
SENATE BILL 5886

State of Washington

54th Legislature

1995 Regular Session

By Senators Haugen, Morton, Rasmussen and Swecker

Read first time 02/13/95. Referred to Committee on Senate Select
Committee on Water Policy.

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, 90.03.380, 90.03.383, 90.03.390, 43.21B.110, 43.21B.300,
4 90.03.600, and 43.21B.310; adding a new section to chapter 43.99E RCW;
5 adding a new section to chapter 43.155 RCW; adding a new section to
6 chapter 70.146 RCW; adding a new section to Title 35 RCW; adding a new
7 section to Title 35A RCW; adding a new section to Title 36 RCW; adding
8 new sections to chapter 90.54 RCW; adding a new section to chapter
9 90.14 RCW; adding a new chapter to Title 43 RCW; creating new sections;
10 recodifying RCW 43.21A.067; decodifying RCW 90.14.043; and repealing
11 RCW 43.21A.064 and 90.54.030.

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

13 NEW SECTION. **Sec. 1.** The legislature finds that balanced
14 administration and management of the state water resources is of
15 paramount importance to the citizens of the state. The legislature
16 finds that regional differences in water resource conditions require
17 greater consideration in the development and administration of water
18 resource policy. The legislature finds that to effectively take
19 regional differences into consideration, the decision-making authority

1 needs to be based on water resource plans developed by local elected
2 officials and interested persons from various regions of the state.

3 It is the intent of the legislature to establish two state water
4 resources commissions, which consist of members from interest groups in
5 western and eastern parts of the state. Further, it is the direction
6 of the legislature that the commissions implement programs that are
7 balanced with the interests of all sectors of the state's residents
8 taken in account.

9 It is further the intent of the legislature that all existing water
10 rights be protected and not diminished by the actions of the state.

11 NEW SECTION. **Sec. 2.** The definitions in this section apply
12 throughout this chapter.

13 (1) "Commission" means the western and eastern Washington water
14 resource commissions established pursuant to this chapter.

15 (2) "Lead agency" means the local government in a WRIA who is the
16 largest purveyor of water measured in terms of the total volume of
17 wholesale and retail water that is purveyed in the WRIA.

18 (3) "Planning team" means the group of individuals in each county
19 that is located within a WRIA. Individuals are selected pursuant to
20 section 8 of this act.

21 (4) "Planning unit" means the combination of planning teams from
22 within a WRIA or combination of WRIAs.

23 (5) "Special purpose government" means water, combined water-sewer,
24 irrigation, reclamation, conservation, or public utility districts.

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

28 (7) "Water resource plan" means a plan developed pursuant to this
29 chapter that describes the water resource needs and strategies for
30 meeting those needs for each WRIA or combination of WRIAs in the state.
31 The plans are developed by planning units.

32 (8) "WRIA" means a water resource inventory area established in WAC
33 173-500-030, as it exists on January 1, 1995.

34 NEW SECTION. **Sec. 3.** (1) There is hereby created and established
35 two state commissions to be known and designated jointly as the
36 Washington water resources commissions, hereinafter referred to as the
37 commissions. One commission, to be known as the eastern Washington

1 water resources commission, shall have jurisdiction throughout the area
2 of the state east of the crest of the Cascade mountains and including
3 all of Skamania county. One commission, to be known as the western
4 Washington water resources commission, shall have jurisdiction
5 throughout the area of the state west of the crest of the Cascade
6 mountains, exclusive of Skamania county.

7 (2) Members shall serve four-year terms. The members of the
8 initial commissions shall be appointed for terms beginning September 1,
9 1995, and expiring as follows: Four commissioners for the term
10 expiring January 1, 1997; and four commissioners for the term expiring
11 January 1, 1999. Each of the commissioners shall hold office until his
12 or her successor is appointed. Upon the expiration of the terms of the
13 initial eight commissioners first appointed, each succeeding
14 commissioner shall be appointed and hold office for the term of four
15 years. The commissioners shall biennially choose a chair from among
16 themselves.

17 (3) Each commission shall be composed of eight members appointed by
18 the governor, with the consent of the senate. On each commission there
19 must be one representative from each of the following groups:
20 Irrigated agriculture, municipal purveyors other than counties,
21 industrial water users, construction interests, counties, tribal
22 interests, hydroelectric power, and environmental interests.

23 In making appointments to the commissions, the governor shall
24 select persons with recognized expertise in water-related issues,
25 including, for example, issues involving irrigation, hydroelectric
26 production, fisheries, growth needs, municipal and industrial supply,
27 and tribal interests. In the eastern commission, at least four of the
28 members shall have a background in rural-related issues. In the
29 western commission, at least four of the members shall have a
30 background in urban-related issues. The governor shall select
31 commission members for each commission from a list of no more than
32 three nominees for each position, submitted by the following: The
33 irrigated agriculture position shall be nominated by the Washington
34 water resources association; the municipal purveyor position shall be
35 nominated by the association of Washington cities; the industrial user
36 position shall be nominated by the association of Washington business;
37 the construction interest position shall be nominated by the building
38 industry association of Washington; the county position shall be
39 nominated by the Washington state association of counties; and the

1 hydroelectric power position shall be nominated by the Northwest
2 hydroelectric association.

3 (4) In selecting their nominees, the nominating organizations shall
4 select persons with recognized expertise in water-related issues and
5 who are capable of providing leadership in reviewing and implementing
6 state water resource policy. Nominees need not be members of the
7 nominating organization, and each organization shall provide methods by
8 which members and nonmembers may comment upon the nominations. If the
9 governor determines that the list of nominees submitted by a nominating
10 organization lacks qualified persons, the governor may request an
11 additional list of three nominees, in which case the nominating
12 organization shall provide another list of nominees.

13 In addition to the appointments from lists submitted by the
14 nominating organizations, the governor shall select a tribal
15 representative after discussions with representatives of Indian tribes,
16 and the governor shall select an environmental position after
17 discussion with appropriate environmental groups.

18 (5) No elective state official, state officer, or state employee
19 shall be a member of the commissions. At the time of their appointment
20 and thereafter during their respective terms of office, the members of
21 the eastern commission shall reside within the eastern jurisdiction and
22 the members of the western commission shall reside within the western
23 jurisdiction. No more than two members of each commission shall reside
24 in the same county. No member shall be appointed for more than two
25 consecutive terms.

26 (6) Any member of the commissions may be removed for
27 inefficiencies, malfeasance, and misfeasance in office.

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

35 (8) All of the initial commissioners shall be appointed by the
36 governor within ninety days of the effective date of this act.

