

CERTIFICATION OF ENROLLMENT  
**SECOND SUBSTITUTE HOUSE BILL 2054**

Chapter 442, Laws of 1997  
(partial veto)

55th Legislature  
1997 Regular Session

WATER RESOURCE MANAGEMENT--MODIFICATIONS

EFFECTIVE DATE: 7/27/97

Passed by the House April 27, 1997  
Yeas 60 Nays 38

CLYDE BALLARD  
**Speaker of the  
House of Representatives**

Passed by the Senate April 18, 1997  
Yeas 27 Nays 18

BRAD OWEN  
**President of the Senate**

Approved May 20, 1997, with the  
exception of sections 107 through 116,  
202, 401, 402, 501, 601, 602, 603, 604,  
605, 701 through 716, and 802, which  
are vetoed.

GARY LOCKE  
**Governor of the State of Washington**

CERTIFICATE  
I, Timothy A. Martin, Chief Clerk of  
the House of Representatives of the  
State of Washington, do hereby certify  
that the attached is **SECOND SUBSTITUTE  
HOUSE BILL 2054** as passed by the  
House of Representatives and the  
Senate on the dates hereon set forth.

TIMOTHY A. MARTIN  
**Chief Clerk**

FILED  
May 20, 1997 - 4:25 p.m.

**Secretary of State  
State of Washington**



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

6 NEW SECTION. **Sec. 102.** The legislature finds that the local  
7 development of watershed plans for managing water resources and for  
8 protecting existing water rights is vital to both state and local  
9 interests. The local development of these plans serves vital local  
10 interests by placing it in the hands of people: Who have the greatest  
11 knowledge of both the resources and the aspirations of those who live  
12 and work in the watershed; and who have the greatest stake in the  
13 proper, long-term management of the resources. The development of such  
14 plans serves the state's vital interests by ensuring that the state's  
15 water resources are used wisely, by protecting existing water rights,  
16 by protecting instream flows for fish, and by providing for the  
17 economic well-being of the state's citizenry and communities.  
18 Therefore, the legislature believes it necessary for units of local  
19 government throughout the state to engage in the orderly development of  
20 these watershed plans.

21 NEW SECTION. **Sec. 103.** Unless the context clearly requires  
22 otherwise, the definitions in this section apply throughout this  
23 chapter.

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

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

29 (3) "Minimum instream flow" means a minimum flow under chapter  
30 90.03 or 90.22 RCW or a base flow under chapter 90.54 RCW.

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

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

1 (6) "WRIA plan" or "plan" means the product of the planning unit  
2 including any rules adopted in conjunction with the product of the  
3 planning unit.

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

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

13 (2) If a planning unit requests technical assistance from a state  
14 agency as part of its planning activities under this chapter and the  
15 assistance is with regard to a subject matter over which the agency has  
16 jurisdiction, the state agency shall provide the technical assistance  
17 to the planning unit.

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

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

28 (2) Each planning unit that has complied with subsection (1) of  
29 this section is eligible to receive fifty thousand dollars for each  
30 WRIA to initiate the planning process. The department shall allocate  
31 additional funds to WRIA planning units based on need demonstrated by  
32 a detailed proposed budget submitted by the planning unit for carrying  
33 out the duties of the planning unit. Each WRIA planning unit may  
34 receive up to two hundred fifty thousand dollars for each WRIA during  
35 the first two-year period of planning, with a maximum allocation of  
36 five hundred thousand dollars for each WRIA. Funding provided under

1 this section shall be considered a contractual obligation against the  
2 moneys appropriated for this purpose.

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

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

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

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

15 \*NEW SECTION. **Sec. 107.** (1)(a) *Except as provided in section 108*  
16 *of this act for multi-WRIA planning, the county with the largest area*  
17 *within the boundaries of a WRIA, the city obtaining the largest amount*  
18 *of water from the WRIA, and the largest water supply utility in the*  
19 *WRIA may jointly and unanimously choose to initiate water resource*  
20 *planning for the WRIA under this chapter. If the initiating group so*  
21 *chooses, it shall make application to the department of ecology to*  
22 *declare its intent to conduct watershed planning. Upon making*  
23 *application to the department, the initiating group shall notify the*  
24 *counties, cities, water supply utilities, tribal governments, and*  
25 *conservation districts with territory within the WRIA that these groups*  
26 *are to meet to appoint their members of the WRIA planning unit. The*  
27 *initiating group may consult with the department regarding the*  
28 *initiation of watershed planning. For the purposes of this section and*  
29 *sections 108 and 112 of this act, a county is considered to have*  
30 *territory within a WRIA only if the territory of the county located in*  
31 *the WRIA constitutes at least fifteen percent of the area of the WRIA.*  
32 *For conducting planning under this chapter, the county with the largest*  
33 *area within the boundaries of the WRIA is the lead agency for the WRIA*  
34 *planning, except as provided in (b) and (c) of this subsection and*  
35 *section 108 of this act for multi-WRIA planning.*

36 (b) *When the counties of a WRIA have convened jointly to make*  
37 *appointments to the planning unit, they may, by a majority vote, choose*

1 as the lead agency for WRIA planning any governmental entity in the  
2 WRIA. Such a governmental entity shall act as the lead agency for this  
3 purpose if it agrees in writing to accept the designation.

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

10 (2) In a WRIA where water resource planning efforts have commenced  
11 before the effective date of this section, such as but not limited to  
12 the Kettle river WRIA, the county legislative authorities with  
13 territory within the WRIA in accordance with subsection (1) of this  
14 section may, by majority vote, choose to adopt the existing planning  
15 unit membership for purposes of planning under chapter . . . , Laws of  
16 1997 (this act).

