
SENATE BILL 5517

State of Washington**54th Legislature****1995 Regular Session****By** Senators Haugen, Morton, Snyder, Sellar, Newhouse, Rasmussen, Swecker, Franklin and Deccio

Read first time 01/25/95. Referred to Committee on Senate Select Committee on Water Policy.

1 AN ACT Relating to reforming water resource and water quality
2 administration; amending RCW 43.27A.020, 43.27A.090, 43.27A.130,
3 43.27A.190, 43.20.230, 43.21A.020, 43.21A.067, 43.83B.040, 43.83B.210,
4 43.83B.220, 43.83B.230, 43.83B.345, 43.83B.365, 43.83B.400, 43.83B.405,
5 43.83B.410, 43.83B.415, 89.16.040, 89.16.045, 89.16.050, 89.16.055,
6 89.16.060, 89.16.070, 89.16.080, 89.30.055, 89.30.058, 89.30.070,
7 89.30.427, 90.03.005, 90.03.015, 90.03.030, 90.03.060, 90.03.070,
8 90.03.100, 90.03.110, 90.03.120, 90.03.130, 90.03.140, 90.03.160,
9 90.03.170, 90.03.190, 90.03.200, 90.03.210, 90.03.230, 90.03.240,
10 90.03.247, 90.03.250, 90.03.260, 90.03.270, 90.03.280, 90.03.290,
11 90.03.300, 90.03.310, 90.03.320, 90.03.330, 90.03.340, 90.03.345,
12 90.03.350, 90.03.360, 90.03.370, 90.03.380, 90.03.383, 90.03.386,
13 90.03.390, 90.03.430, 90.03.440, 90.03.470, 90.03.471, 90.03.600,
14 90.08.040, 90.08.050, 90.14.041, 90.14.043, 90.14.051, 90.14.061,
15 90.14.065, 90.14.091, 90.14.101, 90.14.111, 90.14.130, 90.14.150,
16 90.14.180, 90.14.190, 90.14.200, 90.14.215, 90.14.230, 90.16.060,
17 90.16.090, 90.22.010, 90.22.020, 90.22.030, 90.22.040, 90.22.060,
18 90.24.010, 90.24.030, 90.24.040, 90.24.050, 90.24.060, 90.38.010,
19 90.38.020, 90.38.030, 90.38.040, 90.38.050, 90.40.090, 90.42.020,
20 90.42.030, 90.42.040, 90.42.050, 90.42.080, 90.44.035, 90.44.050,
21 90.44.060, 90.44.070, 90.44.080, 90.44.090, 90.44.100, 90.44.110,

1 90.44.120, 90.44.130, 90.44.180, 90.44.200, 90.44.220, 90.44.230,
2 90.44.250, 90.44.400, 90.44.410, 90.44.410, 90.44.420, 90.44.430,
3 90.44.445, 90.44.450, 90.46.005, 90.46.020, 90.46.030, 90.46.040,
4 90.46.050, 90.54.010, 90.54.030, 90.54.040, 90.54.045, 90.54.050,
5 90.54.060, 90.54.100, 90.54.110, 90.54.120, 90.54.130, 90.54.140,
6 90.54.150, 90.54.160, 90.54.170, 90.54.190, 90.54.200, 90.54.900,
7 90.66.040, 90.66.050, 90.66.060, 90.66.070, and 90.66.080; reenacting
8 and amending RCW 43.83B.300 and 90.42.010; adding new sections to
9 chapter 43.27A RCW; creating a new section; recodifying RCW 43.21A.067;
10 decodifying RCW 90.14.043; repealing RCW 43.21A.064; providing
11 effective dates; providing an expiration date; and declaring an
12 emergency.

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

14 **PART I**
15 **COMMISSION CREATED**

16 NEW SECTION. **Sec. 1.** There is hereby created a state commission
17 to be known as the Washington water resources and water quality
18 commission. The commission shall consist of two divisions: An eastern
19 division with jurisdiction throughout the area of the state east of the
20 crest of the Cascade mountains and including all of Skamania county and
21 a western division with jurisdiction throughout the area of the state
22 west of the crest of the Cascade mountains, exclusive of Skamania
23 county. Each division shall be composed of five members appointed by
24 the governor, with the consent of the senate.

25 The members shall serve four-year terms except for three of the
26 initial members of the eastern division and two of the initial members
27 of the western division as designated by the governor who shall serve
28 two-year terms. The terms of the initial members shall begin September
29 1, 1995. At the first meeting of each division following September 1
30 of each year, each division shall choose one of its members to serve as
31 chairperson for the ensuing year.

32 Each commissioner shall receive a salary as may be fixed by the
33 governor in accordance with the provisions of RCW 43.03.040.

34 A member may be dismissed by the governor prior to the expiration
35 of his or her term for cause.

1 NEW SECTION. **Sec. 2.** In making appointments to the board, the
2 governor shall select persons with recognized expertise in water-
3 related issues, including, for example, issues involving irrigation,
4 hydroelectric production, fisheries, municipal and industrial supply,
5 tribal interests, and water quality. In the eastern division, at least
6 three of the members shall have a background in rural-related issues.
7 In the western division, at least three of the members shall have a
8 background in urban-related issues.

9 No elective state official, state officer, or state employee shall
10 be a member of the commission. At the time of their appointment and
11 thereafter during their respective terms of office, the members of the
12 eastern division shall reside within the eastern jurisdiction and the
13 members of the western division shall reside within the western
14 jurisdiction. No more than two members of each division shall reside
15 in the same county. No member shall be appointed for more than two
16 consecutive terms.