37 NEW SECTION. **Sec. 4.** For joint matters, a majority of all of the
38 commissioners shall constitute a quorum, and for separate matters, a

1 majority of each commissioner shall constitute a quorum, for the
2 transaction of any business, for the performance of any duty, or for
3 the exercise of any power of the commission. The joint commissions may
4 hold hearings at any time or place within the state. Any
5 investigation, inquiry, or hearing that a commission has power to
6 undertake or to hold may be undertaken or held by or before any
7 commissioner. All investigations, inquiries, and hearings of a
8 commission, and all findings, orders, or decisions, made by a
9 commissioner, when approved and confirmed by the commission and filed
10 in its office, shall be and be deemed to be the orders or decisions of
11 the commission.

12 NEW SECTION. **Sec. 5.** (1) In addition to the powers, duties, and
13 functions in section 26 of this act, the commissions have the following
14 powers and duties:

15 (a) Rule adoption for their joint operation;

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

19 (c) The commissions, acting jointly, shall review and approve the
20 proposed budget prepared by the state engineer;

21 (d) Each commission shall appoint and employ staff as may be
22 necessary to carry on the administrative work of the commission;

23 (e) Each commission may appoint technical working groups and
24 advisory interest group committees to assist it in carrying out its
25 duties;

26 (f) Pursuant to section 9 of this act, the commissions shall review
27 all water resource plans from within their respective jurisdictions to
28 ensure that the plans are consistent with state and federal laws;

29 (g) Each commission shall approve or deny all interbasin transfers
30 within its jurisdiction with the advice of the state engineer. The
31 commissions, acting jointly, shall by rule adopt procedures for
32 interbasin transfers, consistent with state law by October 1, 1996.

33 (2) The commissions shall adopt rules only as specifically
34 authorized in statute.

35 NEW SECTION. **Sec. 6.** All proceedings of the commissions are
36 subject to the open public meetings act, chapter 42.30 RCW. All
37 documents and records in possession of the commissions and the state

1 engineer shall be public records. Each commission shall adopt and use
2 an official seal. The commissions shall jointly make and submit to the
3 governor and the legislature a biennial report beginning January 1997
4 containing a statement of the transactions and proceedings of its
5 office, together with the information gathered by the commissions and
6 the state engineer and such other facts, suggestions, and
7 recommendations as the governor may require or the legislature request.

8 NEW SECTION. **Sec. 7.** In addition to the powers, duties, and
9 functions in section 27 of this act, the state engineer has the
10 following powers and duties:

11 (1) Water resource data management. Data management includes
12 compilation and coordination of current available data from federal,
13 state, and local government, and other available sources. The state
14 engineer shall act as a repository for data;

15 (2) Analysis and engineering studies. The state engineer may
16 contract for analysis and engineering studies, regarding water resource
17 management. The state engineer shall make such information available
18 to WRIA planning units;

19 (3) Contracting authority. The state engineer shall contract with
20 local governments for field investigations through a memorandum of
21 understanding at the option of the local government;

22 (4) Planning activities. Notwithstanding any other provision of
23 law, the state engineer may not initiate or conduct planning activities
24 unless it is in accordance with chapter . . . , Laws of 1995 (this act);

25 (5) Instream flow. Notwithstanding any other provision of law, the
26 state engineer may not establish any instream flows unless it is part
27 of a water resource plan adopted pursuant to section 9 of this act;

28 (6) Budget preparation. Prepare a budget for the approval of the
29 two commissions acting jointly for submittal to the office of financial
30 management under chapter 43.88 RCW.

31 NEW SECTION. **Sec. 8.** It is the intent of the legislature that
32 water resource planning be done locally, at the watershed level.

33 (1) There are hereby established sixty-two watershed resource
34 planning units, to be known as WRIA planning units, coterminous with
35 the watershed resource inventory areas (WRIAs).

1 (2)(a) Each WRIA planning unit will have a lead agency, which will
2 be the largest water purveyor in the WRIA, or as otherwise provided for
3 in this subsection.

4 (b) The largest water purveyor shall notify the appropriate groups
5 who are eligible to participate in the WRIA planning teams and the
6 nongovernmental water user groups that they should meet for the
7 purposes of determining their representation.

8 (c) If the largest water purveyor elects to not be the lead agency,
9 the planning unit, once formed, shall choose a lead agency.

10 (d) It will be the responsibility of the lead agency to serve as
11 coordinator of the planning unit activities, which shall include
12 staffing, management of contractors, assistance in drafting the plan
13 prepared by the planning unit, and assistance in securing funding
14 through interlocal cooperation agreements and/or private contributions.

15 (3) Except as provided in subsection (7) of this section, there
16 will be a planning team from each county for each WRIA that is in whole
17 or in part of a WRIA within the county. The planning unit shall be
18 comprised of all county planning teams in the WRIA as designated in
19 subsection (4) of this section and the nongovernmental entities
20 designated in subsection (5) of this section.

21 (4)(a) For counties with a population of seventy thousand or more
22 that is located in all or part of a WRIA, each county planning team
23 shall consist of no more than thirteen members. Representatives from
24 the following governmental entities comprise a WRIA planning team for
25 each WRIA that is located in whole or in part of the county:

26 (i) Counties. Counties that are governed by councils shall be
27 represented by one councilmember selected by the council and one person
28 selected by the county executive. Counties that are governed by
29 commissioners shall be represented by two county commissioners;

30 (ii) Cities and towns. At least one, but not more than five
31 positions on each county WRIA planning team are reserved for cities and
32 towns. Each city or town located wholly or partially within the part
33 of each county within the WRIA shall select at least one elected
34 official to serve on the county WRIA planning team unless there are
35 more than five cities and towns in the part of the county within the
36 WRIA. In that case, the city and town elected officials shall meet and
37 decide how to allocate the five positions. If there is no city or town
38 located in the part of the county within the WRIA, there will be no
39 city or town representative;

1 (iii) Special purpose governments. At least four positions on each
2 county WRIA planning team are reserved for elected officials
3 representing special purpose governments. Each special purpose
4 government located wholly or partially within the part of the county
5 within the WRIA shall select a planning team representative, unless
6 there are more than four special purpose governments. If there are
7 more than four special purpose governments, the elected representatives
8 of the special purpose districts shall meet as a group and determine
9 among themselves how to allocate their four positions and any of the
10 five positions not filled by the cities and towns;

11 (iv) Tribes. Two positions on a county WRIA planning team are
12 reserved for and shall be selected by elected members of the tribal
13 authorities of federally recognized Indian tribes whose reservations
14 are within the part of the county within the WRIA or who have treaty
15 rights to water within that part of the county within the WRIA. The
16 tribes shall among themselves determine how to select their planning
17 team representatives.