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

23 (3)(a) One WRIA planning unit shall be appointed for the WRIA as  
24 provided by this section or for a multi-WRIA area as provided by  
25 section 108 of this act for multi-WRIA planning. The planning unit  
26 shall be composed of:

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

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

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

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

36 (v) Three members representing various special interest groups  
37 appointed jointly by the cities with territory within the WRIA; and six  
38 members representing various special interest groups appointed jointly  
39 by the counties with territory within the WRIA;

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

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

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

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

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

24       (4) Except for a person appointed under subsection (3)(a)(ix) or  
25 (b) of this section, each person appointed to a WRIA planning unit  
26 shall have been a resident and a property owner of the WRIA for at  
27 least three years. No state employees or state officials other than  
28 members appointed under subsection (3)(a)(ix) of this section may be  
29 appointed to the planning unit. In appointing persons to the WRIA  
30 planning unit representing special interest groups, the counties and  
31 cities shall consider industrial water users, general businesses,  
32 hydroelectric and thermal power producers, and irrigated agriculture,  
33 nonirrigated agriculture, forestry, recreation, environmental, and  
34 fisheries interest groups and other groups with interests in the WRIA.

35       (5)(a) In voting to appoint the members of a WRIA planning unit, to  
36 select a lead agency for water resource planning under section 107 or  
37 108 of this act, to approve a WRIA plan under section 112 of this act,  
38 or to request or concur with a request for multi-WRIA planning under  
39 section 108 of this act, each county with territory within the WRIA

1 shall have three votes, divided equally among the members of the  
2 county's legislative authority and these actions shall be made by  
3 majority vote based on the votes allocated under this section. In  
4 voting to appoint members of a WRIA planning unit: Each city with  
5 territory within the WRIA shall have one vote and appointments shall be  
6 made by majority vote of such cities; each water supply utility other  
7 than those of a city or town with territory within the WRIA shall have  
8 one vote and appointments shall be made by majority vote of such  
9 districts; and each conservation district with territory within the  
10 WRIA shall have one vote and appointments shall be made by majority  
11 vote of such districts. All appointments shall be made within sixty  
12 days of the date the appointing authorities other than the counties are  
13 notified to convene to make appointments or the appointments shall be  
14 made by the counties with territory in the WRIA in the same manner the  
15 counties make other appointments.

16 (b) The members appointed to the WRIA planning unit under  
17 subsection (3)(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 (3)(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 under subsection (1)(a) of this section.

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 \*Sec. 107 was vetoed. See message at end of chapter.

32 \*NEW SECTION. Sec. 108. (1) The counties with territory in a  
33 WRIA, the city obtaining the largest quantity of water from the WRIA,  
34 and the largest water supply utility in the WRIA may jointly and  
35 unanimously elect to initiate multi-WRIA planning. If this initiating  
36 group so chooses, the initiating group shall notify the counties,  
37 cities, water supply utilities, tribal governments, and conservation  
38 districts with territory within the multi-WRIA area that these groups



1 are to meet to appoint their members of the multi-WRIA area planning  
2 unit.

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

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

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

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

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

14 (v) Three members representing various special interest groups  
15 appointed jointly by the cities with territory within the multi-WRIA  
16 area; and six members representing various special interest groups  
17 appointed jointly by the counties with territory within the multi-WRIA  
18 area;

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

21 (vii) Three members representing the general citizenry appointed  
22 jointly by the counties with territory in the multi-WRIA area, of which  
23 at least one shall be a holder of a water right certificate and at  
24 least one shall be a holder of a water right for which a statement of  
25 claim was in the state's water rights claims registry before January 1,  
26 1997;

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

32 (ix) Three members representing state agencies including the  
33 secretary of the department of transportation or the secretary's  
34 designee, the director of the department of fish and wildlife or the  
35 director's designee, and the director of the department of ecology or  
36 the director's designee. The three members representing state  
37 government shall have a single vote representing state agency  
38 interests.

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

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

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

25       Nothing in this act shall affect ongoing efforts to develop new  
26 resources and the sharing of existing resources. No moratorium may be  
27 imposed on water resource decision making by the department solely  
28 because of ongoing planning efforts or the absence of a plan or  
29 planning effort. Any new planning units formed under this act shall  
30 recognize efforts already in progress.

31       (3)(a) The counties in the multi-WRIA area shall select, by a  
32 majority vote, a governmental entity in the multi-WRIA area to act as  
33 lead agency for water resource planning in the multi-WRIA area under  
34 this chapter. Such an entity shall serve as the lead agency if it  
35 agrees in writing to do so. All appointments shall be made within  
36 sixty days of the date the lead agency in the multi-WRIA area notifies  
37 the other appointing authorities to convene to make appointments or the  
38 appointments shall be made by the counties with territory in the multi-  
39 WRIA area in the same manner the counties make other appointments.

1 (b) The members appointed to the WRIA planning unit under  
2 subsection (1)(a)(i), (ii), and (iii) of this section may, within  
3 thirty days, by unanimous vote, increase the number of members of the  
4 planning unit appointed under subsection (1)(a)(v), (vi), and (vii) of  
5 this section by up to five members. Appointment of additional members  
6 to the planning unit shall be made within thirty days from the date of  
7 application to the department to initiate planning.

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

16 (4) A planning unit for a multi-WRIA area shall perform all of the  
17 functions assigned by this chapter to a WRIA planning unit and is  
18 subject to all of the provisions of this chapter that apply to a WRIA  
19 planning unit.

20 \*Sec. 108 was vetoed. See message at end of chapter.