17 NEW SECTION. **Sec. 3.** Any three commissioners of a division shall
18 constitute a quorum for the transaction of any business, for the
19 performance of any duty, or for the exercise of any power within the
20 authority of the division. Any six commissioners of either division
21 shall constitute a quorum for the transaction of any business, for the
22 performance of any duty, or for the exercise of any power within the
23 authority of the commission as a whole.

24 NEW SECTION. **Sec. 4.** The commission, acting as a whole, has the
25 following powers and duties:

26 (1) The commission, by the adoption of rules, shall establish
27 state-wide policy and guidelines regarding water resource and water
28 quality management consistent with statutory law.

29 (2) The commission shall act as coordinator of water resource and
30 water quality rules and guidelines of other state agencies to assure
31 consistency with state-wide policies.

32 (3) The commission shall appoint a clerk for each division and
33 employ other staff as may be necessary to carry on the administrative
34 work of the commission and its two divisions. The division clerks
35 shall have the authority to authenticate documents and other records of
36 their division or the commission acting as a whole when required.

1 (4) The commission may appoint technical working groups and
2 advisory interest group committees to assist it in carrying out its
3 duties.

4 (5) The commission is the sole authority for approval of interbasin
5 transfers which cross the jurisdictional boundary of the two divisions.

6 (6) The commission may conduct investigations, inquiries, or
7 hearings, as appropriate. Such investigations, inquiries, or hearings
8 may be conducted by or before any commissioner or any administrative
9 law judge or other examiner designated by the commission. All
10 investigations, inquiries, and hearings of the commission and all
11 findings, orders, or decisions, made by a commissioner, when approved
12 and confirmed by the commission shall be the orders or decisions of the
13 commission.

14 NEW SECTION. **Sec. 5.** Each division of the commission has the
15 following powers and duties:

16 (1) The division, by the adoption of rules, shall establish
17 division policy and guidelines regarding water resource and water
18 quality management consistent with statutory law and the rules adopted
19 by the commission acting as a whole.

20 (2) The division shall review regional plans to ensure consistency
21 between plans and to ensure consistency and adherence to state-wide and
22 division policy and statute law.

23 (3) The division may appoint technical working groups and advisory
24 interest group committees to assist it in carrying out its duties.

25 (4) The division is the sole authority for approval of interbasin
26 transfers within the jurisdiction of the division.

27 (5) The division may conduct investigations, inquiries, or
28 hearings, as appropriate. Such investigations, inquiries, or hearings
29 may be conducted by or before any commissioner of the division or any
30 administrative law judge or other examiner designated by the division.
31 All investigations, inquiries, and hearings of the division and all
32 findings, orders, or decisions, made by a commissioner, when approved
33 and confirmed by the division, shall be the orders or decisions of the
34 division.

35 (6) The division shall appoint the division engineer who shall
36 serve at the pleasure of the division.

1 (7) The division may designate persons by rule to preside and enter
2 final orders in emergency adjudication of water rights under RCW
3 34.05.479.

4 NEW SECTION. **Sec. 6.** The commission shall submit a biennial
5 report to the governor and the legislature containing a summary of the
6 transactions and proceedings of the commission acting as a whole and of
7 each division, together with a summary of any information gathered by
8 the commission, the divisions and the division engineers, and such
9 other facts, suggestions, and recommendations as the governor may
10 require or the legislature request.

11 NEW SECTION. **Sec. 7.** The attorney general shall represent and
12 appear for the people of the state of Washington and the commission or
13 its divisions in all actions and proceedings involving any question
14 under this chapter, or under or in reference to any act or order of the
15 commission or its divisions; and it is the duty of the attorney general
16 to enforce all water resource and water quality laws in general,
17 including laws and rules which the division engineers are required to
18 enforce.

19 NEW SECTION. **Sec. 8.** The division engineers have the following
20 powers and duties within the territory of their respective division:

- 21 (1) Development and management of water resource data;
- 22 (2) Enforcement of water resource laws;
- 23 (3) Analysis and engineering, which may be performed by private or
24 public entity under contract;
- 25 (4) Issuance of water permits. Permit decisions shall be based on
26 technical data, local water resource plans, and water quality
27 requirements. In areas for which a regional plan is final, the
28 engineer must approve or disapprove a permit within three months of
29 receipt of a completed application;
- 30 (5) Provision of technical assistance to regional groups and
31 technical committees;
- 32 (6) Establishment of in-stream flow requirements based on
33 historical flow to maintain historic fishery resources in areas where
34 no regional water resource group has been established;
- 35 (7) Establishment of technical committees;

1 (8) Conduct of general or individual adjudications of competing
2 claims for water resources pursuant to statute and rules adopted by the
3 commission and divisions regarding procedures and substantive
4 standards. For this purpose, the engineer may be authorized by rule to
5 request the appointment of administrative law judges under chapter
6 34.12 RCW who shall have authority to administer oaths, to issue
7 subpoenas for the attendance of witnesses and the production of papers,
8 books, accounts, documents, and testimony, to examine witnesses, and to
9 receive testimony.

10 NEW SECTION. **Sec. 9.** Water resource planning shall be done at the
11 local level by regional water resource groups. Regional water resource
12 group geographical boundaries shall be coterminous with the boundaries
13 of one or several water resource inventory areas.

14 (1) Regional water resource groups may be established by the
15 division upon the petition of two or more cities, counties, or tribal
16 authorities within the proposed boundaries of the region. The division
17 shall approve or disapprove the establishment of a regional water
18 resource group and determine the size and membership of the group in
19 accordance with standards adopted by rule.

