

2 **2SHB 2054** - S AMD (S-3322.1/97) - 520
3 By Senator Morton

4 ADOPTED AS AMENDED 4/25/97

5 Strike everything after the enacting clause and insert the
6 following:

7 "PART I
8 BASIN PLANS

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

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

20 NEW SECTION. **Sec. 102.** The legislature finds that the local
21 development of watershed plans for managing water resources and for
22 protecting existing water rights is vital to both state and local
23 interests. The local development of these plans serves vital local
24 interests by placing it in the hands of people: Who have the greatest
25 knowledge of both the resources and the aspirations of those who live
26 and work in the watershed; and who have the greatest stake in the
27 proper, long-term management of the resources. The development of such
28 plans serves the state's vital interests by ensuring that the state's
29 water resources are used wisely, by protecting existing water rights,
30 by protecting instream flows for fish, and by providing for the
31 economic well-being of the state's citizenry and communities.
32 Therefore, the legislature believes it necessary for units of local
33 government throughout the state to engage in the orderly development of
34 these watershed plans.

1 NEW SECTION. **Sec. 103.** Unless the context clearly requires
2 otherwise, the definitions in this section apply throughout this
3 chapter.

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

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

9 (3) "Minimum instream flow" means a minimum flow under chapter
10 90.03 or 90.22 RCW or a base flow under chapter 90.54 RCW.

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

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

18 (6) "WRIA plan" or "plan" means the product of the planning unit
19 including any rules adopted in conjunction with the product of the
20 planning unit.

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

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

30 (2) If a planning unit requests technical assistance from a state
31 agency as part of its planning activities under this chapter and the
32 assistance is with regard to a subject matter over which the agency has
33 jurisdiction, the state agency shall provide the technical assistance
34 to the planning unit.

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

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

7 (2) Each planning unit that has complied with subsection (1) of
8 this section is eligible to receive fifty thousand dollars for each
9 WRIA to initiate the planning process. The department shall allocate
10 additional funds to WRIA planning units based on need demonstrated by
11 a detailed proposed budget submitted by the planning unit for carrying
12 out the duties of the planning unit. Each WRIA planning unit may
13 receive up to two hundred fifty thousand dollars for each WRIA during
14 the first two-year period of planning, with a maximum allocation of
15 five hundred thousand dollars for each WRIA. Funding provided under
16 this section shall be considered a contractual obligation against the
17 moneys appropriated for this purpose.

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

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

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

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

30 NEW SECTION. **Sec. 107.** (1)(a) Except as provided in section 108 of
31 this act for multi-WRIA planning, the county with the largest area
32 within the boundaries of a WRIA, the city obtaining the largest amount
33 of water from the WRIA, and the largest water supply utility in the
34 WRIA may jointly and unanimously choose to initiate water resource
35 planning for the WRIA under this chapter. If the initiating group so
36 chooses, it shall make application to the department of ecology to
37 declare its intent to conduct watershed planning. Upon making

1 application to the department, the initiating group shall notify the
2 counties, cities, water supply utilities, tribal governments, and
3 conservation districts with territory within the WRIA that these groups
4 are to meet to appoint their members of the WRIA planning unit. The
5 initiating group may consult with the department regarding the
6 initiation of watershed planning. For the purposes of this section and
7 sections 108 and 112 of this act, a county is considered to have
8 territory within a WRIA only if the territory of the county located in
9 the WRIA constitutes at least fifteen percent of the area of the WRIA.
10 For conducting planning under this chapter, the county with the largest
11 area within the boundaries of the WRIA is the lead agency for the WRIA
12 planning, except as provided in (b) and (c) of this subsection and
13 section 108 of this act for multi-WRIA planning.

14 (b) When the counties of a WRIA have convened jointly to make
15 appointments to the planning unit, they may, by a majority vote, choose
16 as the lead agency for WRIA planning any governmental entity in the
17 WRIA. Such a governmental entity shall act as the lead agency for this
18 purpose if it agrees in writing to accept the designation.

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

25 (2) In a WRIA where water resource planning efforts have commenced
26 before the effective date of this section, such as but not limited to
27 the Kettle river WRIA, the county legislative authorities with
28 territory within the WRIA in accordance with subsection (1) of this
29 section may, by majority vote, choose to adopt the existing planning
30 unit membership for purposes of planning under chapter . . . , Laws of
31 1997 (this act).

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

38 (3)(a) One WRIA planning unit shall be appointed for the WRIA as
39 provided by this section or for a multi-WRIA area as provided by

1 section 108 of this act for multi-WRIA planning. The planning unit
2 shall be composed of:

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

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

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

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

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

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

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

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

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

34 (b) In addition, for a WRIA located within Pierce, King, Snohomish,
35 or Spokane county, one representative of the water purveyor using the
36 largest amount of water from the WRIA shall be a voting member of the
37 planning unit whether the principal offices of the purveyor are or are
38 not located within the WRIA.

1 (4) Except for a person appointed under subsection (3)(a)(ix) or
2 (b) of this section, each person appointed to a WRIA planning unit
3 shall have been a resident and a property owner of the WRIA for at
4 least three years. No state employees or state officials other than
5 members appointed under subsection (3)(a)(ix) of this section may be
6 appointed to the planning unit. In appointing persons to the WRIA
7 planning unit representing special interest groups, the counties and
8 cities shall consider industrial water users, general businesses,
9 hydroelectric and thermal power producers, and irrigated agriculture,
10 nonirrigated agriculture, forestry, recreation, environmental, and
11 fisheries interest groups and other groups with interests in the WRIA.

12 (5)(a) In voting to appoint the members of a WRIA planning unit, to
13 select a lead agency for water resource planning under section 107 or
14 108 of this act, to approve a WRIA plan under section 112 of this act,
15 or to request or concur with a request for multi-WRIA planning under
16 section 108 of this act, each county with territory within the WRIA
17 shall have three votes, divided equally among the members of the
18 county's legislative authority and these actions shall be made by
19 majority vote based on the votes allocated under this section. In
20 voting to appoint members of a WRIA planning unit: Each city with
21 territory within the WRIA shall have one vote and appointments shall be
22 made by majority vote of such cities; each water supply utility other
23 than those of a city or town with territory within the WRIA shall have
24 one vote and appointments shall be made by majority vote of such
25 districts; and each conservation district with territory within the
26 WRIA shall have one vote and appointments shall be made by majority
27 vote of such districts. All appointments shall be made within sixty
28 days of the date the appointing authorities other than the counties are
29 notified to convene to make appointments or the appointments shall be
30 made by the counties with territory in the WRIA in the same manner the
31 counties make other appointments.