21 \*NEW SECTION. Sec. 109. The lead agency shall provide staff  
22 support from resources provided for planning under chapter . . . , Laws  
23 of 1997 (this act) and from other sources, including but not limited to  
24 sources provided under section 113 of this act, for the work of the  
25 WRIA planning unit. Each WRIA planning unit may establish its own  
26 methods of operation that are consistent with this chapter and may  
27 establish methods for reviewing the operations of its lead agency. No  
28 planning unit appointed or selected under this chapter may possess or  
29 exercise the power of eminent domain. No planning unit appointed or  
30 selected under this chapter may take any action that affects in any  
31 manner a general adjudication proceeding for water rights, completed or  
32 ongoing. Each WRIA planning unit is encouraged to: Consider  
33 information and plans that may have been previously developed by other  
34 entities in establishing water resource management plans for the WRIA;  
35 consider existing data regarding water resources in the WRIA; and, for  
36 a WRIA that borders another state, cooperate with local government  
37 counterparts in the adjacent state regarding water resource planning.  
38 Water resource plans developed under this chapter for a WRIA may not

1 *interfere in any manner with a general adjudication of water rights,*  
2 *completed or ongoing. Such a WRIA plan may not in any manner impair or*  
3 *diminish with a water right that exists before the adoption of the plan*  
4 *by the department under section 112 of this act.*

5 *All meetings of a WRIA planning unit shall be conducted as public*  
6 *meetings as required for such meetings by the open public meetings act,*  
7 *chapter 42.30 RCW. Some time shall be set aside at the end of each*  
8 *meeting of a WRIA planning unit for public comments. Each planning*  
9 *unit shall establish procedures to be followed by the unit in making*  
10 *decisions. The objective to be sought by the planning unit in making*  
11 *decisions is to reach agreement among its members on the decisions.*  
12 *Decisions by a two-thirds majority vote may be used if the unit has*  
13 *found that attempts at achieving full agreement have not been*  
14 *successful.*

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

28 *\*Sec. 109 was vetoed. See message at end of chapter.*

29 *\*NEW SECTION. Sec. 110. (1) Each WRIA planning unit shall develop*  
30 *a water resource plan. The plan must address the elements listed in*  
31 *subsection (2) of this section and may include other elements added by*  
32 *the planning unit. Once organized, the first task of the planning unit*  
33 *is to prioritize these elements regarding their importance in the WRIA*  
34 *and in developing a water resource plan for the WRIA. A plan shall not*  
35 *be developed such that its provisions (a) are in conflict with state*  
36 *statute or federal law; (b) impair or diminish in any manner a water*  
37 *right existing before its adoption; (c) are inconsistent with the*  
38 *construction, operation, or maintenance of a federal reclamation*

1 project; or (d) are inconsistent with an instream flow or condition  
2 established for hydroelectric power project licensed under the federal  
3 power act. No aspect of the plan may establish standards for water  
4 quality or regulate water quality in any manner whatsoever.

5 (2) The plan must include the following:

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

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

10 (ii) A quantitative estimation using existing sources of  
11 information, of the amount of precipitation and surface and ground  
12 water available, using available technologies, collectively for both  
13 current and future water uses, including for instream purposes and for  
14 withdrawal or diversion;

15 (iii) A quantitative estimation using existing sources of  
16 information, of the amount of surface and ground water actually being  
17 used, and the months of peak and minimum use, both in-stream and by  
18 withdrawal, for agricultural, industrial, fisheries, recreational,  
19 environmental, municipal, and residential purposes, and including  
20 amounts claimed, permitted, or certificated for future municipal needs;  
21 and

22 (iv) A quantitative estimation of the amount of water,  
23 approximately, that is represented by amounts in claims in the water  
24 rights claims registry, in water use permits, in certificated rights,  
25 and in rules establishing instream flows;

26 (b) A quantitative description of future water-based instream and  
27 out-of-stream needs in the planning unit, based on projected population  
28 and agricultural and other economic growth. That is, an identification  
29 of the water needed collectively for use for agricultural, fisheries,  
30 recreational, environmental, industrial, municipal, and residential  
31 purposes. If a federal reclamation project is providing water for  
32 reclamation purposes within the WRIA or multi-WRIA area, federal  
33 reclamation water use requirements shall be those for project lands  
34 within the WRIA or multi-WRIA area;

35 (c) Instream flows.

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

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

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

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

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

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

23       (vii) If the planning unit is unable to approve such adjustments  
24 unanimously, such flows or levels may be submitted as a recommended  
25 adjustment to established minimum instream flows or lake levels in the  
26 WRIA plan for consideration by the department. Such recommendations  
27 must be approved by a two-thirds majority vote of the voting members of  
28 the planning unit.

29       (viii) A minimum instream flow or lake level set for a body of  
30 water in a WRIA plan adopted by the department under section 112 of  
31 this act supersedes any minimum flow or level or base flow or any other  
32 such flow or level previously established for the body of water by the  
33 department;

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

1 (e) An identification of known areas that provide for the recharge  
2 of aquifers from the surface and areas where aquifers recharge surface  
3 bodies of water;

4 (f) Strategies for increasing water supplies in the WRIA,  
5 including:

6 (i) Water conservation and reuse measures; and

7 (ii) Storage enhancements, including modifications to existing  
8 reservoirs, new reservoirs, and underground storage. Any quantity of  
9 water made available under these strategies is a quantity that is in  
10 addition to the water declared available for appropriation under (d) of  
11 this subsection; and

12 (g) An identification of areas where voluntary water-related  
13 habitat improvement projects or voluntary transactions providing for  
14 the purchase of water-related habitat or water-related habitat  
15 easements would provide the greatest benefit to habitat in the WRIA,  
16 and a prioritization of the areas based on their potential for  
17 providing such benefits. The purpose of this element of the plan is to  
18 provide a means of coordinating nonregulatory, voluntary efforts for  
19 improving water-related habitat in the WRIA.