20 (2) Regional water resource groups shall have the following powers
21 and duties:

22 (a) Development of a regional water resource plan, including water
23 storage proposals, in-stream flow requirements, and incentives for
24 water pollution control, water recycling, and water reuse. The
25 division engineer shall provide technical and administrative assistance
26 to facilitate the development of regional water resource plans;

27 (b) Recommendation of areas for general adjudication of water
28 rights by the division engineer;

29 (c) Creation of ad hoc technical working groups or interest group
30 advisory committees;

31 (d) Authority to receive state and federal funds and assistance.

32 (3) Regional water resource plans shall be submitted to the
33 division for approval and may be rejected by the division only if the
34 plan is inconsistent with statute, commission and division rules, and
35 any comprehensive plan adopted by any county pursuant to the growth
36 management act which is applicable within the region. Funding for
37 development of the plan shall be shared by the political subdivisions
38 in the group and the state.

1 (4) In-stream flow levels set by the division engineer may be
2 adjusted during the planning process. If existing unallocated flow is
3 insufficient to meet historic flow needs, the group shall consider
4 conservation, water transfers, or modification of storage capacity to
5 achieve in-stream flow objectives.

6 (5) A regional group shall cease to exist after approval of the
7 regional plan by the division.

8 (6) The division may establish successor regional water resource
9 groups to develop plan revisions. Such successor groups shall cease to
10 exist when any proposed revision is approved by the division.

11 NEW SECTION. **Sec. 10.** A new section is added to chapter 43.27A
12 RCW to read as follows:

13 All reports, documents, surveys, books, records, files, papers, or
14 written material in the possession of the department of ecology
15 relating to functions transferred under chapter . . ., Laws of 1995
16 (this act) shall be delivered to the custody of the Washington water
17 resources and water quality commission. All cabinets, furniture,
18 office equipment, motor vehicles, and other tangible property employed
19 by the department of ecology relating to functions transferred shall be
20 made available to the Washington water resources and water quality
21 commission. All funds, credits, or other assets held by the department
22 of ecology relating to functions transferred shall be assigned to the
23 Washington water resources and water quality commission.

24 Any appropriations made to the department of ecology relating to
25 functions transferred shall, on the effective date of this section, be
26 transferred and credited to the Washington water resources and water
27 quality commission.

28 Whenever any question arises as to the transfer of any funds,
29 including unexpended balances within any accounts, books, documents,
30 records, papers, files, equipment, or any other tangible property used
31 or held in the exercise of the powers and the performance of the duties
32 and functions transferred, the director of financial management shall
33 make a determination as to the proper allocation and certify the same
34 to the entities concerned.

35 NEW SECTION. **Sec. 11.** A new section is added to chapter 43.27A
36 RCW to read as follows:

1 All rules and all pending business before the department of ecology
2 relating to functions transferred shall be continued and acted upon by
3 the Washington water resources and water quality commission. All
4 existing contracts and obligations shall remain in full force and
5 effect and shall be performed by the Washington water resources and
6 water quality commission.

7 **PART II**

8 **INTERNAL REFERENCE CORRECTIONS AND NOMENCLATURE**

9 **Sec. 12.** RCW 43.27A.020 and 1987 c 109 s 31 are each amended to
10 read as follows:

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

13 (1) "~~((Department))~~ Commission" means the ~~((department—of~~
14 ~~ecology;))~~ Washington water resources and water quality commission.

15 (2) "~~((Director))~~ Division engineer" means ~~((the—director—of~~
16 ~~ecology;))~~ one or both of the division engineers.

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

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

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

26 **Sec. 13.** RCW 43.27A.090 and 1988 c 127 s 25 are each amended to
27 read as follows:

28 The ~~((department))~~ commission shall be empowered as follows:

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

35 (2) To prepare the views and recommendations of the state of
36 Washington on any project, plan, or program relating to the planning,

1 development, administration, management, conservation, and preservation
2 of any waters located in or affecting the state of Washington,
3 including any federal permit or license proposal, and appear on behalf
4 of, and present views and recommendations of the state at any
5 proceeding, negotiation or hearing conducted by the federal government,
6 interstate agency, state or other agency.

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

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

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

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

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

36 (8) To assemble and correlate state, local and federal laws,
37 regulations, plans, programs, and policies affecting the beneficial
38 use, disposal, pollution, control, or conservation of water, river
39 basin development, flood prevention, parks, reservations, forests,

1 wildlife refuges, drainage and sanitary systems, waste disposal, water
2 works, watershed protection and development, minimum in-stream flows,
3 base flows, soil conservation, power facilities and area and municipal
4 water supply needs, and recommend suitable legislation or other action
5 to the legislature, the congress of the United States, or any city,
6 municipality, or to responsible state, local or federal executive
7 departments or agencies.

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

13 (10) To encourage, assist and advise regional, and city and
14 municipal agencies, officials or bodies responsible for planning in
15 relation to water aspects of their programs, and coordinate local water
16 resources activities, programs, and plans.

17 (11) To (~~promulgate~~) adopt such rules (~~and regulations~~) as are
18 necessary to carry out the purposes of this chapter.