32 (b) The members appointed to the WRIA planning unit under
33 subsection (3)(a)(i), (ii), and (iii) of this section may, within
34 thirty days, by unanimous vote, increase the number of members of the
35 planning unit appointed under subsection (3)(a)(v), (vi), and (vii) of
36 this section by up to five members. Appointment of additional members
37 to the planning unit shall be made within thirty days from the date of
38 application to the department under subsection (1)(a) of this section.

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

9 NEW SECTION. Sec. 108. (1) The counties with territory in a WRIA,
10 the city obtaining the largest quantity of water from the WRIA, and the
11 largest water supply utility in the WRIA may jointly and unanimously
12 elect to initiate multi-WRIA planning. If this initiating group so
13 chooses, the initiating group shall notify the counties, cities, water
14 supply utilities, tribal governments, and conservation districts with
15 territory within the multi-WRIA area that these groups are to meet to
16 appoint their members of the multi-WRIA area planning unit.

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

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

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

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

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

28 (v) Three members representing various special interest groups
29 appointed jointly by the cities with territory within the multi-WRIA
30 area; and six members representing various special interest groups
31 appointed jointly by the counties with territory within the multi-WRIA
32 area;

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

35 (vii) Three members representing the general citizenry appointed
36 jointly by the counties with territory in the multi-WRIA area, of which
37 at least one shall be a holder of a water right certificate and at
38 least one shall be a holder of a water right for which a statement of

1 claim was in the state's water rights claims registry before January 1,
2 1997;

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

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

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

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

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

1 Nothing in this act shall affect ongoing efforts to develop new
2 resources and the sharing of existing resources. No moratorium may be
3 imposed on water resource decision making by the department solely
4 because of ongoing planning efforts or the absence of a plan or
5 planning effort. Any new planning units formed under this act shall
6 recognize efforts already in progress.

7 (3)(a) The counties in the multi-WRIA area shall select, by a
8 majority vote, a governmental entity in the multi-WRIA area to act as
9 lead agency for water resource planning in the multi-WRIA area under
10 this chapter. Such an entity shall serve as the lead agency if it
11 agrees in writing to do so. All appointments shall be made within
12 sixty days of the date the lead agency in the multi-WRIA area notifies
13 the other appointing authorities to convene to make appointments or the
14 appointments shall be made by the counties with territory in the multi-
15 WRIA area in the same manner the counties make other appointments.

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

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

31 (4) A planning unit for a multi-WRIA area shall perform all of the
32 functions assigned by this chapter to a WRIA planning unit and is
33 subject to all of the provisions of this chapter that apply to a WRIA
34 planning unit.

35 NEW SECTION. **Sec. 109.** The lead agency shall provide staff
36 support from resources provided for planning under chapter . . . , Laws
37 of 1997 (this act) and from other sources, including but not limited to
38 sources provided under section 113 of this act, for the work of the

1 WRIA planning unit. Each WRIA planning unit may establish its own
2 methods of operation that are consistent with this chapter and may
3 establish methods for reviewing the operations of its lead agency. No
4 planning unit appointed or selected under this chapter may possess or
5 exercise the power of eminent domain. No planning unit appointed or
6 selected under this chapter may take any action that affects in any
7 manner a general adjudication proceeding for water rights, completed or
8 ongoing. Each WRIA planning unit is encouraged to: Consider
9 information and plans that may have been previously developed by other
10 entities in establishing water resource management plans for the WRIA;
11 consider existing data regarding water resources in the WRIA; and, for
12 a WRIA that borders another state, cooperate with local government
13 counterparts in the adjacent state regarding water resource planning.
14 Water resource plans developed under this chapter for a WRIA may not
15 interfere in any manner with a general adjudication of water rights,
16 completed or ongoing. Such a WRIA plan may not in any manner impair or
17 diminish with a water right that exists before the adoption of the plan
18 by the department under section 112 of this act.

19 All meetings of a WRIA planning unit shall be conducted as public
20 meetings as required for such meetings by the open public meetings act,
21 chapter 42.30 RCW. Some time shall be set aside at the end of each
22 meeting of a WRIA planning unit for public comments. Each planning
23 unit shall establish procedures to be followed by the unit in making
24 decisions. The objective to be sought by the planning unit in making
25 decisions is to reach agreement among its members on the decisions.
26 Decisions by a two-thirds majority vote may be used if the unit has
27 found that attempts at achieving full agreement have not been
28 successful.

29 No person who is a member of a WRIA planning unit may designate
30 another to act on behalf of the person as a member or to attend as a
31 member a meeting of the unit on behalf of the person. If a member of
32 a WRIA planning unit is absent from more than five meetings of the WRIA
33 planning unit that constitute twenty percent or more of the meetings
34 that have been conducted by the planning unit while the person is a
35 member of the unit and these absences have not been excused as provided
36 by this section, the member's position on the WRIA planning unit is to
37 be considered vacant. A person's absence from a meeting may be
38 excused: By the chair of the planning unit if a written request to do
39 so is received by the chair before the meeting from which the member is

1 to be absent; or by a majority vote of the members of the planning unit
2 at the meeting during which the member is absent.

3 NEW SECTION. **Sec. 110.** (1) Each WRIA planning unit shall develop
4 a water resource plan. The plan must address the elements listed in
5 subsection (2) of this section and may include other elements added by
6 the planning unit. Once organized, the first task of the planning unit
7 is to prioritize these elements regarding their importance in the WRIA
8 and in developing a water resource plan for the WRIA. A plan shall not
9 be developed such that its provisions (a) are in conflict with state
10 statute or federal law; (b) impair or diminish in any manner a water
11 right existing before its adoption; (c) are inconsistent with the
12 construction, operation, or maintenance of a federal reclamation
13 project; or (d) are inconsistent with an instream flow or condition
14 established for hydroelectric power project licensed under the federal
15 power act. No aspect of the plan may establish standards for water
16 quality or regulate water quality in any manner whatsoever.