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

24 (4) A plan shall not be developed under this chapter to require  
25 directly or indirectly the implementation of laws, rules, or programs  
26 that are designed primarily to control water pollution or discharges of  
27 pollutants to water, to regulate effluent discharges or wastewater  
28 treatment systems or facilities, or to establish or require the  
29 achievement of water quality standards, including but not limited to  
30 chapter 90.48 RCW and rules adopted under chapter 90.48 RCW, the  
31 national pollutant discharge elimination system permit program, and the  
32 state waste discharge permit program.

33 \*Sec. 110 was vetoed. See message at end of chapter.

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

1       (2) Any action taken by a state agency regarding water resources  
2 within a WRIA for which a plan has been adopted under section 112 of  
3 this act and any planning conducted by a state agency regarding water  
4 resources within a WRIA for which a plan has been adopted under section  
5 112 of this act shall be taken or conducted in a manner that is  
6 consistent with the plan. All actions and decisions of the department  
7 regarding water resources in the WRIA shall be consistent with and  
8 based upon such an adopted plan for the WRIA. Any other authority of  
9 the department exercised within the WRIA regarding water resources  
10 shall be exercised in a manner that is consistent with such an adopted  
11 plan.

12 \*Sec. 111 was vetoed. See message at end of chapter.

13       \*NEW SECTION. Sec. 112. (1) Upon completing a proposed water  
14 resource plan for the WRIA, the WRIA planning unit shall publish notice  
15 of and conduct at least one public hearing in the WRIA on the proposed  
16 plan. The planning unit shall take care to provide notice of the  
17 hearing throughout the WRIA or multi-WRIA area. As a minimum, it shall  
18 publish a notice of the hearing in one or more newspapers of general  
19 circulation in the WRIA or multi-WRIA area. After considering the  
20 public comments presented at the hearing or hearings, the planning unit  
21 shall submit a copy of its proposed plan to the department and to the  
22 tribal council of each reservation with territory within the WRIA.

23       (2)(a) The department shall provide advice as to any specific  
24 subsections or sections of the plan that the department believes to be  
25 in conflict with state statute or federal law and may provide other  
26 recommendations regarding the plan. The department shall transmit its  
27 advice and recommendations regarding the plan to the WRIA planning unit  
28 within sixty days of receiving it for review.

29       (b) The tribal council may review and provide comments and  
30 recommendations to the planning unit within sixty days of the receipt  
31 of the plan.

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

37       The WRIA planning unit shall approve a water resource plan for the  
38 WRIA by a two-thirds majority vote of the members of the planning unit.



1 An approved plan shall be submitted to the counties with territory  
2 within the WRIA for adoption. If a WRIA planning unit receives funding  
3 for WRIA or multi-WRIA planning under section 105 of this act and does  
4 not approve a plan for submission to the counties within four years of  
5 the date the planning unit receives the first of that funding from the  
6 department for the planning, the department shall develop and adopt a  
7 water resource plan for the WRIA or multi-WRIA area.

8 (4) The legislative authority of each of the counties with  
9 territory within the WRIA shall provide public notice for and conduct  
10 at least one public hearing on the WRIA plan submitted to the county  
11 under this section. The counties shall take care to provide notice of  
12 the hearings throughout the WRIA or multi-WRIA area. As a minimum,  
13 they shall publish a notice of the hearings in one or more newspapers  
14 of general circulation in the WRIA or multi-WRIA area. After the  
15 public hearings, the legislative authorities of these counties shall  
16 convene in joint session to consider the plan. The counties may  
17 approve or reject the plan, but may not amend the plan. Approval of a  
18 plan, or of recommendations for a plan that is not approved, shall be  
19 made by a majority vote of the members of the various legislative  
20 authorities of the counties with territory in the WRIA based on the  
21 votes allocated under section 107 of this act.

22 If the plan is not approved, it shall be returned to the WRIA  
23 planning unit with recommendations for revisions. Any revised plan and  
24 implementing rules prepared by the planning unit shall be submitted to  
25 the department and to the counties as provided by this section for WRIA  
26 water resource plans generally.

27 (5) If the plan and implementing rules are approved by the members  
28 of the legislative authorities, the plan shall be transmitted to the  
29 department for adoption. The department shall adopt such an approved  
30 WRIA water resource plan through the adopting of implementing rules.  
31 The department has no discretion to amend or reject the plan or  
32 implementing rules except those recommendations provided in section  
33 110(2)(c) (iii) or (vii) of this act. A copy of the implementing rules  
34 and notice of its adoption as rules shall be published in the state  
35 register under chapter 34.05 RCW. The public hearing required by  
36 chapter 34.05 RCW shall be deemed to have been satisfied by public  
37 hearings held by county legislative authorities.

38 (6) If the department finds that an element of a WRIA plan is in  
39 conflict with state statute or federal law and the planning unit does

1 not remove the conflict created by the element from its plan, the  
2 department and the planning unit shall submit the conflict to  
3 mediation. If mediation does not resolve the conflict within sixty  
4 days, the department shall file a petition for declaratory judgment in  
5 the superior court to determine whether the element is or is not in  
6 conflict with state statute or federal law. The petition shall be  
7 filed in the superior court in the county with the largest area in the  
8 WRIA or multi-WRIA area governed by the plan. The counties that  
9 approved the plan shall be named as parties to the proceeding. The  
10 superior court shall review the potential conflict under the error of  
11 law standard. If the superior court finds that an element of the plan  
12 is in conflict with state statute or federal law, that element of the  
13 plan shall be invalid. Decisions on such petitions are reviewable as  
14 in other civil cases. This subsection shall not be construed as  
15 establishing such state liability for any other element of the plan  
16 adopted as rules.

17 \*Sec. 112 was vetoed. See message at end of chapter.

18 \*NEW SECTION. Sec. 113. The WRIA planning units may accept  
19 grants, funds, and other financing, as well as enter into cooperative  
20 agreements with private and public entities for planning assistance and  
21 funding.

22 \*Sec. 113 was vetoed. See message at end of chapter.

