which are more efficient or more water use  
3 efficient than those under which the right was perfected or through a  
4 change in the crops grown under the water right. RCW 90.03.380(4) and  
5 section 48 of this act apply to water made surplus as provided in this  
6 subsection.

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

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

13 When an application complying with the provisions of this chapter  
14 and with the rules and regulations of the department has been filed,  
15 the same shall be placed on record with the department, and it shall be  
16 its duty to investigate the application, and determine what water, if  
17 any, is available for appropriation, and find and determine to what  
18 beneficial use or uses it can be applied. If it is proposed to  
19 appropriate water for irrigation purposes, the department shall  
20 investigate, determine and find what lands are capable of irrigation by  
21 means of water found available for appropriation. If it is proposed to  
22 appropriate water for the purpose of power development, the department  
23 shall investigate, determine and find whether the proposed development  
24 is likely to prove detrimental to the public interest, having in mind  
25 the highest feasible use of the waters belonging to the public. If the  
26 application does not contain, and the applicant does not promptly  
27 furnish sufficient information on which to base such findings, the  
28 department may issue a preliminary permit, for a period of not to  
29 exceed three years, requiring the applicant to make such surveys,  
30 investigations, studies, and progress reports, as in the opinion of the  
31 department may be necessary. If the applicant fails to comply with the  
32 conditions of the preliminary permit, it and the application or  
33 applications on which it is based shall be automatically canceled and  
34 the applicant so notified. If the holder of a preliminary permit  
35 shall, before its expiration, file with the department a verified  
36 report of expenditures made and work done under the preliminary permit,  
37 which, in the opinion of the department, establishes the good faith,  
38 intent and ability of the applicant to carry on the proposed

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

36 This section does not apply to changes made under section 48 of  
37 this act or to applications for transfers or changes made under RCW  
38 90.03.380 or 90.44.100.



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

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

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

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

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

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

11 For the purposes of permitting and distributing ground water, the  
12 hydraulic continuity of ground water with surface water shall be  
13 determined by the department.

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

37 (2) All wells located a horizontal distance less than one-fourth  
38 mile from a surface water source that produce water from an unconfined

1 aquifer shall be assumed to be hydraulically continuous to the surface  
2 water source, unless the applicant or appropriator provides  
3 satisfactory information or demonstration to the contrary. Department  
4 staff may provide reasonable assistance to the applicant or  
5 appropriator in acquiring the satisfactory information.

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

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

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

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

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

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

34 (i) Suitable equations and graphical techniques that are described  
35 in pertinent publications (such as "Computation of Rate and Volume of  
36 Stream Depletion by Wells", by C.T. Jenkins, in: "Techniques of Water-  
37 Resources Investigations of the United States Geological Survey: Book  
38 4, Chapter D1");

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

3 (5) Any wells, other than those covered in subsection (4) of this  
4 section, that produce water from an aquifer that is determined to be  
5 hydraulically continuous to the surface water source may be determined  
6 by the department to cause substantial interference with the surface  
7 water source. In making this determination, the department shall  
8 consider at least the following factors:

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

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

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

16 (d) There is interference and such interference would be immediate  
17 or delayed; or

18 (e) Demonstrable cumulative adverse impacts on streamflow or  
19 surface water supply.

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

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

25 (~~The department of ecology~~) A WRIA plan adopted under section 12  
26 of this act may establish minimum water flows or levels for streams,  
27 lakes or other public waters for the purposes of protecting fish, game,  
28 birds or other wildlife resources, or recreational or aesthetic values  
29 of said public waters whenever it appears to be in the public interest  
30 to establish the same. (~~In addition, the department of ecology shall,~~  
31 ~~when requested by the department of fish and wildlife to protect fish,~~  
32 ~~game or other wildlife resources under the jurisdiction of the~~  
33 ~~requesting state agency, or if the department of ecology finds it~~  
34 ~~necessary to preserve water quality, establish such minimum flows or~~  
35 ~~levels as are required to protect the resource or preserve the water~~  
36 ~~quality described in the request or determination. Any request~~  
37 ~~submitted by the department of fish and wildlife shall include a~~  
38 ~~statement setting forth the need for establishing a minimum flow or~~

1 level. ~~When the department acts to preserve water quality, it shall~~  
2 ~~include a similar statement with the proposed rule filed with the code~~  
3 ~~reviser.))~~ This section shall not apply to waters artificially stored  
4 in reservoirs, provided that in the granting of storage permits by the  
5 department of ecology or its successor agency in the future, full  
6 recognition shall be given to downstream minimum flows, if any there  
7 may be, which have theretofore been established hereunder.

8 The current guidelines, standards, or criteria governing the  
9 instream flow programs established pursuant to this chapter shall not  
10 be altered or amended after March 15, 1988, in accordance with RCW  
11 90.54.022(5).