17 (2) The plan must include the following:

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

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

22 (ii) A quantitative estimation using existing sources of
23 information, of the amount of precipitation and surface and ground
24 water available, using available technologies, collectively for both
25 current and future water uses, including for instream purposes and for
26 withdrawal or diversion;

27 (iii) A quantitative estimation using existing sources of
28 information, of the amount of surface and ground water actually being
29 used, and the months of peak and minimum use, both in-stream and by
30 withdrawal, for agricultural, industrial, fisheries, recreational,
31 environmental, municipal, and residential purposes, and including
32 amounts claimed, permitted, or certificated for future municipal needs;
33 and

34 (iv) A quantitative estimation of the amount of water,
35 approximately, that is represented by amounts in claims in the water
36 rights claims registry, in water use permits, in certificated rights,
37 and in rules establishing instream flows;

1 (b) A quantitative description of future water-based instream and
2 out-of-stream needs in the planning unit, based on projected population
3 and agricultural and other economic growth. That is, an identification
4 of the water needed collectively for use for agricultural, fisheries,
5 recreational, environmental, industrial, municipal, and residential
6 purposes. If a federal reclamation project is providing water for
7 reclamation purposes within the WRIA or multi-WRIA area, federal
8 reclamation water use requirements shall be those for project lands
9 within the WRIA or multi-WRIA area;

10 (c) Instream flows.

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

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

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

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

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

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

37 (vii) If the planning unit is unable to approve such adjustments
38 unanimously, such flows or levels may be submitted as a recommended
39 adjustment to established minimum instream flows or lake levels in the

1 WRIA plan for consideration by the department. Such recommendations
2 must be approved by a two-thirds majority vote of the voting members of
3 the planning unit.

4 (viii) A minimum instream flow or lake level set for a body of
5 water in a WRIA plan adopted by the department under section 112 of
6 this act supersedes any minimum flow or level or base flow or any other
7 such flow or level previously established for the body of water by the
8 department;

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

14 (e) An identification of known areas that provide for the recharge
15 of aquifers from the surface and areas where aquifers recharge surface
16 bodies of water;

17 (f) Strategies for increasing water supplies in the WRIA,
18 including:

19 (i) Water conservation and reuse measures; and

20 (ii) Storage enhancements, including modifications to existing
21 reservoirs, new reservoirs, and underground storage. Any quantity of
22 water made available under these strategies is a quantity that is in
23 addition to the water declared available for appropriation under (d) of
24 this subsection; and

25 (g) An identification of areas where voluntary water-related
26 habitat improvement projects or voluntary transactions providing for
27 the purchase of water-related habitat or water-related habitat
28 easements would provide the greatest benefit to habitat in the WRIA,
29 and a prioritization of the areas based on their potential for
30 providing such benefits. The purpose of this element of the plan is to
31 provide a means of coordinating nonregulatory, voluntary efforts for
32 improving water-related habitat in the WRIA.

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

37 (4) A plan shall not be developed under this chapter to require
38 directly or indirectly the implementation of laws, rules, or programs
39 that are designed primarily to control water pollution or discharges of

1 pollutants to water, to regulate effluent discharges or wastewater
2 treatment systems or facilities, or to establish or require the
3 achievement of water quality standards, including but not limited to
4 chapter 90.48 RCW and rules adopted under chapter 90.48 RCW, the
5 national pollutant discharge elimination system permit program, and the
6 state waste discharge permit program.

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

12 (2) Any action taken by a state agency regarding water resources
13 within a WRIA for which a plan has been adopted under section 112 of
14 this act and any planning conducted by a state agency regarding water
15 resources within a WRIA for which a plan has been adopted under section
16 112 of this act shall be taken or conducted in a manner that is
17 consistent with the plan. All actions and decisions of the department
18 regarding water resources in the WRIA shall be consistent with and
19 based upon such an adopted plan for the WRIA. Any other authority of
20 the department exercised within the WRIA regarding water resources
21 shall be exercised in a manner that is consistent with such an adopted
22 plan.

23 NEW SECTION. **Sec. 112.** (1) Upon completing a proposed water
24 resource plan for the WRIA, the WRIA planning unit shall publish notice
25 of and conduct at least one public hearing in the WRIA on the proposed
26 plan. The planning unit shall take care to provide notice of the
27 hearing throughout the WRIA or multi-WRIA area. As a minimum, it shall
28 publish a notice of the hearing in one or more newspapers of general
29 circulation in the WRIA or multi-WRIA area. After considering the
30 public comments presented at the hearing or hearings, the planning unit
31 shall submit a copy of its proposed plan to the department and to the
32 tribal council of each reservation with territory within the WRIA.

33 (2)(a) The department shall provide advice as to any specific
34 subsections or sections of the plan that the department believes to be
35 in conflict with state statute or federal law and may provide other
36 recommendations regarding the plan. The department shall transmit its

1 advice and recommendations regarding the plan to the WRIA planning unit
2 within sixty days of receiving it for review.

3 (b) The tribal council may review and provide comments and
4 recommendations to the planning unit within sixty days of the receipt
5 of the plan.

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

11 The WRIA planning unit shall approve a water resource plan for the
12 WRIA by a two-thirds majority vote of the members of the planning unit.
13 An approved plan shall be submitted to the counties with territory
14 within the WRIA for adoption. If a WRIA planning unit receives funding
15 for WRIA or multi-WRIA planning under section 105 of this act and does
16 not approve a plan for submission to the counties within four years of
17 the date the planning unit receives the first of that funding from the
18 department for the planning, the department shall develop and adopt a
19 water resource plan for the WRIA or multi-WRIA area.

20 (4) The legislative authority of each of the counties with
21 territory within the WRIA shall provide public notice for and conduct
22 at least one public hearing on the WRIA plan submitted to the county
23 under this section. The counties shall take care to provide notice of
24 the hearings throughout the WRIA or multi-WRIA area. As a minimum,
25 they shall publish a notice of the hearings in one or more newspapers
26 of general circulation in the WRIA or multi-WRIA area. After the
27 public hearings, the legislative authorities of these counties shall
28 convene in joint session to consider the plan. The counties may
29 approve or reject the plan, but may not amend the plan. Approval of a
30 plan, or of recommendations for a plan that is not approved, shall be
31 made by a majority vote of the members of the various legislative
32 authorities of the counties with territory in the WRIA based on the
33 votes allocated under section 107 of this act.