23 \*NEW SECTION. Sec. 114. A new section is added to chapter 90.03  
24 RCW to read as follows:

25 (1) The department shall rule in a timely manner upon complete  
26 applications to appropriate public surface and ground water. For  
27 complete applications that seek to appropriate water from within a WRIA  
28 for which a WRIA plan has been adopted, the department shall grant or  
29 deny the application within one hundred eighty days of the date the  
30 properly completed application is filed with the department, except as  
31 provided in subsection (2) of this section. For applications filed  
32 after July 1, 1999, that seek to appropriate water from within a WRIA  
33 for which no WRIA plan has been adopted, the department shall grant or  
34 deny the application within one year of the date the properly completed  
35 application is filed with the department, except as provided in  
36 subsection (2) of this section. The times allowed in this section to  
37 rule upon an application shall not include the time it takes the  
38 applicant to respond to an explicit request for additional information

1 reasonably required to make a determination on the application. The  
2 department shall be allowed only one such request for additional  
3 information. The cost of obtaining such information shall be  
4 reasonable in relation to the quantity and value of the water right  
5 applied for. Once the applicant responds to an information request,  
6 the stay of the time allowed for the permit decision shall end.

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

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

16 \*Sec. 114 was vetoed. See message at end of chapter.

17 \*NEW SECTION. Sec. 115. A new section is added to chapter 34.05  
18 RCW to read as follows:

19 (1) Once a plan has been adopted by the counties in the WRIA under  
20 section 112 of this act and the plan has been submitted to the  
21 department of ecology, the department shall file implementing rules for  
22 the plan with the code reviser along with an order adopting the  
23 implementing rules. The code reviser shall cause the order and the  
24 implementing rules to be published in the Washington state register in  
25 the manner provided for the adoption of final rules and shall  
26 incorporate the implementing rules into the Washington Administrative  
27 Code. No other aspect of this chapter that establishes procedures for  
28 the adoption of rules applies to the adoption of the plan by the  
29 department.

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

32 \*Sec. 115 was vetoed. See message at end of chapter.

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

35 (1) Consistent with chapter . . . , Laws of 1997 (this act) the  
36 department, through the adoption of appropriate rules, is directed, as  
37 a matter of high priority to insure that the waters of the state are  
38 utilized for the best interests of the people, to develop and implement

1 *in accordance with the policies of this chapter a comprehensive state*  
2 *water resources program which will provide a process for making*  
3 *decisions on future water resource allocation and use. The department*  
4 *may develop the program in segments so that immediate attention may be*  
5 *given to waters of a given physioeconomic region of the state or to*  
6 *specific critical problems of water allocation and use.*

7 (2) *In relation to the management and regulatory programs relating*  
8 *to water resources vested in it, the department is further directed to*  
9 *modify existing regulations and adopt new regulations, when needed and*  
10 *possible, to insure that existing regulatory programs are in accord*  
11 *with the water resource policy of this chapter and the program*  
12 *established in subsection (1) of this section.*

13 (3) *The department is directed to review all statutes relating to*  
14 *water resources which it is responsible for implementing. When any of*  
15 *the same appear to the department to be ambiguous, unclear, unworkable,*  
16 *unnecessary, or otherwise deficient, it shall make recommendations to*  
17 *the legislature including appropriate proposals for statutory*  
18 *modifications or additions. Whenever it appears that the policies of*  
19 *any such statutes are in conflict with the policies of this chapter,*  
20 *and the department is unable to fully perform as provided in subsection*  
21 *(2) of this section, the department is directed to submit statutory*  
22 *modifications to the legislature which, if enacted, would allow the*  
23 *department to carry out such statutes in harmony with this chapter.*

24 \*Sec. 116 was vetoed. See message at end of chapter.

25 **PART II**

26 **STORAGE**

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

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

31 (1) Uses of water for domestic, stock watering, industrial,  
32 commercial, agricultural, irrigation, hydroelectric power production,  
33 mining, fish and wildlife maintenance and enhancement, recreational,  
34 and thermal power production purposes, and preservation of  
35 environmental and aesthetic values, and all other uses compatible with  
36 the enjoyment of the public waters of the state, are declared to be  
37 beneficial.

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

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

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

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

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

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

34 (4) The development of multipurpose water storage facilities shall  
35 be a high priority for programs of water allocation, planning,  
36 management, and efficiency. The department, other state agencies,  
37 local governments, and planning units formed under section 107 or 108  
38 of this act shall evaluate the potential for the development of new  
39 storage projects and the benefits and effects of storage in reducing

1 damage to stream banks and property, increasing the use of land,  
2 providing water for municipal, industrial, agricultural, power  
3 generation, and other beneficial uses, and improving stream flow  
4 regimes for fisheries and other instream uses.

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

7 ~~((+5+))~~ (6) Multiple-purpose impoundment structures are to be  
8 preferred over single-purpose structures. Due regard shall be given to  
9 means and methods for protection of fishery resources in the planning  
10 for and construction of water impoundment structures and other  
11 artificial obstructions.

12 ~~((+6+))~~ (7) Federal, state, and local governments, individuals,  
13 corporations, groups and other entities shall be encouraged to carry  
14 out practices of conservation as they relate to the use of the waters  
15 of the state. In addition to traditional development approaches,  
16 improved water use efficiency and conservation shall be emphasized in  
17 the management of the state's water resources and in some cases will be  
18 a potential new source of water with which to meet future needs  
19 throughout the state.

20 ~~((+7+))~~ (8) Development of water supply systems, whether publicly  
21 or privately owned, which provide water to the public generally in  
22 regional areas within the state shall be encouraged. Development of  
23 water supply systems for multiple domestic use which will not serve the  
24 public generally shall be discouraged where water supplies are  
25 available from water systems serving the public.