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

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

27 **Sec. 14.** RCW 43.27A.130 and 1988 c 127 s 26 are each amended to
28 read as follows:

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

34 **Sec. 15.** RCW 43.27A.190 and 1987 c 109 s 11 are each amended to
35 read as follows:

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

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

3 (1) Chapter 90.03 RCW; or

4 (2) Chapter 90.44 RCW; or

5 (3) Chapter 86.16 RCW; or

6 (4) Chapter 43.37 RCW; or

7 (5) Chapter 43.27A RCW; or

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

10 (7) A rule or regulation adopted, or a directive or order issued by
11 the ((department)) division engineer relating to subsections (1)
12 through (6) of this section; the ((department)) division engineer may
13 cause a written regulatory order to be served upon said person either
14 personally, or by registered or certified mail delivered to addressee
15 only with return receipt requested and acknowledged by him or her. The
16 order shall specify the provision of the statute, rule, regulation,
17 directive, or order alleged to be or about to be violated, and the
18 facts upon which the conclusion of violating or potential violation is
19 based, and shall order the act constituting the violation or the
20 potential violation to cease and desist or, in appropriate cases, shall
21 order necessary corrective action to be taken with regard to such acts
22 within a specific and reasonable time. The regulation of a headgate or
23 controlling works as provided in RCW 90.03.070, by a watermaster,
24 stream patrolman, or other person so authorized by the ((department))
25 division engineer shall constitute a regulatory order within the
26 meaning of this section. A regulatory order issued hereunder shall
27 become effective immediately upon receipt by the person to whom the
28 order is directed, except for regulations under RCW 90.03.070 which
29 shall become effective when a written notice is attached as provided
30 therein. Any person aggrieved by such order may appeal the order
31 pursuant to ((RCW 43.21B.310)) chapter 34.05 RCW.

32 **Sec. 16.** RCW 43.20.230 and 1993 sp.s. c 4 s 9 are each amended to
33 read as follows:

34 Consistent with the water resource planning process of the
35 ((department of ecology)) Washington water resources and water quality
36 commission, the department of health shall:

37 (1) Develop procedures and guidelines relating to water use
38 efficiency(~~(, as defined in section 4(3), chapter 348, Laws of 1989,)~~)

1 to be included in the development and approval of cost-efficient water
2 system plans required under RCW 43.20.050;

3 (2) Develop criteria, with input from technical experts, with the
4 objective of encouraging the cost-effective reuse of greywater and
5 other water recycling practices, consistent with protection of public
6 health and water quality;

7 (3) Provide advice and technical assistance upon request in the
8 development of water use efficiency plans; and

9 (4) Provide advice and technical assistance on request for
10 development of model conservation rate structures for public water
11 systems. Subsections (1), (2), and (3) of this section are subject to
12 the availability of funding.

13 **Sec. 17.** RCW 43.21A.020 and 1970 ex.s. c 62 s 2 are each amended
14 to read as follows:

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

33 **Sec. 18.** RCW 43.21A.067 and 1987 c 109 s 27 are each amended to
34 read as follows:

35 The ~~((director of ecology))~~ division engineer may create within
36 ~~((his))~~ the ~~((department))~~ division a fund to be known as the "basic
37 data fund."

1 Into such fund shall be deposited all moneys contributed by persons
2 for stream flow, ground water, and water quality data or other
3 hydrographic information furnished by the ((department)) division
4 engineer in cooperation with the United States geological survey, and
5 the fund shall be expended on a matching basis with the United States
6 geological survey for the purpose of obtaining additional basic
7 information needed for an intelligent inventory of water resources in
8 the state.

9 Disbursements from the basic data fund shall be on vouchers
10 approved by the ((department)) division engineer and the district
11 engineer of the United States geological survey.

12 **Sec. 19.** RCW 43.83B.040 and 1972 ex.s. c 128 s 4 are each amended
13 to read as follows:

14 The proceeds from the sale of the bonds deposited in the state and
15 local improvements revolving account of the general fund under the
16 terms of this chapter shall be administered by the ((state department
17 of ecology)) division engineer subject to legislative appropriation.
18 The ((department)) division engineer may use or permit the use of any
19 funds derived from the sale of bonds authorized under this chapter to
20 accomplish the purpose for which said bonds are issued by direct
21 expenditures and by grants or loans to public bodies, including grants
22 to public bodies as matching funds in any case where federal, local, or
23 other funds are made available on a matching basis for improvements
24 within the purposes of this chapter.

25 **Sec. 20.** RCW 43.83B.210 and 1989 c 171 s 7 are each amended to
26 read as follows:

27 The ((department of ecology)) division engineer is authorized to
28 make loans or grants or combinations thereof from funds under RCW
29 43.83B.010 through 43.83B.110 to eligible public bodies as defined in
30 RCW 43.83B.050 for rehabilitation or betterment of agricultural water
31 supply facilities, and/or construction of agricultural water supply
32 facilities required to develop new irrigated lands. The ((department
33 of ecology)) division engineer may make such loans or grants or
34 combinations thereof as matching funds in any case where federal,
35 local, or other funds have been made available on a matching basis. A
36 loan or combination loan and grant shall not exceed fifty percent of
37 the approved eligible project cost for any single proposed project.

1 Any grant or grant portion of a combination loan and grant from funds
2 under RCW 43.83B.010 through 43.83B.110 for any single proposed project
3 shall not exceed fifteen percent of the eligible project costs:
4 PROVIDED, That the fifteen percent limitation established herein shall
5 not be applicable to project commitments which the director or deputy
6 director of the state department of ecology made to the bureau of
7 reclamation of the United States department of interior for providing
8 state funding at thirty-five percent of project costs during the period
9 between August 1, 1974, and June 30, 1975.

10 **Sec. 21.** RCW 43.83B.220 and 1989 c 11 s 17 are each amended to
11 read as follows:

12 In addition to the powers granted by RCW 43.83B.210, the ((director
13 of the department of ecology or his designee)) division engineer is
14 authorized to make contractual agreements in accordance with provisions
15 of this chapter on behalf of the state of Washington. Contractual
16 agreements shall include provisions to secure such loans, and shall
17 assure the proper and timely payment of said loans or loan portions of
18 combination loans and grants.