18 (b) For counties with a population of sixty-nine thousand nine
19 hundred ninety-nine or less that is located in all or part of the WRIA,
20 each county planning team shall have no more than six members.
21 Representatives from the following governmental entities comprise the
22 WRIA planning team for each WRIA that is located in whole or in part of
23 the county:

24 (i) Counties. One commissioner;

25 (ii) Cities and towns. One city or town elected official from a
26 city or town located wholly or partially within the part of the county
27 within the WRIA. If there is more than one city or town in the part of
28 the county within the WRIA, the city and town elected officials shall
29 meet and decide on their representative. If there is no city or town
30 so located, the city position shall be taken by a special purpose
31 government representative;

32 (iii) Special purpose governments. Three positions are reserved
33 for elected officials representing special purpose governments. Each
34 special purpose government located wholly or partially within the part
35 of a county within the WRIA shall select a representative, unless there
36 are more than three special purpose governments. If there are more
37 than three special purpose governments, the elected representatives of
38 the special purpose districts shall meet as a group and determine among
39 themselves how to allocate their positions;

1 (iv) Tribes. One position on a county WRIA planning team is
2 reserved for and shall be selected by elected members of the tribal
3 authorities of federally recognized Indian tribes whose reservations
4 are within the part of a county within the WRIA or who have treaty
5 rights to water within that part of the county. The tribes shall among
6 themselves determine how to select their representative.

7 (5) In addition to the planning team or teams from each county
8 within the WRIA, the planning unit will include fourteen
9 nongovernmental representatives. There will be two representatives
10 from each of the following groups: Industrial water users and general
11 business users who need new water supplies; irrigated agriculture;
12 nonirrigated agriculture and forestry; recreation; fisheries; hydro/
13 thermal power production; and environmental. One representative from
14 each group shall be a voting member of the planning unit and the other
15 shall be an ex officio member with no voting rights. Each group will
16 meet to select its representative. If the group cannot agree, the
17 group shall submit five nominees for their position to the lead agency.
18 The lead agency shall select the representatives. The representatives
19 must reside in the WRIA.

20 (6) The lead agency for the WRIA planning unit shall also be a
21 member of the WRIA planning unit, unless the agency is already a member
22 of a WRIA county planning team from one of the specified groups.

23 (7) If a county's portion of a WRIA is so small as to be
24 insignificant or if the area is of no interest to the county, the lead
25 agency for the planning unit may poll the government entities from that
26 particular county to determine whether they want to participate. If
27 two-thirds of the entities agree not to participate the lead agency
28 must then get permission from the county to exclude them from the plan
29 preparation stage.

30 (8)(a) Two or more WRIA planning units may join to form a combined
31 WRIA planning unit for the purpose of developing a common water
32 resource plan. At least two-thirds of the members from each WRIA
33 planning unit must agree to combine the WRIA planning units and must
34 get approval from the appropriate water resource commission.

35 (b) The combined WRIA planning unit should be comprised of WRIsAs
36 that share watercourses or other physical features that would make a
37 combined plan reasonably appropriate.

1 (c) The membership of a combined WRIA planning unit shall be the
2 total membership of the individual WRIA planning units that comprise
3 the combined unit as determined in this section.

4 (d) The combined planning unit may select a single lead agency from
5 the lead agencies in each WRIA planning unit or may have multiple lead
6 agencies that will cooperate in carrying out the lead agency functions.

7 (e) The combined WRIA planning unit will perform all of the
8 functions of a single WRIA planning unit.

9 (9) Each WRIA planning unit or combined WRIA planning unit may
10 organize its own method of operation and may establish the methods of
11 operation and review of operations of its lead agency or agencies.
12 Such methods of operation shall include adequate opportunity for public
13 comment. The planning unit will include opportunity for public comment
14 on their planning activities. They must hold public meetings to
15 receive comments at the beginning, in the middle, and at the conclusion
16 of the planning process.

17 (10) All WRIA planning units or combined WRIA planning units must
18 be appointed by March 1, 1996.

19 (11) In areas where regional water resource planning has begun or
20 been drafted as of January 1, 1995, the planning units for those WRIAs
21 shall use the information and plans produced to date in developing
22 water resource plans pursuant to this chapter and may designate the
23 established regional group advisory to the appropriate planning unit or
24 units.

25 (12) All WRIA planning units and combined WRIA planning units
26 should make every effort to use existing data and existing related
27 plans in developing water resource plans pursuant to this chapter.

28 (13) Water resource plans developed under this chapter shall in no
29 way interfere with ongoing water rights adjudications. The results of
30 the adjudications will be recognized by the plan and integrated into
31 the plan as soon as is practicable.

32 (14) WRIAs with watersheds that include immediately adjacent states
33 shall cooperate with local government counterparts in the adjacent
34 state.

35 NEW SECTION. **Sec. 9.** (1) Each WRIA planning unit or combined WRIA
36 planning unit shall develop a water resource plan.

37 (2) The plan must include the following:

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

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

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

13 (d) A quantitative estimation of how much water, approximately, is
14 claimed or permitted, including in-stream flows, that are claimed but
15 not available;

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

19 (f) Instream flows established prior to January 1, 1995, by rule.
20 Notwithstanding any other provisions of state law, the planning unit
21 will set instream flows as part of the plan for the other rivers,
22 streams, and lakes in the WRIA or combined WRIAs for which flows have
23 not been set and may make adjustments to flows that have already been
24 set. Planning units are encouraged to set the flow levels as soon as
25 is practicable and may forward that portion of the water resource plan
26 to the commission for adoption by rule pursuant to chapter 34.05 RCW;

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

29 (i) Conservation measures;

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

32 (iii) Market transfers;

33 (iv) In-stream flows;

34 (h) Identify areas where withdrawal of ground water data has
35 sufficiently demonstrated hydraulic continuity for specific instream
36 flow reaches. Existing information on hydraulic continuity for a WRIA
37 shall be sufficient for these planning purposes until further study can
38 be funded. As information becomes available, the plan may be updated;

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

6 (3) Before final approval by the planning unit, the unit must
7 submit the plan to the appropriate commission for review on consistency
8 with state and federal law. The commission must respond within thirty
9 working days of submittal. The planning unit must consider the
10 recommendations of the commission. The plan must be approved by two-
11 thirds of the planning unit's or combined planning unit's members and
12 upon approval of the plan, the plan shall be submitted to the county
13 legislative authorities with jurisdiction in the unit.

14 (4) The counties in the WRIA shall each have two public hearings on
15 the plan and take action within sixty days of receipt of the plan.
16 Counties who choose not to participate pursuant to section 8(7) of this
17 act will hold public hearings as described in this section.

18 After all counties in the WRIA or combined WRIsAs have held their
19 public hearings, the planning unit will convene to consider the public
20 comments and potential revisions to the plan to address those comments.
21 The planning unit must readopt any revised plan by two-thirds majority
22 vote and then submit the plan to the counties in the WRIA who shall
23 adopt the plan within thirty days of receipt.

24 Upon approval by all the counties within the WRIA the plan shall be
25 submitted to the appropriate commission, which shall adopt the plan by
26 rule in accordance with chapter 34.05 RCW. Adopted plans shall be used
27 by the state engineer as the basis for all water resource decisions and
28 actions within the WRIA.