34 If the plan is not approved, it shall be returned to the WRIA
35 planning unit with recommendations for revisions. Any revised plan and
36 implementing rules prepared by the planning unit shall be submitted to
37 the department and to the counties as provided by this section for WRIA
38 water resource plans generally.

1 (5) If the plan and implementing rules are approved by the members
2 of the legislative authorities, the plan shall be transmitted to the
3 department for adoption. The department shall adopt such an approved
4 WRIA water resource plan through the adopting of implementing rules.
5 The department has no discretion to amend or reject the plan or
6 implementing rules except those recommendations provided in section
7 110(2)(c) (iii) or (vii) of this act. A copy of the implementing rules
8 and notice of its adoption as rules shall be published in the state
9 register under chapter 34.05 RCW. The public hearing required by
10 chapter 34.05 RCW shall be deemed to have been satisfied by public
11 hearings held by county legislative authorities.

12 (6) If the department finds that an element of a WRIA plan is in
13 conflict with state statute or federal law and the planning unit does
14 not remove the conflict created by the element from its plan, the
15 department and the planning unit shall submit the conflict to
16 mediation. If mediation does not resolve the conflict within sixty
17 days, the department shall file a petition for declaratory judgment in
18 the superior court to determine whether the element is or is not in
19 conflict with state statute or federal law. The petition shall be
20 filed in the superior court in the county with the largest area in the
21 WRIA or multi-WRIA area governed by the plan. The counties that
22 approved the plan shall be named as parties to the proceeding. The
23 superior court shall review the potential conflict under the error of
24 law standard. If the superior court finds that an element of the plan
25 is in conflict with state statute or federal law, that element of the
26 plan shall be invalid. Decisions on such petitions are reviewable as
27 in other civil cases. This subsection shall not be construed as
28 establishing such state liability for any other element of the plan
29 adopted as rules.

30 NEW SECTION. **Sec. 113.** The WRIA planning units may accept grants,
31 funds, and other financing, as well as enter into cooperative
32 agreements with private and public entities for planning assistance and
33 funding.

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

36 (1) The department shall rule in a timely manner upon complete
37 applications to appropriate public surface and ground water. For

1 complete applications that seek to appropriate water from within a WRIA
2 for which a WRIA plan has been adopted, the department shall grant or
3 deny the application within one hundred eighty days of the date the
4 properly completed application is filed with the department, except as
5 provided in subsection (2) of this section. For applications filed
6 after July 1, 1999, that seek to appropriate water from within a WRIA
7 for which no WRIA plan has been adopted, the department shall grant or
8 deny the application within one year of the date the properly completed
9 application is filed with the department, except as provided in
10 subsection (2) of this section. The times allowed in this section to
11 rule upon an application shall not include the time it takes the
12 applicant to respond to an explicit request for additional information
13 reasonably required to make a determination on the application. The
14 department shall be allowed only one such request for additional
15 information. The cost of obtaining such information shall be
16 reasonable in relation to the quantity and value of the water right
17 applied for. Once the applicant responds to an information request,
18 the stay of the time allowed for the permit decision shall end.

19 (2) If a detailed statement, generally referred to as an
20 environmental impact statement, must be prepared under chapter 43.21C
21 RCW for or in regard to an application to appropriate water, the
22 department shall grant or deny the application within ninety days of
23 the date the final environmental impact statement is available from the
24 official responsible for it under chapter 43.21C RCW.

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

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

30 (1) Once a plan has been adopted by the counties in the WRIA under
31 section 112 of this act and the plan has been submitted to the
32 department of ecology, the department shall file implementing rules for
33 the plan with the code reviser along with an order adopting the
34 implementing rules. The code reviser shall cause the order and the
35 implementing rules to be published in the Washington state register in
36 the manner provided for the adoption of final rules and shall
37 incorporate the implementing rules into the Washington Administrative
38 Code. No other aspect of this chapter that establishes procedures for

1 the adoption of rules applies to the adoption of the plan by the
2 department.

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

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

7 (1) Consistent with chapter . . . , Laws of 1997 (this act) the
8 department, through the adoption of appropriate rules, is directed, as
9 a matter of high priority to insure that the waters of the state are
10 utilized for the best interests of the people, to develop and implement
11 in accordance with the policies of this chapter a comprehensive state
12 water resources program which will provide a process for making
13 decisions on future water resource allocation and use. The department
14 may develop the program in segments so that immediate attention may be
15 given to waters of a given physioeconomic region of the state or to
16 specific critical problems of water allocation and use.

17 (2) In relation to the management and regulatory programs relating
18 to water resources vested in it, the department is further directed to
19 modify existing regulations and adopt new regulations, when needed and
20 possible, to insure that existing regulatory programs are in accord
21 with the water resource policy of this chapter and the program
22 established in subsection (1) of this section.

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

34 **PART II**
35 **STORAGE**

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

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

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

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

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

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

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

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

3 (ii) The municipality demonstrates that no violation of receiving
4 water quality standards or appreciable environmental degradation will
5 result.

6 (4) The development of multipurpose water storage facilities shall
7 be a high priority for programs of water allocation, planning,
8 management, and efficiency. The department, other state agencies,
9 local governments, and planning units formed under section 107 or 108
10 of this act shall evaluate the potential for the development of new
11 storage projects and the benefits and effects of storage in reducing
12 damage to stream banks and property, increasing the use of land,
13 providing water for municipal, industrial, agricultural, power
14 generation, and other beneficial uses, and improving stream flow
15 regimes for fisheries and other instream uses.

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

18 ((+5)) (6) Multiple-purpose impoundment structures are to be
19 preferred over single-purpose structures. Due regard shall be given to
20 means and methods for protection of fishery resources in the planning
21 for and construction of water impoundment structures and other
22 artificial obstructions.

23 ((+6)) (7) Federal, state, and local governments, individuals,
24 corporations, groups and other entities shall be encouraged to carry
25 out practices of conservation as they relate to the use of the waters
26 of the state. In addition to traditional development approaches,
27 improved water use efficiency and conservation shall be emphasized in
28 the management of the state's water resources and in some cases will be
29 a potential new source of water with which to meet future needs
30 throughout the state.