19 **Sec. 22.** RCW 43.83B.230 and 1975 1st ex.s. c 295 s 14 are each
20 amended to read as follows:

21 In the course of considering applications under this chapter, the
22 ((department of ecology)) division engineer shall make known to other
23 state agencies possibilities which may arise to provide public benefits
24 such as recreation or fish and wildlife enhancement in connection with
25 proposed projects. Such agencies, including the ((department of
26 ecology)) division engineer, are authorized to participate in said
27 projects provided agency funds are made available to pay the full cost
28 of their participation.

29 **Sec. 23.** RCW 43.83B.300 and 1988 c 47 s 1, 1988 c 46 s 2, and 1988
30 c 45 s 1 are each reenacted and amended to read as follows:

31 The legislature finds that the fundamentals of water resource
32 policy in this state must be reviewed by the legislature to ensure that
33 the water resources of the state are protected and fully utilized for
34 the greatest benefit to the people of the state of Washington. The
35 legislature further finds that it is necessary to provide the
36 ((department of ecology)) division engineer with emergency powers to

1 authorize withdrawals of public surface and ground waters, including
2 dead storage within reservoirs, on a temporary basis, and construction
3 of facilities in relation thereto, in order to alleviate emergency
4 water supply conditions arising from the drought forecast for the state
5 of Washington during 1977 and during 1987 through 1989.

6 The legislature further finds that there is a continuing water
7 supply shortage in many areas of the state and that there is an urgent
8 need to assure the survival of irrigated crops and of the state's
9 fisheries.

10 The legislature further finds that in addition to water storage
11 facilities or other augmentation programs, improved efficiency of water
12 use could provide an important new supply of water in many parts of the
13 state with which to meet future water needs and that improved
14 efficiency of water use should receive greater emphasis in the
15 management of the state's water resources.

16 In order to study the fundamentals of water resource policy of the
17 state and to provide needed moneys for the planning, acquisition,
18 construction, and improvement of water supply facilities and for other
19 appropriate measures to assure the survival of irrigated crops and/or
20 the state's fisheries to alleviate emergency water supply conditions
21 arising from droughts occurring from time to time in the state of
22 Washington, and to carry out a comprehensive water use efficiency study
23 for the state of Washington, the state finance committee is authorized
24 to issue general obligation bonds of the state of Washington in the sum
25 of eighteen million dollars, or so much thereof as may be required to
26 finance such projects, and all costs incidental thereto. No bonds
27 authorized by this section and RCW 43.83B.360 through 43.83B.375 shall
28 be offered for sale without prior legislative appropriation, and these
29 bonds shall be paid and discharged within thirty years of the date of
30 issuance in accordance with Article VIII, section 1 of the state
31 Constitution.

32 **Sec. 24.** RCW 43.83B.345 and 1977 ex.s. c 1 s 10 are each amended
33 to read as follows:

34 (1) The ((department of ecology)) division engineer shall, by rule,
35 establish rates of charges for all waters delivered from such
36 facilities as constructed by the ((department)) division engineer with
37 funds provided in RCW 43.83B.385 (2) or (3). Where the ((department))
38 division engineer provides water to public or municipal corporations or

1 other governmental bodies having authority to distribute water, the
2 payment for the water may be made pursuant to contract over a period
3 not exceeding twenty-five years from the date of delivery. In all
4 other cases, the ((department)) division engineer shall obtain payment
5 for waters prior to its delivery to a purchaser. All payments received
6 shall be deposited into the state emergency water projects bond
7 redemption fund of 1977.

8 (2) Public bodies, eligible to obtain funds through grants or loans
9 or combinations thereof under the provisions of RCW 43.83B.300
10 ((through)), 43.83B.345, and 43.83B.210 ((as now or hereafter
11 amended)), are authorized to enter into contracts with the ((department
12 of ecology)) division engineer for the purpose of repaying loans
13 authorized by RCW 43.83B.380 and 43.83B.385 and for the purpose of
14 purchasing water under this section.

15 (3) The ((department of ecology)) division engineer is authorized
16 to enter into appropriate contracts to ensure effective delivery of
17 water and the operation and maintenance of facilities constructed
18 pursuant to RCW 43.83B.300, 43.83B.345 through 43.83B.385, 43.83B.901,
19 and 43.83B.210.

20 **Sec. 25.** RCW 43.83B.365 and 1977 ex.s. c 1 s 14 are each amended
21 to read as follows:

22 The principal proceeds from the sale of the bonds authorized in RCW
23 43.83B.300, and 43.83B.355 through 43.83B.375 shall be administered by
24 the ((director of the department of ecology)) division engineer.

25 **Sec. 26.** RCW 43.83B.400 and 1989 c 171 s 1 are each amended to
26 read as follows:

27 It is the intent of the legislature to provide emergency powers to
28 the ((department of ecology)) division engineer to enable it to take
29 actions, in a timely and expeditious manner, that are designed to
30 alleviate hardships and reduce burdens on various water users and uses
31 arising from drought conditions. As used in this chapter, "drought
32 condition" means that the water supply for a geographical area or for
33 a significant portion of a geographical area is below seventy-five
34 percent of normal and the water shortage is likely to create undue
35 hardships for various water uses and users.