29 (5) Water resource management plans developed pursuant to the
30 process in this chapter are presumed valid upon adoption by the
31 counties in the WRIA. This presumption shall apply in any petition or
32 action filed against a plan.

33 (6) An action may be filed in superior court in the county in which
34 the WRIA plan has been adopted by a person challenging the validity of
35 the plan adoption process or a substantive portion of the plan only if
36 that person has participated in the adoption of the plan by attending
37 and testifying at one of the public hearings or providing written
38 testimony to a county within the public testimony period. Such action
39 must be filed within sixty days of adoption.

1 (7) WRIA water resource plans must be adopted by all the counties
2 in the WRIA by June 30, 1998.

3 (8) The state engineer, with the concurrence of the appropriate
4 commission, shall develop and file a plan for a WRIA that has not
5 completed its plan by June 30, 1998.

6 (9) The lead agency or agencies will convene a meeting of the
7 planning unit annually to review progress on implementation of the plan
8 and will prepare a report on the progress. The progress reports will
9 be submitted to the appropriate water resources commission. At this
10 annual meeting, the planning unit may accept new members to replace
11 members who are no longer available to serve.

12 NEW SECTION. **Sec. 10.** The WRIA planning units may accept grants,
13 funds, and other financing, as well as enter into cooperative
14 agreements with private and public entities for planning assistance and
15 funding, including but not limited to funding of the implementation
16 strategies.

17 NEW SECTION. **Sec. 11.** Notwithstanding any other provisions in
18 law, the state engineer shall rule in a timely manner upon applications
19 to appropriate public surface and ground water. For applications that
20 seek to appropriate water from within a WRIA for which a WRIA plan has
21 been adopted, the state engineer shall grant or deny the application
22 within one hundred eighty days of the priority date of the application.
23 For applications that seek to appropriate water from within a WRIA for
24 which no WRIA plan has been adopted, the state engineer shall grant or
25 deny the application within one year of the priority date of the
26 application. The times allowed in this section to rule upon an
27 application shall not include the time it takes the applicant to
28 respond to an explicit request for additional information reasonably
29 required to make a determination on the application. The state
30 engineer shall be allowed only one such request for additional
31 information. The cost of obtaining such information shall be
32 reasonable in relation to the quantity and value of the water right
33 applied for. Once the applicant responds to an information request,
34 the stay of the time allowed for the permit decision shall end.

35 NEW SECTION. **Sec. 12.** All pending water right applications on the
36 effective date of this act shall be acted upon by the department of

1 ecology employees currently engaged in water resource permit activities
2 including those currently assigned to basin planning until such time
3 that the commission and engineer are able to assume these duties.
4 During this transition, permit applications shall not be batched or
5 held for unknown data needs. A permit shall not be denied based on
6 lack of information on hydraulic continuity. Where hydraulic
7 continuity cannot be scientifically demonstrated by the department
8 within one year from the date of application, the permit shall be
9 issued based on current hydraulic continuity information. The burden
10 of proving hydraulic continuity shall be on the state. The new water
11 right holder shall remain junior to other water rights issued prior and
12 remains subject to future restrictions based on senior water right
13 holders. The water rights remain transferable to instream flows should
14 the water right holder choose to contribute. The future management of
15 the water resource shall become part of the planning unit's discussion
16 and policy action recommendation.

17 NEW SECTION. **Sec. 13.** A new section is added to chapter 43.99E
18 RCW to read as follows:

19 After January 1, 1998, no general or special purpose government may
20 receive funding under this chapter if it is not in compliance with
21 sections 1 through 12 of this act.

22 NEW SECTION. **Sec. 14.** A new section is added to chapter 43.155
23 RCW to read as follows:

24 After January 1, 1998, no general or special purpose government may
25 receive funding under this chapter if it is not in compliance with
26 sections 1 through 12 of this act.

27 NEW SECTION. **Sec. 15.** A new section is added to chapter 70.146
28 RCW to read as follows:

29 After January 1, 1998, no general or special purpose government may
30 receive funding under this chapter if it is not in compliance with
31 sections 1 through 12 of this act.

32 NEW SECTION. **Sec. 16.** A new section is added to Title 35 RCW to
33 read as follows:

34 Where there is evidence that there is potentially detrimental salt
35 water intrusion into water supplies, the city or town authority with

1 jurisdiction shall adopt an ordinance to incorporate policies adopted
2 by the commission to mitigate or remedy salt-water intrusions.

3 NEW SECTION. **Sec. 17.** A new section is added to Title 35A RCW to
4 read as follows:

5 Where there is evidence that there is potentially detrimental salt
6 water intrusion into water supplies, the city or town authority with
7 jurisdiction shall adopt an ordinance to incorporate policies adopted
8 by the commission to mitigate or remedy salt-water intrusions.

9 NEW SECTION. **Sec. 18.** A new section is added to Title 36 RCW to
10 read as follows:

11 Where there is evidence that there is potentially detrimental salt
12 water intrusion into water supplies, the county authority with
13 jurisdiction shall adopt an ordinance to incorporate policies adopted
14 by the commission to mitigate or remedy salt-water intrusions.

15 **PART II**
16 **TRANSFER OF POWER**

17 **Sec. 19.** RCW 43.27A.020 and 1987 c 109 s 31 are each amended to
18 read as follows:

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

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

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

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

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

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

33 **Sec. 20.** RCW 43.27A.090 and 1988 c 127 s 25 are each amended to
34 read as follows:

1 The ((department)) commissions shall be empowered as follows:

2 (1) To represent the state at, and fully participate in, the
3 activities of any basin or regional commission, interagency committee,
4 or any other joint interstate or federal-state agency, committee or
5 commission, or publicly financed entity engaged in the planning,
6 development, administration, management, conservation or preservation
7 of the water resources of the state.

8 (2) To prepare the views and recommendations of the state of
9 Washington on any project, plan, or program relating to the planning,
10 development, administration, management, conservation, and preservation
11 of any waters located in or affecting the state of Washington,
12 including any federal permit or license proposal, and appear on behalf
13 of, and present views and recommendations of the state at any
14 proceeding, negotiation or hearing conducted by the federal government,
15 interstate agency, state or other agency.

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

21 (4) To cooperate with appropriate agencies of the federal
22 government and/or agencies of other states, to enter into contracts,
23 and to make appropriate contributions to federal or interstate projects
24 and programs and governmental bodies to carry out the provisions of
25 this chapter.

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

31 ~~(6) ((To develop and maintain a coordinated and comprehensive state
32 water and water resources related development plan, and adopt, with
33 regard to such plan, such policies as are necessary to insure that the
34 waters of the state are used, conserved and preserved for the best
35 interest of the state. There shall be included in the state plan a
36 description of developmental objectives and a statement of the
37 recommended means of accomplishing these objectives. To the extent the
38 director deems desirable, the plan shall integrate into the state plan,~~

1 the plans, programs, reports, research and studies of other state
2 agencies.