31 ((+7)) (8) Development of water supply systems, whether publicly
32 or privately owned, which provide water to the public generally in
33 regional areas within the state shall be encouraged. Development of
34 water supply systems for multiple domestic use which will not serve the
35 public generally shall be discouraged where water supplies are
36 available from water systems serving the public.

37 ((+8)) (9) Full recognition shall be given in the administration
38 of water allocation and use programs to the natural interrelationships
39 of surface and ground waters.

1 (~~(9)~~) (10) Expressions of the public interest will be sought at
2 all stages of water planning and allocation discussions.

3 (~~(10)~~) (11) Water management programs, including but not limited
4 to, water quality, flood control, drainage, erosion control and storm
5 runoff are deemed to be in the public interest.

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

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

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

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

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

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

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

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

9 **PART III**

10 **GENERAL ADJUDICATIONS**

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

13 The legislature finds that the lack of certainty regarding water
14 rights within a water resource basin may impede management and planning
15 for water resources. The legislature further finds that planning units
16 conducting water resource planning under chapter 90.-- RCW (sections
17 101 through 113 of this act) may find that the certainty provided by a
18 general adjudication of water rights under this chapter is required for
19 water planning or water management in a water resource inventory area
20 or in a portion of the area. Therefore, such planning units may
21 petition the department to conduct such a general adjudication and the
22 department shall give high priority to such a request in initiating any
23 such general adjudications under this chapter.

24 **PART IV**

25 **WATER PURVEYORS**

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

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

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

10 (2) For the purposes of this section, the following definitions
11 shall apply:

12 (a) "Interties" are interconnections between public water systems
13 permitting exchange, acquisition, or delivery of wholesale and/or
14 retail water between those systems for other than emergency supply
15 purposes, where such exchange, acquisition, or delivery is within
16 established instantaneous and annual withdrawal rates specified in the
17 systems' existing water right permits or certificates, or contained in
18 claims filed pursuant to chapter 90.14 RCW, and which results in better
19 management of public water supply consistent with existing rights and
20 obligations. Interties include interconnections between public water
21 systems permitting exchange, acquisition, or delivery of water to serve
22 as primary or secondary sources of supply(~~(, but do not include~~
23 ~~development of new sources of supply to meet future demand)) and the
24 development of new sources of supply to meet future demands if the
25 water system or systems receiving water through such an intertie make
26 efficient use of existing sources of water supply and the provision of
27 water through such an intertie is consistent with local land use plans.
28 For this purpose, a system's full compliance with the state department
29 of health's conservation guidelines for such systems is deemed
30 efficient use.~~

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

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

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

35 (4) Notwithstanding the provisions of RCW 90.03.380 and 90.44.100,
36 exchange, acquisition, or delivery of water through interties approved
37 by the department of health commencing use after January 1, 1991, shall
38 be permitted when the intertie improves overall system reliability,
39 enhances the manageability of the systems, provides opportunities for

1 conjunctive use, or delays or avoids the need to develop new water
2 sources, and otherwise meets the requirements of this section, provided
3 that each public water system's water use shall not exceed the
4 instantaneous or annual withdrawal rate specified in its water right
5 authorization, shall not adversely affect existing water rights, and
6 shall not be inconsistent with state-approved plans such as water
7 system plans or other plans which include specific proposals for
8 construction of interties. Interties approved and commencing use after
9 January 1, 1991, shall not be inconsistent with regional water resource
10 plans developed pursuant to chapter 90.54 RCW or chapter 90.-- RCW
11 (sections 101 through 113 of this act).

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

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

31 (7) If the intertie is determined by the department of health to be
32 necessary to address emergent public health or safety concerns
33 associated with public water supply, the public water system shall
34 amend its water system plan as required and shall file an application
35 with the department of ecology to change its existing water right to
36 reflect the proposed use of the water as described in the approved
37 water system plan. The department of ecology shall process the
38 application for change pursuant to RCW 90.03.380 or 90.44.100 as
39 appropriate, except that, notwithstanding the requirements of those

1 sections regarding notice and protest periods, applicants shall be
2 required to publish notice one time, and the comment period shall be
3 fifteen days from the date of publication of the notice. Within sixty
4 days of receiving the application, the department of ecology shall
5 issue findings and advise the department of health if existing water
6 rights are determined to be adversely affected. If no determination is
7 provided by the department of ecology within the sixty-day period, the
8 department of health shall proceed as if existing rights are not
9 adversely affected by the proposed intertie. The department of ecology
10 may obtain an extension of the sixty-day period by submitting written
11 notice to the department of health and to the applicant indicating a
12 definite date by which its determination will be made. No additional
13 extensions shall be granted, and in no event shall the total review
14 period for the department of ecology exceed one hundred eighty days.

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

35 (9) The department of health may approve plans containing intertie
36 proposals prior to the department of ecology's decision on the water
37 right application for change in place of use. However, notwithstanding
38 such approval, construction work on the intertie shall not begin until

1 the department of ecology issues the appropriate water right document
2 to the applicant consistent with the approved plan.

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

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

8 (1) Upon a showing satisfactory to the department that any
9 appropriation has been perfected in accordance with the provisions of
10 this chapter, it shall be the duty of the department to issue to the
11 applicant a certificate stating such facts in a form to be prescribed
12 by him, and such certificate shall thereupon be recorded with the
13 department. Any original water right certificate issued, as provided
14 by this chapter, shall be recorded with the department and thereafter,
15 at the expense of the party receiving the same, be by the department
16 transmitted to the county auditor of the county or counties where the
17 distributing system or any part thereof is located, and be recorded in
18 the office of such county auditor, and thereafter be transmitted to the
19 owner thereof.

20 (2) If a public water system is providing water for municipal
21 supply purposes under a certificated water right, the instantaneous and
22 annual withdrawal rates specified in the certificate are deemed valid
23 and perfected.

24 (3) If a federal reclamation project is providing water for
25 reclamation purposes under a certificated water right, the
26 instantaneous and annual withdrawal rates specified in the certificate
27 are deemed valid and perfected.

28 (4) If an irrigation district is providing water for the purposes
29 authorized by chapter 87.03 RCW under a certificated water right, the
30 instantaneous and annual withdrawal rates specified in the certificate
31 are deemed valid and perfected.

32 (5) The 1997 amendments to this section in this act are null and
33 void if any one of sections 101 through 115 of this act is vetoed by
34 June 30, 1997.