26 ~~((+8+))~~ (9) Full recognition shall be given in the administration  
27 of water allocation and use programs to the natural interrelationships  
28 of surface and ground waters.

29 ~~((+9+))~~ (10) Expressions of the public interest will be sought at  
30 all stages of water planning and allocation discussions.

31 ~~((+10+))~~ (11) Water management programs, including but not limited  
32 to, water quality, flood control, drainage, erosion control and storm  
33 runoff are deemed to be in the public interest.

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

36 ***Consistent with the fundamentals of water resource policy set forth***  
37 ***in this chapter, state and local governments, individuals,***  
38 ***corporations, groups and other entities shall be encouraged to carry***

1 out water use efficiency and conservation programs and practices  
2 consistent with the following:

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

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

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

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

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

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

37 \*Sec. 202 was vetoed. See message at end of chapter.





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

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

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

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

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

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

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

1 plans developed pursuant to chapter 90.54 RCW or chapter 90.-- RCW  
2 (sections 101 through 113 of this act).

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

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

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

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

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

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

32 (10) 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 \*Sec. 401 was vetoed. See message at end of chapter.

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



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

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

4 (d) The operation of legal proceedings;

5 (e) Federal laws imposing land or water use restrictions either  
6 directly or through the voluntary enrollment of a landowner in a  
7 federal program implementing those laws, or acreage limitations, or  
8 production quotas;

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

12 (g) The implementation of practices or technologies or the  
13 installation or repair of facilities, including but not limited to  
14 water conveyance practices, technologies, or facilities, that are more  
15 efficient or more water use efficient than practices, technologies, or  
16 facilities previously used under the water right.

17 (2) Notwithstanding any other provisions of RCW 90.14.130 through  
18 90.14.180, there shall be no relinquishment of any water right:

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

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

26 (c) If such right is claimed for a determined future development to  
27 take place (~~either~~) at any time within fifteen years of either July  
28 1, 1967, or the most recent beneficial use of the water right,  
29 whichever date is later, or

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

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

34 \*Sec. 501 was vetoed. See message at end of chapter.

35 PART VI  
36 GENERAL PERMITS

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

6        *The legislature further finds that water conservation efforts would*  
7 *be greatly enhanced by a permit system that encourages water right*  
8 *applicants to use only the amount of water actually necessary to meet*  
9 *their needs.*

10        *\*Sec. 601 was vetoed. See message at end of chapter.*

11        *\*NEW SECTION. Sec. 602. A new section is added to chapter 90.03*  
12 *RCW to read as follows:*

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

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

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

32        *(2) The department shall, by January 1, 1998, establish the general*  
33 *permit system by adopting rules in accordance with chapter 34.05 RCW.*  
34 *Before the adoption of rules for a system, the department shall consult*  
35 *with representatives of the following interest groups: Agriculture;*  
36 *aquaculture; home construction and development; county government; city*  
37 *government; surface mining; and the environmental community. At least*  
38 *four public hearings must be held at various locations around the*

1 state, not less than two of which shall be east of the crest of the  
2 Cascade mountains. The rules must identify criteria for proposed uses  
3 of water for which applications might be processed under the system and  
4 must establish procedures for filing and processing applications and  
5 issuing water rights certificates under the general permit system.

6 \*Sec. 602 was vetoed. See message at end of chapter.

7 \*NEW SECTION. Sec. 603. A new section is added to chapter 90.03  
8 RCW to read as follows:

9 An application for registration as a nonconsumptive, nonbypass  
10 water user under the general permit system established under section  
11 602 of this act must be made on a form adopted and provided by the  
12 department. Within sixty days of receipt of a properly completed  
13 application, the department shall determine whether the proposed use is  
14 eligible to be processed under the general permit system. If the  
15 department determines that the proposed use is eligible to be processed  
16 under the system, the application must be processed under the system  
17 within the next sixty days. The priority date of the water right  
18 established pursuant to this section shall be the date that the  
19 properly completed application is submitted. If the department  
20 determines that the proposed use is not eligible for the processing,  
21 the department shall explain to the applicant in writing the reasons  
22 for its determination. For a proposed use determined ineligible for  
23 the processing, if the department finds that the information contained  
24 on the application form substantially satisfies the information  
25 requirements for an application for a use that would normally be filed  
26 for processing the application outside of the general permit system,  
27 the department shall notify the applicant of its finding and shall  
28 process the application as if it were filed for processing outside of  
29 the system. If the department finds that the information does not  
30 substantially satisfy the requirements, the application must be  
31 considered to be incomplete for the processing and the applicant must  
32 be notified of this consideration.

33 \*Sec. 603 was vetoed. See message at end of chapter.

34 \*NEW SECTION. Sec. 604. A new section is added to chapter 90.03  
35 RCW to read as follows:

36 Nothing in sections 602 and 603 of this act authorizes the  
37 impairment or operates to impair any existing water rights. A water  
38 right holder under sections 602 and 603 of this act shall not make



1 *withdrawals that impair a senior water right. A holder of a senior*  
2 *water right who believes his or her water right is impaired may file a*  
3 *complaint with the department of ecology. Where such complaints of*  
4 *impairment have been received, the department of ecology shall make all*  
5 *reasonable efforts to resolve them in a timely manner through agreement*  
6 *of the parties. Nothing in section 602 or 603 of this act may be*  
7 *construed as waiving any requirement established under chapter 90.48*  
8 *RCW or federal law that a permittee secure a discharge permit regarding*  
9 *water quality.*

10 \*Sec. 604 was vetoed. See message at end of chapter.

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

15 \*Sec. 605 was vetoed. See message at end of chapter.

16 **PART VII**

17 **APPEALS**

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

33 \*Sec. 701 was vetoed. See message at end of chapter.

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

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

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

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

18 \*Sec. 702 was vetoed. See message at end of chapter.