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

7 ((8)) (7) To assemble and correlate state, local and federal
8 laws, regulations, plans, programs, and policies affecting the
9 beneficial use, ((disposal, pollution,)) control, or conservation of
10 water, river basin development, flood prevention, parks, reservations,
11 forests, wildlife refuges, drainage ((and sanitary)) systems, ((waste
12 disposal,)) water works, watershed protection and development, instream
13 flows, soil conservation, power facilities and area and municipal water
14 supply needs, and recommend suitable legislation or other action to the
15 legislature, the congress of the United States, or any city,
16 municipality, or to responsible state, local or federal executive
17 departments or agencies.

18 ((9)) (8) To cooperate with federal, state, regional, interstate
19 and local public and private agencies in the making of plans for
20 drainage, flood control, use, conservation, allocation and distribution
21 of existing water supplies and the development of new water resource
22 projects.

23 ((10)) (9) To encourage, assist and advise regional, and city and
24 municipal agencies, officials or bodies responsible for planning in
25 relation to water aspects of their programs, and ((coordinate)) to
26 collect information that facilitates the coordination of local water
27 resources activities, programs, and plans.

28 ((11)) (10) To ((promulgate)) adopt such rules ((and
29 regulations)) as are necessary to carry out the purposes of this
30 chapter.

31 ((12)) (11) To hold public hearings, and make such
32 investigations, studies and surveys as are necessary to carry out the
33 purposes of the chapter.

34 ((13)) (12) To subpoena witnesses, compel their attendance,
35 administer oaths, take the testimony of any person under oath and
36 require the production of any books or papers when the ((department))
37 commission deems such measures necessary in the exercise of its rule-
38 making power or in determining whether or not any license, certificate,
39 or permit shall be granted or extended.

1 **Sec. 21.** RCW 43.27A.130 and 1988 c 127 s 26 are each amended to
2 read as follows:

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

8 **Sec. 22.** RCW 43.27A.190 and 1987 c 109 s 11 are each amended to
9 read as follows:

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

- 14 (1) Chapter 90.03 RCW; or
- 15 (2) Chapter 90.44 RCW; or
- 16 (3) Chapter 86.16 RCW; or
- 17 (4) Chapter 43.37 RCW; or
- 18 (5) Chapter 43.27A RCW; or
- 19 (6) Any other law relating to water resources administered by the
20 (~~department~~) engineer; or
- 21 (7) A rule (~~or regulation~~) adopted, or a directive or order
22 issued by the (~~department~~) commissions or engineer relating to
23 subsections (1) through (6) of this section; the (~~department~~)
24 engineer may cause a written regulatory order to be served upon said
25 person either personally, or by registered or certified mail delivered
26 to addressee only with return receipt requested and acknowledged by him
27 or her. The order shall specify the provision of the statute, rule,
28 regulation, directive, or order alleged to be or about to be violated,
29 and the facts upon which the conclusion of violating or potential
30 violation is based, and shall order the act constituting the violation
31 or the potential violation to cease and desist or, in appropriate
32 cases, shall order necessary corrective action to be taken with regard
33 to such acts within a specific and reasonable time. The regulation of
34 a headgate or controlling works as provided in RCW 90.03.070, by a
35 watermaster, stream patrolman, or other person so authorized by the
36 (~~department~~) engineer shall constitute a regulatory order within the
37 meaning of this section. A regulatory order issued hereunder shall
38 become effective immediately upon receipt by the person to whom the

1 order is directed, except for regulations under RCW 90.03.070 which
2 shall become effective when a written notice is attached as provided
3 therein. Any person aggrieved by such order may appeal the order
4 ~~((pursuant to RCW 43.21B.310))~~ to superior court in the county in which
5 the affected water resource is located.

6 **Sec. 23.** RCW 43.21A.020 and 1970 ex.s. c 62 s 2 are each amended
7 to read as follows:

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

24 **Sec. 24.** RCW 43.21A.067 and 1987 c 109 s 27 are each amended to
25 read as follows:

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

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

1 Disbursements from the basic data fund shall be on vouchers
2 approved by the ((department)) engineer and the district engineer of
3 the United States geological survey.

4 **Sec. 25.** RCW 90.54.040 and 1988 c 47 s 5 are each amended to read
5 as follows:

6 (1) The ((department)) commissions, through the adoption of
7 appropriate rules, ((is)) are directed(~~(, as a matter of high priority~~
8 ~~to insure that the waters of the state are utilized for the best~~
9 ~~interests of the people,)) to develop and implement in accordance with
10 the policies of this chapter a ((comprehensive state)) water resources
11 program ((which will provide a process for making decisions)) that
12 implements policies on future water resource allocation and use. ((The
13 department may develop the program in segments so that immediate
14 attention may be given to waters of a given physioeconomic region of
15 the state or to specific critical problems of water allocation and use.~~

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

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

33 (3) The ((department is)) commissions are directed to review all
34 statutes relating to water resources which ((it is)) they are
35 responsible for implementing. When any of the same appear to the
36 ((department)) commissions to be ambiguous, burdensome, unclear,
37 unworkable, unnecessary, or otherwise deficient, ((it)) they shall make
38 recommendations to the legislature including appropriate proposals for

1 statutory modifications or additions. Whenever it appears that the
2 policies of any such statutes are in conflict with the policies of
3 chapter . . . , Laws of 1995 (this ((chapter)) act), and the
4 ((department is)) commissions are unable to fully perform as provided
5 in subsection (2) of this section, the department is directed to submit
6 statutory modifications to the legislature which, if enacted, would
7 allow the department to carry out such statutes in harmony with this
8 chapter.

9 NEW SECTION. Sec. 26. (1) All powers, duties, and functions of
10 the department of ecology pertaining to water resource quantity are
11 transferred to the western Washington and eastern Washington water
12 resources commissions or the state engineer, as appropriate. All
13 references to the director or the department of ecology in the Revised
14 Code of Washington shall be construed to mean the western Washington
15 and eastern Washington water resources commissions or the state
16 engineer when referring to the functions transferred in this section.

17 (2)(a) All reports, documents, surveys, books, records, files,
18 papers, or written material in the possession of the department of
19 ecology pertaining to the powers, functions, and duties transferred
20 shall be delivered to the custody of the western Washington and eastern
21 Washington water resources commissions or the state engineer. All
22 cabinets, furniture, office equipment, motor vehicles, and other
23 tangible property employed by the department of ecology in carrying out
24 the powers, functions, and duties transferred shall be made available
25 to the western Washington and eastern Washington water resources
26 commissions or the state engineer. All funds, credits, or other assets
27 held in connection with the powers, functions, and duties transferred
28 shall be assigned to the western Washington and eastern Washington
29 water resources commissions or the state engineer.