35

PART V

36

RELINQUISHMENT

1 **Sec. 501.** RCW 90.14.140 and 1987 c 125 s 1 are each amended to
2 read as follows:

3 (1) For the purposes of RCW 90.14.130 through 90.14.180,
4 "sufficient cause" shall be defined as the nonuse of all or a portion
5 of the water by the owner of a water right for a period of five or more
6 consecutive years where such nonuse occurs as a result of:

7 (a) Drought, or other unavailability of water;

8 (b) Active service in the armed forces of the United States during
9 military crisis;

10 (c) Nonvoluntary service in the armed forces of the United States;

11 (d) The operation of legal proceedings;

12 (e) Federal laws imposing land or water use restrictions either
13 directly or through the voluntary enrollment of a landowner in a
14 federal program implementing those laws, or acreage limitations, or
15 production quotas;

16 (f) An elapse of time occurring while a request or application is
17 processed for transferring or changing a water right to use by a public
18 water supplier for municipal purposes;

19 (g) The implementation of practices or technologies or the
20 installation or repair of facilities, including but not limited to
21 water conveyance practices, technologies, or facilities, that are more
22 efficient or more water use efficient than practices, technologies, or
23 facilities previously used under the water right.

24 (2) Notwithstanding any other provisions of RCW 90.14.130 through
25 90.14.180, there shall be no relinquishment of any water right:

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

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

33 (c) If such right is claimed for a determined future development to
34 take place ((either)) at any time within fifteen years of either July
35 1, 1967, or the most recent beneficial use of the water right,
36 whichever date is later, or

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

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

3 **PART VI**
4 **GENERAL PERMITS**

5 NEW SECTION. **Sec. 601.** The legislature finds that the present
6 delay in the processing of water right applications is not beneficial
7 to the citizens of the state nor is it in keeping with the goal of
8 managing the resource to the highest possible standard and maximum net
9 benefit.

10 The legislature further finds that water conservation efforts would
11 be greatly enhanced by a permit system that encourages water right
12 applicants to use only the amount of water actually necessary to meet
13 their needs.

14 NEW SECTION. **Sec. 602.** A new section is added to chapter 90.03
15 RCW to read as follows:

16 (1) The department shall develop a general permit system for
17 appropriating water for nonconsumptive, nonbypass uses. This system
18 must be designed and used to accurately identify and register any water
19 right application that qualifies for the streamlined process of
20 appropriation of water by meeting the requirements in this section and
21 registering the use. The general permit system must be applicable
22 state-wide, and all waters of the state shall be eligible for coverage
23 under the system. The evaluation and report required for an
24 application under RCW 90.03.290 are not required for applications
25 processed under the general permit system. For the purposes of this
26 section:

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

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

35 (2) The department shall, by January 1, 1998, establish the general
36 permit system by adopting rules in accordance with chapter 34.05 RCW.

1 Before the adoption of rules for a system, the department shall consult
2 with representatives of the following interest groups: Agriculture;
3 aquaculture; home construction and development; county government; city
4 government; surface mining; and the environmental community. At least
5 four public hearings must be held at various locations around the
6 state, not less than two of which shall be east of the crest of the
7 Cascade mountains. The rules must identify criteria for proposed uses
8 of water for which applications might be processed under the system and
9 must establish procedures for filing and processing applications and
10 issuing water rights certificates under the general permit system.

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

13 An application for registration as a nonconsumptive, nonbypass
14 water user under the general permit system established under section
15 602 of this act must be made on a form adopted and provided by the
16 department. Within sixty days of receipt of a properly completed
17 application, the department shall determine whether the proposed use is
18 eligible to be processed under the general permit system. If the
19 department determines that the proposed use is eligible to be processed
20 under the system, the application must be processed under the system
21 within the next sixty days. The priority date of the water right
22 established pursuant to this section shall be the date that the
23 properly completed application is submitted. If the department
24 determines that the proposed use is not eligible for the processing,
25 the department shall explain to the applicant in writing the reasons
26 for its determination. For a proposed use determined ineligible for
27 the processing, if the department finds that the information contained
28 on the application form substantially satisfies the information
29 requirements for an application for a use that would normally be filed
30 for processing the application outside of the general permit system,
31 the department shall notify the applicant of its finding and shall
32 process the application as if it were filed for processing outside of
33 the system. If the department finds that the information does not
34 substantially satisfy the requirements, the application must be
35 considered to be incomplete for the processing and the applicant must
36 be notified of this consideration.

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

3 Nothing in sections 602 and 603 of this act authorizes the
4 impairment or operates to impair any existing water rights. A water
5 right holder under sections 602 and 603 of this act shall not make
6 withdrawals that impair a senior water right. A holder of a senior
7 water right who believes his or her water right is impaired may file a
8 complaint with the department of ecology. Where such complaints of
9 impairment have been received, the department of ecology shall make all
10 reasonable efforts to resolve them in a timely manner through agreement
11 of the parties. Nothing in section 602 or 603 of this act may be
12 construed as waiving any requirement established under chapter 90.48
13 RCW or federal law that a permittee secure a discharge permit regarding
14 water quality.

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

19 **PART VII**

20 **APPEALS**

21 NEW SECTION. **Sec. 701.** The legislature recognizes that in many
22 cases the value of real property directly depends upon the amount of
23 water that is available for use on that property. The legislature also
24 recognizes that water rights are a type of property right in which many
25 different parties may assert an interest. Current statutes require
26 many property rights actions in which different parties assert
27 interests, such as actions for partition or eminent domain, to be filed
28 in superior court. The legislature further finds that informal
29 procedures such as mediation and fact finding have been employed
30 successfully in other areas of the law, and may produce positive
31 results in certain types of water disputes. The legislature therefore
32 finds that property owners should have a choice to select informal or
33 formal hearings before the pollution control hearings board, and that
34 relinquishment proceedings should be appealed to the local superior
35 courts.

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

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

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

14 (3) For proceedings involving the relinquishment of a water right
15 and appeals of formal and informal hearings of the pollution control
16 hearings board involving a water quantity decision as defined in
17 section 713 of this act, the petition shall be filed in the superior
18 court for the county in which is located the land upon which the water
19 was used.

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

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

27 (a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431,
28 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.48.144, 90.56.310, and
29 90.56.330.

30 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
31 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,
32 (~~90.14.130~~) and 90.48.120.