1 **Sec. 27.** RCW 43.83B.405 and 1989 c 171 s 2 are each amended to
2 read as follows:

3 (1) Whenever it appears to the (~~department of ecology~~) division
4 engineer that a drought condition either exists or is forecast to occur
5 within the state or portions thereof, the (~~department of ecology~~)
6 division engineer is authorized to issue orders, pursuant to rules
7 previously adopted, to implement the powers as set forth in RCW
8 43.83B.410 through 43.83B.420. The (~~department~~) division engineer
9 shall, immediately upon the issuance of an order under this section,
10 cause said order to be published in newspapers of general circulation
11 in the areas of the state to which the order relates. Prior to the
12 issuance of an order, the (~~department~~) division engineer shall (a)
13 consult with and obtain the views of the federal and state government
14 entities identified in the drought contingency plan periodically
15 revised by the (~~department~~) division engineer pursuant to RCW
16 43.83B.410(4), and (b) obtain the written approval of the governor.
17 Orders issued under this section shall be deemed orders for the
18 purposes of chapter 34.05 RCW.

19 (2) Any order issued under subsection (1) of this section shall
20 contain a termination date for the order. The termination date shall
21 be not later than one calendar year from the date the order is issued.
22 Although the (~~department~~) division engineer may, with the written
23 approval of the governor, change the termination date by amending the
24 order, no such amendment or series of amendments may have the effect of
25 extending its termination to a date which is later than two calendar
26 years after the issuance of the order.

27 (3) The provisions of subsection (2) of this section do not
28 preclude the issuance of more than one order under subsection (1) of
29 this section for different areas of the state or sequentially for the
30 same area as the need arises for such an order or orders.

31 **Sec. 28.** RCW 43.83B.410 and 1989 c 171 s 3 are each amended to
32 read as follows:

33 Upon the issuance of an order under RCW 43.83B.405, the
34 (~~department of ecology~~) division engineer is empowered to:

35 (1)(a) Authorize emergency withdrawal of public surface and ground
36 waters, including dead storage within reservoirs, on a temporary basis
37 and authorize associated physical works which may be either temporary
38 or permanent. The termination date for the authority to make such an

1 emergency withdrawal may not be later than the termination date of the
2 order issued under RCW 43.83B.405 under which the power to authorize
3 the withdrawal is established. The (~~department of ecology~~) division
4 engineer may issue such withdrawal authorization when, after
5 investigation and after providing appropriate federal, state, and local
6 governmental bodies an opportunity to comment, the following are found:

7 (i) The waters proposed for withdrawal are to be used for a
8 beneficial use involving a previously established activity or purpose;

9 (ii) The previously established activity or purpose was furnished
10 water through rights applicable to the use of a public body of water
11 that cannot be exercised due to the lack of water arising from natural
12 drought conditions; and

13 (iii) The proposed withdrawal will not reduce flows or levels below
14 essential minimums necessary (A) to assure the maintenance of fisheries
15 requirements, and (B) to protect federal and state interests including,
16 among others, power generation, navigation, and existing water rights;

17 (b) All withdrawal authorizations issued under this section shall
18 contain provisions that allow for termination of withdrawals, in whole
19 or in part, whenever withdrawals will conflict with flows and levels as
20 provided in (a)(iii) of this subsection. Domestic and irrigation uses
21 of public surface and ground waters shall be given priority in
22 determining "beneficial uses." As to water withdrawal and associated
23 works authorized under this subsection, the requirements of chapter
24 43.21C RCW and public bidding requirements as otherwise provided by law
25 are waived and inapplicable. All state and local agencies with
26 authority to issue permits or other authorizations for such works
27 shall, to the extent possible, expedite the processing of the permits
28 or authorizations in keeping with the emergency nature of the requests
29 and shall provide a decision to the applicant within fifteen calendar
30 days of the date of application. All state departments or other
31 agencies having jurisdiction over state or other public lands, if such
32 lands are necessary to effectuate the withdrawal authorizations issued
33 under this subsection, shall provide short-term easements or other
34 appropriate property interest upon the payment of the fair market
35 value. This mandate shall not apply to any lands of the state that are
36 reserved for a special purpose or use that cannot properly be carried
37 out if the property interest were conveyed;

38 (2) Approve a temporary change in purpose, place of use, or point
39 of diversion, consistent with existing state policy allowing transfer

1 or lease of waters between willing parties, as provided for in RCW
2 90.03.380, 90.03.390, and 90.44.100. However, compliance with any
3 requirements of (a) notice of newspaper publication of these sections
4 or (b) the state environmental policy act, chapter 43.21C RCW, is not
5 required when such changes are necessary to respond to drought
6 conditions as determined by the (~~department of ecology~~) division
7 engineer. An approval of a temporary change of a water right as
8 authorized under this subsection is not admissible as evidence in
9 either supporting or contesting the validity of water claims in *State*
10 *of Washington, Department of Ecology v. Acquavella*, Yakima county
11 superior court number 77-2-01484-5 or any similar proceeding where the
12 existence of a water right is at issue.

13 (3) Employ additional persons for specified terms of time,
14 consistent with the term of a drought condition, as are necessary to
15 ensure the successful performance of the activities associated with
16 implementing the emergency drought program of this chapter.

17 (4) Revise the drought contingency plan previously developed by the
18 department or its successor agency; and

19 (5) Acquire needed emergency drought-related equipment.