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

35 (c) Whenever any question arises as to the transfer of any
36 personnel, funds, books, documents, records, papers, files, equipment,
37 or other tangible property used or held in the exercise of the powers
38 and the performance of the duties and functions transferred, the

1 director of financial management shall make a determination as to the
2 proper allocation and certify the same to the state agencies concerned.

3 (3) All employees classified under chapter 41.06 RCW, the state
4 civil service law, of the department of ecology engaged in performing
5 the powers, functions, and duties transferred are transferred to the
6 jurisdiction of the western Washington and eastern Washington water
7 resources commissions or the state engineer. The employees are
8 assigned to the western Washington and eastern Washington water
9 resources commissions or the state engineer to perform their usual
10 duties upon the same terms as formerly, without any loss of rights,
11 subject to any action that may be appropriate thereafter in accordance
12 with the laws and rules governing state civil service.

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

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

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

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

34 NEW SECTION. **Sec. 27.** The powers and duties of the department of
35 ecology under the following statutes are transferred to the state
36 engineer: RCW 43.20.230, 43.21A.020, 43.21A.061, 43.21A.064,
37 43.21A.067, 43.21A.069, 43.21A.445, 43.21A.450, 43.21A.460, 43.21A.470,
38 43.27A.020, 43.27A.090, 43.27A.130, 43.27A.190, chapter 43.83B RCW, RCW

1 43.99E.025, chapter 85.08 RCW, Titles 86, 87, and 89 RCW, and chapters
2 90.03, 90.08, 90.14, 90.16, 90.22, 90.24, 90.38, 90.42, 90.44, and
3 90.54 RCW. More specifically, the following powers, duties, programs,
4 and services presently administered and enforced by the department of
5 ecology are transferred to the state engineer:

6 (a) Water regulation, management, and development;

7 (b) Permitting authority regarding appropriation, diversion, and
8 use of water;

9 (c) Inspection of dams, ditches, canals, irrigation systems,
10 hydraulic power plants, and all other systems, works, and plants;

11 (d) Data collection and other hydrographic information duties;

12 (e) Technical assistance powers and duties regarding water
13 resources;

14 (f) Responsibility regarding the safe water drinking act as it
15 relates to water quantity issues;

16 (g) Authority regarding the water resource aspects of international
17 issues, such as Lake Osoyoos;

18 (h) Participation with the federal government in development of the
19 Columbia basin project and the Yakima enhancement project;

20 (i) Flood control and management, flood control improvements and
21 maintenance funding authority, and cooperation with the federal
22 government regarding flood control matters;

23 (j) Duties and powers regarding irrigation districts, reclamation
24 districts, and conservation districts;

25 (k) Reclamation authority for agricultural lands;

26 (l) Powers and duties, both enforcement and administrative
27 authority over water resources, including:

28 (i) The water codes;

29 (ii) Stream patrolmen and watermasters;

30 (iii) Water rights, including but not limited to registration,
31 relinquishment, waiver, and transfer;

32 (iv) Appropriation of water for public and industrial purposes;

33 (v) Minimum flows and levels;

34 (vi) Regulation of outflow of lakes;

35 (vii) Yakima river basin water rights;

36 (viii) Water resource management; and

37 (ix) Regulation of public ground waters.

1 (2) The powers and duties of the department of ecology under the
2 following statutes are transferred to the two state water commissions,
3 to be administered jointly:

4 (a) RCW 43.21A.020 as it relates to state-wide policy;

5 (b) Chapter 43.27A RCW as it relates to state-wide water resource
6 policy;

7 (c) Chapter 89.16 RCW as it relates to state-wide flood management
8 policy.

9 **PART III**

10 **TRANSFER OF WATER RIGHTS**

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

13 It is the intent of the legislature that existing administrative,
14 legal, and economic barriers to the voluntary marketability and
15 transferability of water rights be removed. Water rights transfers
16 will be an important water management tool to meet existing and future
17 water resource demands and will result in more efficient use of water
18 resources, benefitting both the buyer and the seller. The legislature
19 recognizes that water rights, like other property rights, are
20 alienable, and that water rights should become freely marketable and
21 transferable to other locations and uses. Water rights held in trust
22 should also be marketable, subject to the provisions of RCW 90.03.380.
23 The legislature also finds that conservation of water is a resource in
24 itself, and that the transfer of conserved water to other locations and
25 uses serves as a water allocation mechanism. Used effectively, the
26 voluntary transfer of water rights could: (1) Allow the creation of
27 additional multi-use water storage facilities; (2) alleviate water
28 shortages; (3) save capital outlays; (4) reduce development costs; (5)
29 provide an incentive for investment in water conservation efforts by
30 water right holders; and (6) provide significant environmental
31 benefits.

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

34 "Water right transfer" or "transfer" means any voluntary
35 transaction for consideration, carried out in accordance with the
36 provisions of this chapter, in which there is a temporary or permanent

1 change in the place of diversion, place of use, source of supply, time
2 of use, period of use, place of storage, or the purpose of use of all
3 or part of the water to which any person is entitled by reason of
4 owning or holding a water right. The term water right transfer or
5 transfer includes, a sale, lease, or exchange of water rights, an
6 agreement not to exercise a water right, the sale of water conserved by
7 a present user, or any other transaction that permits water rights to
8 be transferred from one use to another for consideration. The term
9 water right transfer or transfer includes the transfer of rights or the
10 exchange or delivery of water between public water systems through an
11 "intertie."

12 Conserved water is that part of a ground or surface water right
13 that is made surplus to the beneficial uses exercised under the right,
14 through a change in the practices or activities under which the right
15 was perfected.

16 NEW SECTION. **Sec. 30.** A new section is added to chapter 90.54 RCW
17 to read as follows:

18 Conserved water may be transferred without limitation as provided
19 in section 29 of this act. A water right proposed for transfer, that
20 includes water other than conserved water, may not be permanently sold,
21 and is subject to transfer for a specific term.

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

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

33 (b) An existing right that is in the status of an undeveloped
34 permit that is not being supplied at the time appropriation or
35 subsequent beneficial use is not subject to injury or detriment by a
36 transfer of water rights.

1 (c) Conserved water is subject to transfer and other existing water
2 rights holders may not claim injury or detriment if the conserved water
3 was obtained by efficiency measures, the water from which the conserved
4 water was reclaimed was put to beneficial use, and the conserved water
5 was not available to other water rights holders as return flow.

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

21 (2)(a) If an application for change proposes to transfer water
22 rights from one irrigation district to another, the department
23 ((shall)) or its successor must, before publication of notice, receive
24 ((concurrence)) approval from each of the irrigation districts that
25 such transfer or change will not adversely affect the ability to
26 deliver water to other landowners or impair the financial integrity of
27 either of the districts.

28 (b) Irrigation districts may transfer conserved water within and
29 outside of the district if the conserved water meets the criteria in
30 subsection (1)(c) of this section.