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

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



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

4 (2) The department shall, by January 1, 1996, establish the general  
5 permit system by adopting rules in accordance with chapter 34.05 RCW.  
6 Before the adoption of rules for a system, the department shall consult  
7 with representatives of the following interest groups: Agriculture;  
8 aquaculture; home construction and development; county government; city  
9 government; surface mining; and the environmental community. At least  
10 four public hearings must be held at various locations around the  
11 state. The rules must identify criteria for proposed uses of water for  
12 which applications might be processed under the system and must  
13 establish procedures for filing and processing applications and issuing  
14 water rights certificates under the general permit system.

15 (3) The fee for general permits authorized under chapter . . . ,  
16 Laws of 1995 (this act) shall be two hundred fifty dollars.

17 NEW SECTION. **Sec. 59.** A new section is added to chapter 90.03 RCW  
18 to read as follows:

19 An application for registration as a nonconsumptive, nonbypass  
20 water user under the general permit system established under section 58  
21 of this act must be made on a form adopted and provided by the  
22 department. Within sixty days of receipt of a completed application,  
23 the department shall determine whether the proposed use is eligible to  
24 be processed under the general permit system. If the department  
25 determines that the proposed use is eligible to be processed under the  
26 system, the application must be processed under the system within the  
27 next sixty days. The priority date of the water right established  
28 pursuant to this section shall be the date that the application is  
29 submitted. If the department determines that the proposed use is not  
30 eligible for the processing, the department shall explain to the  
31 applicant in writing the reasons for its determination. For a proposed  
32 use determined ineligible for the processing, if the department finds  
33 that the information contained on the application form substantially  
34 satisfies the information requirements for an application for a use  
35 that would normally be filed for processing the application outside of  
36 the general permit system, the department shall notify the applicant of  
37 its finding and shall process the application as if it were filed for  
38 processing outside of the system. If the department finds that the

1 information does not substantially satisfy the requirements, the  
2 application must be considered to be incomplete for the processing and  
3 the applicant must be notified of this consideration.

4 NEW SECTION. **Sec. 60.** Nothing in sections 58 and 59 of this act  
5 authorizes the impairment or operates to impair any existing water  
6 rights. A water right holder under sections 58 and 59 of this act  
7 shall not make withdrawals that impair a senior water right. A holder  
8 of a senior water right who believes his or her water right is impaired  
9 may file a complaint with the department of ecology. Where such  
10 complaints of impairment have been received, the department of ecology  
11 shall make all reasonable efforts to resolve them in a timely manner  
12 through agreement of the parties or through available administrative  
13 remedies.

14 **PART VIII**  
15 **MISCELLANEOUS**

16 NEW SECTION. **Sec. 61.** A new section is added to chapter 34.05 RCW  
17 to read as follows:

18 (1) Once the eastern or western Washington water resources  
19 commission receives a water resource plan submitted by a WRIA planning  
20 unit for advice and recommendations under section 12 of this act, the  
21 commission shall conduct at least one public hearing on the plan and  
22 shall provide notice of the hearing and proposed plan as provided in  
23 RCW 34.05.320 for the proposal of a rule. The commission shall  
24 maintain a file for the plan. Once the plan has been adopted by the  
25 counties in the WRIA under section 12 of this act and the plan has been  
26 submitted to the commission, the commission shall file the plan with  
27 the code reviser along with an order adopting the plan as rules. The  
28 code reviser shall cause the order and the water resource plan to be  
29 published in the Washington state register in the manner provided for  
30 the adoption of final rules and shall incorporate the plan into the  
31 Washington Administrative Code. No other aspect of this chapter that  
32 establishes procedures for the adoption of rules applies to the  
33 adoption of the plan by the commission.

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

1        NEW SECTION.    **Sec. 62.**    A new section is added to chapter 43.21A  
2 RCW to read as follows:

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

7        NEW SECTION.    **Sec. 63.**    Part headings as used in this act do not  
8 constitute any part of the law.

9        NEW SECTION.    **Sec. 64.**    Sections 1 through 15, 23, and 24 of this  
10 act shall constitute a new chapter in Title 43 RCW.

11       NEW SECTION.    **Sec. 65.**    RCW 90.14.043 is decodified.

12       NEW SECTION.    **Sec. 66.**    RCW 43.21A.067 as amended by this act shall  
13 be recodified as a section in the new chapter created in section 64 of  
14 this act.

15       NEW SECTION.    **Sec. 67.**    The following acts or parts of acts are  
16 each repealed:

- 17        (1) RCW 43.21A.064 and 1977 c 75 s 46 & 1965 c 8 s 43.21.130; and  
18        (2) RCW 90.54.030 and 1990 c 295 s 2, 1988 c 47 s 4, & 1971 ex.s.  
19 c 225 s 3.

20       NEW SECTION.    **Sec. 68.**    Sections 16, 17, 19 through 21, 58, and 65  
21 through 67 of this act shall take effect July 1, 1996.

22       NEW SECTION.    **Sec. 69.**    Section 46 of this act shall expire July 1,  
23 1996.

24       NEW SECTION.    **Sec. 70.**    Sections 22 and 52 through 56 of this act  
25 are necessary for the immediate preservation of the public peace,  
26 health, or safety, or support of the state government and its existing  
27 public institutions, and shall take effect immediately.

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