33 (c) The issuance, modification, or termination of any permit,
34 certificate, or license by the department or any air authority in the
35 exercise of its jurisdiction, including the issuance or termination of
36 a waste disposal permit, the denial of an application for a waste
37 disposal permit, or the modification of the conditions or the terms of
38 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, the administrator of the
7 office of marine safety, or an air authority which pursuant to law must
8 be decided as an adjudicative proceeding under chapter 34.05 RCW.

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

11 (a) The hearings board has no jurisdiction to review orders
12 pertaining to the relinquishment of a water right under RCW 90.14.130,
13 or to review proceedings regarding general adjudications of water
14 rights conducted pursuant to 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 pursuant to RCW
20 70.94.332, 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and
21 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 to adopt, modify,
25 or repeal rules.

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

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

31 The administrative procedure act, chapter 34.05 RCW, shall apply to
32 the appeal of rules and regulations adopted by the board to the same
33 extent as it applied to the review of rules and regulations adopted by
34 the directors and/or boards or commissions of the various departments
35 whose powers, duties and functions were transferred by section 6,
36 chapter 62, Laws of 1970 ex. sess. to the department. ~~((All other~~
37 ~~decisions and orders of the director and all decisions of air pollution~~
38 ~~control boards or authorities established pursuant to chapter 70.94 RCW~~

1 ~~shall be subject to review by the hearings board as provided in this~~
2 ~~chapter.))~~

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

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

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

12 In an appeal that involves a penalty of five thousand dollars or
13 less, the appeal may be heard by one member of the board, whose
14 decision shall be the final decision of the board. An informal hearing
15 appeal relating to a water quantity decision as defined in section 713
16 of this act may be heard by one member of the board. The board shall
17 define by rule alternative procedures to expedite small appeals. These
18 alternatives may include: Mediation, upon agreement of all parties
19 unless initiated as provided in section 713 of this act; submission of
20 testimony by affidavit; conducting hearing by telephone; or other forms
21 that may lead to less formal and faster resolution of appeals.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 Notwithstanding and in addition to any other powers granted to the
37 department of ecology, whenever it appears to the department that a

1 person is violating or is about to violate any of the provisions of the
2 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) Any other law relating to water resources administered by the
9 department; or

10 (7) A rule or regulation adopted, or a directive or order issued by
11 the department relating to subsections (1) through (6) of this section;
12 the department may cause a written regulatory order to be served upon
13 ((said)) the person either personally, or by registered or certified
14 mail delivered to addressee only with return receipt requested and
15 acknowledged by him or her. The order shall specify the provision of
16 the statute, rule, regulation, directive or order alleged to be or
17 about to be violated, and the facts upon which the conclusion of
18 violating or potential violation is based, and shall order the act
19 constituting the violation or the potential violation to cease and
20 desist or, in appropriate cases, shall order necessary corrective
21 action to be taken with regard to such acts within a specific and
22 reasonable time. The regulation of a headgate or controlling works as
23 provided in RCW 90.03.070, by a watermaster, stream patrolman, or other
24 person so authorized by the department shall constitute a regulatory
25 order within the meaning of this section. A regulatory order issued
26 hereunder shall become effective immediately upon receipt by the person
27 to whom the order is directed, except for regulations under RCW
28 90.03.070 which shall become effective when a written notice is
29 attached as provided therein. Any person aggrieved by such order may
30 appeal the order pursuant to RCW 43.21B.310, except that appeals of
31 orders pertaining to the relinquishment of a water right shall be filed
32 in superior court pursuant to RCW 90.14.130.

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

35 When it appears to the department of ecology that a person entitled
36 to the use of water has not beneficially used his or her water right or
37 some portion thereof, and it appears that ((said)) the person's right
38 has or may have reverted to the state because of such nonuse, as

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

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

26 Any person feeling aggrieved by any decision of the department of
27 ecology may have the same reviewed pursuant to RCW 43.21B.310.
28 However, any order pertaining to the relinquishment of a water right
29 shall be filed in superior court pursuant to RCW 90.14.130. In any such
30 review, the findings of fact as set forth in the report of the
31 department of ecology shall be prima facie evidence of the fact of any
32 waiver or relinquishment of a water right or portion thereof. If the
33 hearings board affirms the decision of the department, a party seeks
34 review in superior court of that hearings board decision pursuant to
35 chapter 34.05 RCW, and the court determines that the party was injured
36 by an arbitrary, capricious, or erroneous order of the department, the
37 court may award reasonable attorneys' fees.

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

3 (1) All matters relating to the implementation and enforcement of
4 this chapter by the department of ecology shall be carried out in
5 accordance with chapter 34.05 RCW, the Administrative Procedure Act,
6 except where the provisions of this chapter expressly conflict with
7 chapter 34.05 RCW. Proceedings held pursuant to RCW 90.14.130 are
8 ~~((adjudicative proceedings within the meaning of chapter 34.05 RCW.~~
9 ~~Final decisions of the department of ecology in these proceedings))~~
10 appealable to superior court as provided in that section. Other final
11 decisions of the department of ecology under this chapter are subject
12 to review by the pollution control hearings board in accordance with
13 chapter 43.21B RCW.

14 (2) RCW 90.14.130 provides nonexclusive procedures for determining
15 a relinquishment of water rights under RCW 90.14.160, 90.14.170, and
16 90.14.180. RCW 90.14.160, 90.14.170, and 90.14.180 may be applied in,
17 among other proceedings, general adjudication proceedings initiated
18 under RCW 90.03.110 or 90.44.220: PROVIDED, That nothing herein shall
19 apply to litigation involving determinations of the department of
20 ecology under RCW 90.03.290 relating to the impairment of existing
21 rights.

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

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

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

31 (1) A water right claimant, or permit or certificate holder or
32 applicant who is aggrieved or adversely affected by a water quantity
33 decision may appeal the decision to the pollution control hearings
34 board pursuant to RCW 43.21B.310. A formal hearing before the board
35 may only be granted if all parties to the appeal of the water quantity
36 decision agree to a formal hearing.