31 (c) A change in place of use by an individual water user or users
32 of water provided by an irrigation district need only receive approval
33 for the change from the board of directors of the district if the use
34 of water continues within the irrigation district.

35 (d) The department or its successor may not require that irrigation
36 water rights transfers be conditioned on the transferor reducing his or
37 her irrigated acreage.

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

4 (4) The department or its successor may not initiate relinquishment
5 proceedings under chapter 90.14 RCW as a result of information gained
6 solely through a proposed water rights transfer under this section.

7 (5) The department or its successor may not initiate relinquishment
8 proceedings under chapter 90.14 RCW on the grounds that an irrigation
9 district holding a water right in trust for the benefit of land owners
10 within the district has not put all of the water authorized in the
11 permit to beneficial use.

12 (6) There shall be no relinquishment of all or any part of a water
13 right when any water right holder fails to use all of the water that
14 the holder is entitled to use under an appropriative water right
15 because of water conservation efforts financed by such holder. Any
16 reduction in the use of such appropriated water because of such
17 conservation efforts shall be deemed equivalent to a reasonable
18 beneficial use of water by the holder to the full extent of the
19 reduction in use resulting from the conservation effort. A water right
20 holder shall have the right to apply conserved water to any other
21 beneficial use of the holder, or to sell, convey, exchange, or transfer
22 any conserved water for beneficial use by another.

23 (7) The provisions of RCW 90.03.290 do not apply to transfers or
24 changes made under this section.

25 NEW SECTION. Sec. 32. A new section is added to chapter 90.14 RCW
26 to read as follows:

27 The department or its successor may not initiate relinquishment
28 proceedings under this chapter as a result of information gained solely
29 through a proposed water rights transfer under RCW 90.03.380.

30 **Sec. 33.** RCW 90.03.383 and 1991 c 350 s 1 are each amended to read
31 as follows:

32 (1) The legislature recognizes the value of interties for improving
33 the reliability of public water systems, enhancing their management,
34 and more efficiently utilizing the increasingly limited resource.
35 Given the continued growth in the most populous areas of the state, the
36 increased complexity of public water supply management, and the trend
37 toward regional planning and regional solutions to resource issues,

1 interconnections of public water systems through interties provide a
2 valuable tool to ensure reliable public water supplies for the citizens
3 of the state. Public water systems have been encouraged in the past to
4 utilize interties to achieve public health and resource management
5 objectives. The legislature finds that it is in the public interest to
6 recognize interties existing and in use as of January 1, 1991, and to
7 have associated water rights modified by the department of ecology or
8 its successor to reflect current use of water through those interties,
9 pursuant to subsection (3) of this section. The legislature further
10 finds it in the public interest to develop a coordinated process to
11 review proposals for interties commencing use after January 1, 1991.

12 (2) For the purposes of this section, the following definitions
13 shall apply:

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

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

34 (3) Public water systems with interties existing and in use as of
35 January 1, 1991, or that have received written approval from the
36 department of health prior to that date, shall file written notice of
37 those interties with the department of health and the department of
38 ecology or its successor. The notice may be incorporated into the
39 public water system's five-year update of its water system plan, but

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

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

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

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

20 (7) If the intertie is determined by the department of health to be
21 necessary to address emergent public health or safety concerns
22 associated with public water supply, the public water system shall
23 amend its water system plan as required and shall file an application
24 with the department of ecology or its successor to change its existing
25 water right to reflect the proposed use of the water as described in
26 the approved water system plan. The department of ecology or its
27 successor shall process the application for change pursuant to RCW
28 90.03.380 or 90.44.100 as appropriate, except that, notwithstanding the
29 requirements of those sections regarding notice and protest periods,
30 applicants shall be required to publish notice one time, and the
31 comment period shall be fifteen days from the date of publication of
32 the notice. Within sixty days of receiving the application, the
33 department of ecology or its successor shall issue findings and advise
34 the department of health if existing water rights are determined to be
35 adversely affected. If no determination is provided by the department
36 of ecology or its successor within the sixty-day period, the department
37 of health shall proceed as if existing rights are not adversely
38 affected by the proposed intertie. The department of ecology or its
39 successor may obtain an extension of the sixty-day period by submitting

1 written notice to the department of health and to the applicant
2 indicating a definite date by which its determination will be made. No
3 additional extensions shall be granted, and in no event shall the total
4 review period for the department of ecology or its successor exceed one
5 hundred eighty days.

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

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

34 **Sec. 34.** RCW 90.03.390 and 1991 c 350 s 3 are each amended to read
35 as follows:

36 RCW 90.03.380 shall not be construed to prevent water users from
37 making a seasonal or temporary change of point of diversion or place of
38 use of water when such change can be made without detriment or injury

1 to existing rights(~~(, but in no case shall such change be made without~~
2 ~~the permission of the water master of the district in which such~~
3 ~~proposed change is located, or of the department))~~). Nor shall RCW
4 90.03.380 be construed to prevent construction of emergency interties
5 between public water systems to permit exchange of water during short-
6 term emergency situations, or rotation in the use of water for bringing
7 about a more economical use of the available supply, provided however,
8 that the department of health in consultation with the department of
9 ecology or its successor shall adopt rules or develop written
10 guidelines setting forth standards for determining when a short-term
11 emergency exists and the circumstances in which emergency interties are
12 permitted. The rules or guidelines shall be consistent with the
13 procedures established in RCW 43.83B.400 through 43.83B.420.

14 The request for seasonal or temporary change must be made to the
15 department or its successor in a manner that the department or its
16 successor prescribes and approval must be granted prior to the change
17 being made. The request need not comply with the full information and
18 newspaper publication requirements of RCW 90.03.380 and no certificate
19 of change is to issue.

20 A request that proposes to change use of water from one irrigation
21 district to another must receive concurrence from each of the
22 irrigation districts that such change will not adversely affect the
23 ability to deliver water to other landowners or impair the financial
24 integrity of the districts, before department or its successor action
25 is taken.

26 A change in place of use by an individual water user or users of
27 water provided by an irrigation district need only receive approval for
28 the change from the board of directors of the district if the use of
29 water continues within the irrigation district.

30 Water users owning lands to which water rights are attached may
31 rotate in the use of water to which they are collectively entitled, or
32 an individual water user having lands to which are attached water
33 rights of a different priority, may in like manner rotate in use when
34 such rotation can be made without detriment to other existing water
35 rights, and has the approval of the (~~water master or~~) department or
36 its successor.

37 **PART IV**
38 **APPEALS**

1 NEW SECTION. **Sec. 35.** (1) The following decisions of the water
2 resources commissions and the state engineer may be appealed by the
3 person to whom it is directed, or by any other aggrieved person with
4 standing:

5 (a) Any decision granting, denying, cancelling, modifying, or
6 denying a request to modify otherwise allowed by statute, or any permit
7 or license within the jurisdiction of the water resource commissions or
8 the state engineer;

9 (b) A decision to approve, or to deny approval of, the transfer of
10 any water right;

11 (c) The issuance of a civil penalty pursuant to RCW 90.03.600;

12 (d) The denial of a request to extend the date for completion of
13 construction or the date for application of water to a beneficial use
14 in a water right permit;

15 (e) The issuance or modification of a regulatory order;

16 (f) An order that a water right, or a portion thereof, has or may
17 have reverted to the state due to nonuse.