20 **Sec. 29.** RCW 43.83B.415 and 1989 c 171 s 4 are each amended to
21 read as follows:

22 (1) The (~~department of ecology~~) division engineer is authorized
23 to make loans, grants, or combinations of loans and grants from
24 emergency agricultural water supply funds when necessary to provide
25 water to alleviate emergency drought conditions in order to ensure the
26 survival of irrigated crops and the state's fisheries. For the
27 purposes of this section, "emergency agricultural water supply funds"
28 means funds appropriated from the state emergency water projects
29 revolving account created under RCW 43.83B.360. The (~~department of~~
30 ~~ecology~~) division engineer may make the loans, grants, or combinations
31 of loans and grants as matching funds in any case where federal, local,
32 or other funds have been made available on a matching basis. The
33 (~~department~~) division engineer may make a loan of up to ninety
34 percent of the total eligible project cost or combination loan and
35 grant up to one hundred percent of the total single project cost. The
36 grant portion for any single project shall not exceed twenty percent of
37 the total project cost except that, for activities forecast to have
38 fifty percent or less of normal seasonal water supply, the grant

1 portion for any single project or entity shall not exceed forty percent
2 of the total project cost. No single entity shall receive more than
3 ten percent of the total emergency agricultural water supply funds
4 available for drought relief. These funds shall not be used for
5 nonagricultural drought relief purposes unless there are no other
6 capital budget funds available for these purposes. In any biennium the
7 total expenditures of emergency agricultural water supply funds for
8 nonagricultural drought relief purposes may not exceed ten percent of
9 the total of such funds available during that biennium.

10 (2)(a) Except as provided in (b) of this subsection, after June 30,
11 1989, emergency agricultural water supply funds, including the
12 repayment of loans and any accrued interest, shall not be used for any
13 purpose except during drought conditions as determined under RCW
14 43.83B.400 and 43.83B.405.

15 (b) Emergency agricultural water supply funds may be used on a one-
16 time basis for the development of procedures to be used by state
17 governmental entities to implement the state's drought contingency
18 plan.

19 **Sec. 30.** RCW 89.16.040 and 1981 c 216 s 2 are each amended to read
20 as follows:

21 From the moneys appropriated from the reclamation account there
22 shall be paid, upon vouchers approved by the (~~director of ecology~~)
23 division engineer, the administrative expenses of the (~~director~~)
24 division engineer under this chapter and such amounts as are found
25 necessary for the investigation and survey of reclamation projects
26 proposed to be financed in whole or in part by the (~~director~~)
27 division engineer, and such amounts as may be authorized by him or her
28 for the reclamation of lands in diking, diking improvement, drainage,
29 drainage improvement, diking and drainage, diking and drainage
30 improvement, irrigation and irrigation improvement districts, and such
31 other districts as are authorized by law for the reclamation or
32 development of waste or undeveloped lands or the rehabilitation of
33 existing reclamation projects, and all such districts and improvement
34 districts shall, for the purposes of this chapter be known as
35 reclamation districts.

36 **Sec. 31.** RCW 89.16.045 and 1972 ex.s. c 51 s 4 are each amended to
37 read as follows:

1 Notwithstanding any other provisions of this chapter, the
2 (~~director of ecology~~) division engineer may, by written contract with
3 a reclamation district, loan moneys from the reclamation account to
4 said district for use in financing a project of construction,
5 reconstruction or improvement of district facilities, or a project of
6 additions to such facilities. No such contract shall exceed fifty
7 thousand dollars per project or a term of ten years, or provide for an
8 interest rate of more than eight percent per annum. The (~~director~~)
9 division engineer shall not execute any contract as provided in this
10 section until (~~he~~) it determines that the project for which the
11 moneys are furnished is within the scope of the district's powers to
12 undertake, that the project is feasible, that its construction is in
13 the best interest of the state and the district, and that the district
14 proposing the project is in a sound financial condition and capable of
15 repaying the loan with interest in not more than ten annual payments.
16 Any district is empowered to enter into a contract, as provided for in
17 this section, and to levy assessments based on the special benefits
18 accruing to lands within the district as are necessary to satisfy the
19 contract, when a resolution of the governing body of the reclamation
20 district authorizing its execution is approved by the body: PROVIDED,
21 That no district shall be empowered to execute with the (~~director~~)
22 division engineer any such contract during the term of any previously
23 executed contract authorized by this section.

24 **Sec. 32.** RCW 89.16.050 and 1983 c 167 s 248 are each amended to
25 read as follows:

26 In carrying out the purposes of this chapter, the (~~director of the~~
27 ~~department of ecology of the state of Washington~~) division engineer
28 shall be authorized (~~and empowered~~):

29 To make surveys and investigations of the wholly or partially
30 unreclaimed and undeveloped lands in this state and to determine the
31 relative agricultural values, productiveness and uses, and the
32 feasibility and cost of reclamation and development thereof;

33 To formulate and adopt a sound policy for the reclamation and
34 development of the agricultural resources of the state, and from time
35 to time select for reclamation and development such lands as may be
36 deemed advisable, and the (~~director~~) division engineer may in (~~his~~)
37 its discretion advise as to the formation and assist in the
38 organization of reclamation districts under the laws of this state;

1 To purchase the bonds of any reclamation district whose project is
2 approved by the ((~~director~~)) division engineer and which is found to be
3 upon a sound financial basis, to contract with any such district for
4 making surveys and furnishing engineering plans and supervision for the
5 construction of its project, or for constructing or completing its
6 project and to advance money to the credit of the district for any or
7 all of such purposes, and to accept the bonds, notes or warrants of
8 such district in payment therefor, and to expend the moneys
9 appropriated from the reclamation account in the purchase of such
10 bonds, notes or warrants or in carrying out such contracts: PROVIDED,
11 That interest not to exceed the annual rate provided for in the bonds,
12 notes or warrants agreed to be purchased, shall be charged and received
13 for all moneys advanced to the district prior to the delivery of the
14 bonds, notes or warrants and the amount of such interest shall be
15 included in the purchase price of such bonds, notes or warrants:
16 PROVIDED FURTHER, That no district, the bonds, notes or warrants of
17 which have been purchased by the state under the provisions of the
18 state reclamation act, shall thereafter during the life of said bonds,
19 notes or warrants make expenditures of any kind from the bond or
20 warrant funds of the district or incur obligations chargeable against
21 such funds or issue any additional notes without previous written
22 approval of the ((~~director of ecology of the state of Washington~~))
23 division engineer, and any obligations incurred without such approval
24 shall be void;