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

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

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

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

32 (c) The issuance, modification, or termination of any permit,  
33 certificate, or license by the department or any air authority in the  
34 exercise of its jurisdiction, including the issuance or termination of  
35 a waste disposal permit, the denial of an application for a waste  
36 disposal permit, or the modification of the conditions or the terms of  
37 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. 703 was vetoed. See message at end of chapter.

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

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

1 ~~control boards or authorities established pursuant to chapter 70.94 RCW~~  
2 ~~shall be subject to review by the hearings board as provided in this~~  
3 ~~chapter.))~~

4 \*Sec. 704 was vetoed. See message at end of chapter.

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

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

12 \*Sec. 705 was vetoed. See message at end of chapter.

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

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

25 \*Sec. 706 was vetoed. See message at end of chapter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 \*Sec. 707 was vetoed. See message at end of chapter.

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

3       *Notwithstanding and in addition to any other powers granted to the*  
4 *department of ecology, whenever it appears to the department that a*  
5 *person is violating or is about to violate any of the provisions of the*  
6 *following:*

7       (1) *Chapter 90.03 RCW; or*

8       (2) *Chapter 90.44 RCW; or*

9       (3) *Chapter 86.16 RCW; or*

10       (4) *Chapter 43.37 RCW; or*

11       (5) *Chapter 43.27A RCW; or*

12       (6) *Any other law relating to water resources administered by the*  
13 *department; or*

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

37 *\*Sec. 708 was vetoed. See message at end of chapter.*

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

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

30 *\*Sec. 709 was vetoed. See message at end of chapter.*

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

33       *Any person feeling aggrieved by any decision of the department of*  
34 *ecology may have the same reviewed pursuant to RCW 43.21B.310.*  
35 *However, any order pertaining to the relinquishment of a water right*  
36 *shall be filed in superior court pursuant to RCW 90.14.130. In any such*  
37 *review, the findings of fact as set forth in the report of the*  
38 *department of ecology shall be prima facie evidence of the fact of any*

1 waiver or relinquishment of a water right or portion thereof. If the  
2 hearings board affirms the decision of the department, a party seeks  
3 review in superior court of that hearings board decision pursuant to  
4 chapter 34.05 RCW, and the court determines that the party was injured  
5 by an arbitrary, capricious, or erroneous order of the department, the  
6 court may award reasonable attorneys' fees.

7 \*Sec. 710 was vetoed. See message at end of chapter.

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

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

21 (2) RCW 90.14.130 provides nonexclusive procedures for determining  
22 a relinquishment of water rights under RCW 90.14.160, 90.14.170, and  
23 90.14.180. RCW 90.14.160, 90.14.170, and 90.14.180 may be applied in,  
24 among other proceedings, general adjudication proceedings initiated  
25 under RCW 90.03.110 or 90.44.220: PROVIDED, That nothing herein shall  
26 apply to litigation involving determinations of the department of  
27 ecology under RCW 90.03.290 relating to the impairment of existing  
28 rights.

29 \*Sec. 711 was vetoed. See message at end of chapter.

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

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

37 \*Sec. 712 was vetoed. See message at end of chapter.



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

3        (1) A water right claimant, or permit or certificate holder or  
4 applicant who is aggrieved or adversely affected by a water quantity  
5 decision may appeal the decision to the pollution control hearings  
6 board pursuant to RCW 43.21B.310. A formal hearing before the board  
7 may only be granted if all parties to the appeal of the water quantity  
8 decision agree to a formal hearing.

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

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

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

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

23 \*Sec. 713 was vetoed. See message at end of chapter.

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

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

30        (2) The parties involved in the informal hearing must provide the  
31 mediator and the other parties in advance with a clear, concise  
32 statement of the disputed issues and the parties' position in relation  
33 to the issues and supporting documentation. The mediator shall meet  
34 with the parties either jointly or separately, in the general area of  
35 the project under review or by telephone, at the discretion of the  
36 mediator, and shall take such steps as the mediator deems appropriate  
37 to resolve their differences and reach a settlement agreement. If a  
38 settlement agreement is reached, the mediator shall prepare and submit

1 to the hearings board a written order of dismissal to which the  
2 settlement agreement is attached. The hearings board shall enter the  
3 order and dismiss the case unless the hearings board finds that the  
4 settlement agreement is contrary to law.

5 If the hearings board finds that the settlement agreement is  
6 contrary to law, it shall notify the parties and refer the dispute back  
7 to mediation.

8 (3) If the parties are unable to achieve a settlement agreement  
9 within ninety days after being appointed, the mediator shall issue a  
10 statement that a settlement agreement has not been reached. After  
11 issuance of the statement, the party filing the appeal may request the  
12 hearings board to submit the dispute to fact finding with  
13 recommendations. Notice of the request for fact finding must be sent  
14 to the other parties.

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

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

35 (6) The fact finder shall, within thirty days following the  
36 conclusion of the hearing, make written findings of fact and written  
37 recommendations to the parties as to how the dispute should be  
38 resolved. The fact finder may not apply any presumption as part of the  
39 findings of fact or recommendations. A copy of the findings and

1 *recommendations shall be filed with the hearings board. The findings*  
2 *of fact and recommendations of the fact finder are advisory only, and*  
3 *are not subject to review by the hearings board.*

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

6 *\*Sec. 714 was vetoed. See message at end of chapter.*

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

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

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

18 *\*Sec. 715 was vetoed. See message at end of chapter.*

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

21 *An appeal to superior court of a water quantity decision, as*  
22 *defined in section 713 of this act, following an informal hearing by*  
23 *the board shall be heard de novo. If an informal hearing on the*  
24 *decision or order had been completed by the pollution control hearings*  
25 *board, no issue may be raised in superior court that was not raised and*  
26 *discussed as part of the fact-finding hearing. No bond may be required*  
27 *on appeals to the superior court or on review by the supreme court*  
28 *unless specifically required by the judge of the superior court.*