18 (2) A decision may be appealed by the person to whom it is directed
19 within thirty days of receipt. A decision may be appealed by any other
20 person aggrieved with standing within thirty days of the date of
21 issuance of that decision, regardless of when the decision is received.

22 (3) Notwithstanding any provision of chapter 34.05 RCW to the
23 contrary, the person to whom a decision is directed may, at that
24 person's option, appeal the decision by either applying for an
25 adjudicative proceeding pursuant to RCW 34.05.413 or by filing an
26 appeal directly to superior court.

27 (4) Notwithstanding any provision of chapter 34.05 RCW to the
28 contrary, any other person aggrieved with standing may appeal a
29 decision only by filing an action in superior court. Within thirty
30 days of the date any such action is filed, the person to whom the
31 decision is directed may, at that person's option apply for an
32 adjudicative proceeding pursuant to RCW 34.05.413, in which case the
33 superior court action shall be stayed pending the outcome of the
34 adjudicative proceeding.

35 (5) Adjudicative proceedings initiated by the process in this
36 section shall, notwithstanding any other provision of chapter 34.05 RCW
37 to the contrary, be conducted by one or more administrative law judges
38 assigned by the office of administrative hearings in accordance with
39 chapter 34.12 RCW, who will act as presiding officer. The initial

1 order of the presiding officer shall become final, and subject to
2 judicial review, without further agency action or review. Such orders
3 may be appealed as provided in chapter 34.05 RCW.

4 (6) If an appeal is brought directly to superior court as provided
5 in this section, the matter shall be tried de novo as a civil action.
6 Venue for appeals brought directly in superior court shall lie in the
7 county where the property affected by the decision is located.

8 (7) Any other person aggrieved with standing shall be entitled to
9 maintain an appeal pursuant to this section only if that person has
10 standing to bring the appeal.

11 (8) Appeals may not be brought under this section of:

12 (a) The decisions of any city, county, special purpose government,
13 planning unit, or planning team;

14 (b) Any decision that is adopted as a rule pursuant to chapter
15 34.05 RCW; or

16 (c) Any decision arising from a water rights adjudication initiated
17 pursuant to chapter 90.03 RCW.

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

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

26 (a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431,
27 70.105.080, 70.107.050, 88.46.090, (~~(90.03.600)~~) 90.48.144, 90.56.310,
28 and 90.56.330.

29 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
30 (~~(43.27A.190)~~) 70.94.211, 70.94.332, 70.105.095, (~~(86.16.020)~~)
31 88.46.070, (~~(90.14.130)~~) and 90.48.120.

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

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

3 (e) Decisions of local health departments regarding the issuance
4 and enforcement of permits to use or dispose of biosolids under RCW
5 70.95J.080.

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

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

12 (a) The hearings board has no jurisdiction to review state engineer
13 decisions on water permits or water rights or general adjudications of
14 water rights under chapter 90.03 or 90.44 RCW.

15 (b) The following hearings shall not be conducted by the hearings
16 board:

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

19 (~~(b)~~) (ii) Hearings conducted by the department or its successor
20 pursuant to RCW 70.94.332, 70.94.390, 70.94.395, 70.94.400, 70.94.405,
21 70.94.410, and 90.44.180.

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

24 (d)) (iii) Hearings conducted by the department or its successor
25 to adopt, modify, or repeal rules.

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

29 **Sec. 37.** RCW 43.21B.300 and 1993 c 387 s 23 are each amended to
30 read as follows:

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

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

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

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

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

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

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

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

38 (5) All penalties recovered shall be paid into the state treasury
39 and credited to the general fund except those penalties imposed

1 pursuant to RCW 18.104.155, which shall be credited to the reclamation
2 account as provided in RCW 18.104.155(7), RCW 70.94.431, the
3 disposition of which shall be governed by that provision, RCW
4 70.105.080, which shall be credited to the hazardous waste control and
5 elimination account, created by RCW 70.105.180, and RCW 90.56.330,
6 which shall be credited to the coastal protection fund created by RCW
7 90.48.390.

8 **Sec. 38.** RCW 90.03.600 and 1987 c 109 s 157 are each amended to
9 read as follows:

10 The power is granted to the department of ecology or its successor
11 to levy civil penalties of up to one hundred dollars per day for
12 violation of any of the provisions of this chapter and chapters 43.83B,
13 90.22, and 90.44 RCW, and rules, permits, and similar documents and
14 regulatory orders of the department of ecology or its successor adopted
15 or issued pursuant to such chapters. (~~The procedures of RCW 90.48.144~~
16 ~~shall be applicable to all phases of the levying of a penalty as well~~
17 ~~as review and appeal of the same.))~~

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

20 (1) Except as provided in subsection (2) of this section, any order
21 issued by the department or its successor, the administrator of the
22 office of marine safety, or authority pursuant to RCW 70.94.211,
23 70.94.332, 70.105.095, 43.27A.190, 86.16.020, 88.46.070, or
24 90.48.120(2) or any provision enacted after July 26, 1987, or any
25 permit, certificate, or license issued by the department or its
26 successor may be appealed to the pollution control hearings board if
27 the appeal is filed with the board and served on the department or its
28 successor or authority within thirty days after receipt of the order.
29 Except as provided under chapter 70.105D RCW, this is the exclusive
30 means of appeal of such an order.

31 (~~(2)~~) (a) The department or its successor, the administrator, or
32 the authority in its discretion may stay the effectiveness of an order
33 during the pendency of such an appeal.

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

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

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

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

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

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

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

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

13 ~~((5))~~ (d) Upon failure to comply with any final order of the
14 department or its successor or the administrator, the attorney general,
15 on request of the department or its successor or the administrator, may
16 bring an action in the superior court of the county where the violation
17 occurred or the potential violation is about to occur to obtain such
18 relief as necessary, including injunctive relief, to insure compliance
19 with the order. The air authorities may bring similar actions to
20 enforce their orders.

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

26 (2) State engineer decisions concerning water permits or water
27 rights shall be appealed to superior court.

28 NEW SECTION. Sec. 40. Sections 1 through 12 and 35 of this act
29 shall constitute a new chapter in Title 43 RCW.

30 NEW SECTION. Sec. 41. RCW 90.14.043 is decodified.

31 NEW SECTION. Sec. 42. RCW 43.21A.067 as amended by this act shall
32 be recodified as a section in the new chapter created in section 40 of
33 this act.

34 NEW SECTION. Sec. 43. The following acts or parts of acts are
35 each repealed:

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

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