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

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

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

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

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

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

21 (2) The parties involved in the informal hearing must provide the
22 mediator and the other parties in advance with a clear, concise
23 statement of the disputed issues and the parties' position in relation
24 to the issues and supporting documentation. The mediator shall meet
25 with the parties either jointly or separately, in the general area of
26 the project under review or by telephone, at the discretion of the
27 mediator, and shall take such steps as the mediator deems appropriate
28 to resolve their differences and reach a settlement agreement. If a
29 settlement agreement is reached, the mediator shall prepare and submit
30 to the hearings board a written order of dismissal to which the
31 settlement agreement is attached. The hearings board shall enter the
32 order and dismiss the case unless the hearings board finds that the
33 settlement agreement is contrary to law.

34 If the hearings board finds that the settlement agreement is
35 contrary to law, it shall notify the parties and refer the dispute back
36 to mediation.

37 (3) If the parties are unable to achieve a settlement agreement
38 within ninety days after being appointed, the mediator shall issue a

1 statement that a settlement agreement has not been reached. After
2 issuance of the statement, the party filing the appeal may request the
3 hearings board to submit the dispute to fact finding with
4 recommendations. Notice of the request for fact finding must be sent
5 to the other parties.

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

11 (5) Within five days of being appointed, the fact finder shall
12 establish a date, time, and place for the fact-finding hearing. The
13 date of the hearing must be within thirty days of the appointment of
14 the fact finder. The hearing shall be conducted in the general area
15 where the project under review is located. At least seven days before
16 the date of the hearing, each party must submit to the fact finder and
17 to the other parties written proposals on all of the issues it intends
18 to submit to fact finding. The fact finder has the power to issue
19 subpoenas requiring the attendance and production of witnesses and the
20 production of evidence. The order of presentation at the hearing shall
21 be as agreed by the parties or as determined by the fact finder. Each
22 documentary exhibit shall be filed with the fact finder and copies
23 shall be provided to the other parties. The fact finder shall declare
24 the hearing closed after the parties have completed presenting their
25 testimony within agreed time limits.

26 (6) The fact finder shall, within thirty days following the
27 conclusion of the hearing, make written findings of fact and written
28 recommendations to the parties as to how the dispute should be
29 resolved. The fact finder may not apply any presumption as part of the
30 findings of fact or recommendations. A copy of the findings and
31 recommendations shall be filed with the hearings board. The findings
32 of fact and recommendations of the fact finder are advisory only, and
33 are not subject to review by the hearings board.

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

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

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

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

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

12 An appeal to superior court of a water quantity decision, as
13 defined in section 713 of this act, following an informal hearing by
14 the board shall be heard de novo. If an informal hearing on the
15 decision or order had been completed by the pollution control hearings
16 board, no issue may be raised in superior court that was not raised and
17 discussed as part of the fact-finding hearing. No bond may be required
18 on appeals to the superior court or on review by the supreme court
19 unless specifically required by the judge of the superior court.

20 **PART VIII**
21 **MISCELLANEOUS**

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

24 (1) 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 the right may be transferred to another or to others and become
28 appurtenant to any other land or place of use without loss of priority
29 of right theretofore established if such change can be made without
30 detriment or injury to existing rights. The point of diversion of
31 water for beneficial use or the purpose of use may be changed, if such
32 change can be made without detriment or injury to existing rights. A
33 change in the place of use, point of diversion, and/or purpose of use
34 of a water right to enable irrigation of additional acreage or the
35 addition of new uses may be permitted if such change results in no
36 increase in the annual consumptive quantity of water used under the

1 water right. For purposes of this section, "annual consumptive
2 quantity" means the estimated or actual annual amount of water diverted
3 pursuant to the water right, reduced by the estimated annual amount of
4 return flows, averaged over the most recent five-year period of
5 continuous beneficial use of the water right. Before any transfer of
6 such right to use water or change of the point of diversion of water or
7 change of purpose of use can be made, any person having an interest in
8 the transfer or change, shall file a written application therefor with
9 the department, and ~~((said))~~ the application shall not be granted until
10 notice of ~~((said))~~ the application ~~((shall-be))~~ is published as
11 provided in RCW 90.03.280. If it shall appear that such transfer or
12 such change may be made without injury or detriment to existing rights,
13 the department shall issue to the applicant a certificate in duplicate
14 granting the right for such transfer or for such change of point of
15 diversion or of use. The certificate so issued shall be filed and be
16 made a record with the department and the duplicate certificate issued
17 to the applicant may be filed with the county auditor in like manner
18 and with the same effect as provided in the original certificate or
19 permit to divert water.

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

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

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

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

3 After an application to, and upon the issuance by the department of
4 an amendment to the appropriate permit or certificate of ground water
5 right, the holder of a valid right to withdraw public ground waters
6 may, without losing his priority of right, construct wells or other
7 means of withdrawal at a new location in substitution for or in
8 addition to those at the original location, or he may change the manner
9 or the place of use of the water(~~(:—PROVIDED, HOWEVER, That such)~~).
10 An amendment shall be issued only after publication of notice of the
11 application and findings as prescribed in the case of an original
12 application. Such amendment shall be issued by the department only on
13 the conditions that: (1) The additional or substitute well or wells
14 shall tap the same body of public ground water as the original well or
15 wells; (2) use of the original well or wells shall be discontinued upon
16 construction of the substitute well or wells; (3) the construction of
17 an additional well or wells shall not enlarge the right conveyed by the
18 original permit or certificate; and (4) other existing rights shall not
19 be impaired. An amendment to a permit or certificate to change the
20 place of use, point of withdrawal, and/or purpose of use of a ground
21 water right to enable irrigation of additional acreage or the addition
22 of new uses may be issued if such change results in no increase in the
23 annual consumptive quantity of water used under a certificate or
24 authorized for use under a permit. For purposes of this section,
25 "annual consumptive quantity" means the estimated or actual annual
26 amount of water withdrawn pursuant to a certificate or the amount
27 authorized for use pursuant to a permit, reduced by the estimated
28 annual amount of return flows. For permits or certificates under which
29 actual amounts of water have been withdrawn, withdrawals and return
30 flows shall be averaged over the most recent five-year period of
31 continuous beneficial use of the ground water right or, if the period
32 of actual continuous beneficial use is less than five years, such
33 lesser period. The department may specify an approved manner of
34 construction and shall require a showing of compliance with the terms
35 of the amendment, as provided in RCW 90.44.080 in the case of an
36 original permit.

37 NEW SECTION. **Sec. 803.** As used in this act, part headings
38 constitute no part of the law.