29 *\*Sec. 716 was vetoed. See message at end of chapter.*

30 **PART VIII**  
31 **MISCELLANEOUS**

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

34 *(1) The right to the use of water which has been applied to a*  
35 *beneficial use in the state shall be and remain appurtenant to the land*  
36 *or place upon which the same is used: PROVIDED, HOWEVER, That ((said))*

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

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

36 (3) A change in place of use by an individual water user or users  
37 of water provided by an irrigation district need only receive approval  
38 for the change from the board of directors of the district if the use  
39 of water continues within the irrigation district, and when water is

1 provided by an irrigation entity that is a member of a board of joint  
2 control created under chapter 87.80 RCW, approval need only be received  
3 from the board of joint control if the use of water continues within  
4 the area of jurisdiction of the joint board and the change can be made  
5 without detriment or injury to existing rights.

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

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

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

1 continuous beneficial use of the ground water right or, if the period  
2 of actual continuous beneficial use is less than five years, such  
3 lesser period. The department may specify an approved manner of  
4 construction and shall require a showing of compliance with the terms  
5 of the amendment, as provided in RCW 90.44.080 in the case of an  
6 original permit.

7 \*Sec. 802 was vetoed. See message at end of chapter.

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

10 NEW SECTION. **Sec. 804.** Sections 101 through 113 of this act  
11 constitute a new chapter in Title 90 RCW.

12 NEW SECTION. **Sec. 805.** If any provision of this act or its  
13 application to any person or circumstance is held invalid, the  
14 remainder of the act or the application of the provision to other  
15 persons or circumstances is not affected.

Passed the House April 27, 1997.

Passed the Senate April 18, 1997.

Approved by the Governor May 20, 1997, with the exception of  
certain items that were vetoed.

Filed in Office of Secretary of State May 20, 1997.

1 Note: Governor's explanation of partial veto is as follows:

2 "I am returning herewith, without my approval as to sections 107  
3 through 116, 202, 401, 402, 501, 601, 602, 603, 604, 605, 701 through  
4 716, and 802, Second Substitute House Bill No. 2054 entitled:

5 "AN ACT Relating to water resource management;"

6 Second Substitute House Bill No. 2054 addresses a number of water  
7 resource management issues, including watershed planning, storage,  
8 adjudications, water purveyors, relinquishment, general permits, water  
9 right appeals, and transfers.

10 I agree with legislative leaders on the need for local watershed  
11 planning. The people who live in a particular area should have a  
12 strong voice as to how water should be used in their watershed.  
13 Sections 101 through 106 set the tone for how we will resolve many of  
14 our water problems and I support those sections.

15 Sections 107 through 116 set out a process for local watershed  
16 planning and adoption which does not provide sufficient flexibility to  
17 accommodate a wide array of watershed planning needs. The time limits  
18 imposed on the Department of Ecology for making decisions on water  
19 right applications are unreasonable under current resources available  
20 to the Department of Ecology.

1        Section 202 equates water storage with water conservation and  
2 although the two may be related, this definition of water conservation  
3 could be problematic in future water rights processing and appeals.

4        Sections 401 and 402 are null and void because of my actions on  
5 sections 107 through 116, but these are important water resource  
6 management issues so I will address the issues in these sections.  
7 Section 401 makes changes to the intertie statute (RCW 90.03.380) to  
8 promote land development, but is not linked to growth management plans  
9 or state-approved demand forecasts. The broad language used to  
10 grandfather in existing interties would create dormant water rights and  
11 excuse these interties from a review to determine potential impacts on  
12 other existing water rights as well as instream flows. Section 402  
13 would equate the perfection of a water right to the quantity allocated  
14 in a certificate of water right rather than the quantity beneficially  
15 used. This would violate a fundamental principle of western water law  
16 and the state water code and create great uncertainty in trying to  
17 determine what water is available for other water rights, new  
18 applications, and the protection of instream resources.

19        Section 501, without a standard established by the legislature,  
20 could allow a water right holder to avoid relinquishment by taking an  
21 unlimited amount of time to implement a water conservation project.

22        Sections 601 through 605 would create a new surface water permit  
23 exemption for water uses that consume less than 5,000 gallons per day.

24        Sections 701 through 716 would override the existing, well-  
25 established and highly functional water right appeals process. These  
26 sections could establish a total of four processes to reach a factual  
27 decision on the record.

28        Section 802 would amend the ground water code to allow changes to  
29 water rights that are already authorized in section 801, which amends  
30 the surface water code. The legislature has already recognized that  
31 the surface water code, RCW chapter 90.03, applies to the allocation  
32 and regulation of ground water. I believe, and the Department of  
33 Ecology concurs, that the amendments to RCW 90.03.380 set forth within  
34 section 801 apply to ground water rights as well as to surface water  
35 rights. To the extent that this is duplicative of the provisions in  
36 section 801, section 802, which amends RCW 90.44.100, is unnecessary.  
37 Section 802 would also allow the irrigation of additional acreage or  
38 the addition of new uses for a quantity of water authorized under a  
39 ground water permit that has not yet been put to beneficial use. This  
40 is a concept that I am very interested in exploring, and I will be  
41 asking for further study and recommendations on this issue in the  
42 interim.

43        For these reasons, I have vetoed sections 107 through 116, 202,  
44 401, 402, 501, 601, 602, 603, 604, 605, 701 through 716, and 802,  
45 Second Substitute House Bill No. 2054.

46        With the exception of sections 107 through 116, 202, 401, 402, 501,  
47 601, 602, 603, 604, 605, 701 through 716, and 802, Second Substitute  
48 House Bill No. 2054 is approved."