25 To sell and dispose of any reclamation district bonds acquired by
26 the ((~~director~~)) division engineer, at public or private sale, and to
27 pay the proceeds of such sale into the reclamation account: PROVIDED,
28 That such bonds shall not be sold for less than the purchase price plus
29 accrued interest, except in case of a sale to an agency supplied with
30 money by the United States of America, or to the United States of
31 America in furtherance of refunding operations of any irrigation
32 district, diking or drainage district, or diking or drainage
33 improvement district, now pending or hereafter carried on by such
34 district, in which case the ((~~director~~)) division engineer shall have
35 authority to sell any bonds of such district owned by the state of
36 Washington under the provisions of the state reclamation act, to the
37 United States of America, or other federal agency on such terms as said
38 United States of America, or other federal agency shall prescribe for

1 bonds of the same issue of such district as that held by the state of
2 Washington in connection with such refunding operations;

3 To borrow money upon the security of any bonds, including refunding
4 bonds, of any reclamation district, acquired by the ((~~director~~))
5 division engineer, on such terms and rate of interest and over such
6 period of time as the ((~~director~~)) division engineer may see fit, and
7 to hypothecate and pledge reclamation district bonds or refunding bonds
8 acquired by the ((~~director~~)) division engineer as security for such
9 loan. Such loans shall have, as their sole security, the bonds so
10 pledged and the revenues therefrom, and the ((~~director~~)) division
11 engineer shall not have authority to pledge the general credit of the
12 state of Washington: PROVIDED, That in reloading any money so
13 borrowed, or obtained from a sale of bonds it shall be the duty of the
14 ((~~director~~)) division engineer to fix such rates of interest as will
15 prevent impairment of the reclamation revolving account;

16 To purchase delinquent general tax or delinquent special assessment
17 certificates chargeable against lands included within any reclamation
18 district obligated to the state under the provisions of the state
19 reclamation act, and to purchase lands included in such districts and
20 placed on sale on account of delinquent taxes or delinquent assessments
21 with the same rights, privileges and powers with respect thereto as a
22 private holder and owner of said certificates, or as a private
23 purchaser of said lands: PROVIDED, That the ((~~director~~)) division
24 engineer shall be entitled to a delinquent tax certificate upon
25 application to the proper county treasurer therefor without the
26 necessity of a resolution of the county legislative authority
27 authorizing the issuance of certificates of delinquency required by law
28 in the case of the sale of such certificates to private purchasers;

29 To sell said delinquent certificates or the lands acquired at sale
30 on account of delinquent taxes or delinquent assessments at public or
31 private sale, and on such conditions as the ((~~director~~)) division
32 engineer shall determine;

33 To, whenever the ((~~director~~)) division engineer shall deem it
34 advisable, require any district with which he or she may contract, to
35 provide such safeguards as he or she may deem necessary to assure bona
36 fide settlement and development of the lands within such district, by
37 securing from the owners of lands therein agreements to limit the
38 amount of their holdings to such acreage as they can properly farm and
39 to sell their excess land holdings at reasonable prices;

1 To employ all necessary experts, assistants and employees and fix
2 their compensation and to enter into any and all contracts and
3 agreements necessary to carry out the purposes of this chapter;

4 To have the assistance, cooperation and services of, and the use of
5 the records and files in, all the departments and institutions of the
6 state, particularly the office of the commissioner of public lands, the
7 state department of agriculture, Washington State University, and the
8 University of Washington; and all state officers and the governing
9 authorities of all state institutions are hereby authorized and
10 directed to cooperate with the ~~((director))~~ division engineer in
11 furthering the purpose of this chapter;

12 To cooperate with the United States in any plan of land
13 reclamation, land settlement or agricultural development which the
14 congress of the United States may provide and which may effect the
15 development of agricultural resources within the state of Washington,
16 and the ~~((director))~~ division engineer shall have full power to carry
17 out the provisions of any cooperative land settlement act that may be
18 enacted by the United States.

19 **Sec. 33.** RCW 89.16.055 and 1993 c 387 s 27 are each amended to
20 read as follows:

21 ~~((In addition to the powers provided in RCW 89.16.050,))~~ The
22 ~~((department of ecology))~~ division engineer is authorized ~~((and~~
23 ~~empowered))~~ to:

24 (1) Conduct surveys, studies, investigations, and water right
25 examinations for proposed reclamation projects or the rehabilitation of
26 existing reclamation projects that may be funded fully or partially
27 from the receipts of the sale of bonds issued by the state of
28 Washington.

29 (2) Support the preparation for and administration of proceedings,
30 provided in RCW 90.03.110 or 90.44.220, or both, pertaining to river
31 systems or other water bodies that are associated with existing or
32 proposed reclamation projects.

33 (3) Conduct a regulatory program for well construction as provided
34 in chapter 18.104 RCW.

35 Funds of the account established by RCW 89.16.020 may, as
36 appropriated by the legislature, be used in relation to the powers
37 provided in this section, notwithstanding any other provisions of
38 chapter 89.16 RCW that may be to the contrary.

1 **Sec. 34.** RCW 89.16.060 and 1972 ex.s. c 51 s 6 are each amended to
2 read as follows:

3 The (~~department of ecology~~) division engineer shall have the
4 power to cooperate and to contract with the United States for the
5 reclamation of lands in this state by the United States, and shall have
6 the power to contract with the United States for the handling of such
7 reclamation work by the United States and for the repayment of such
8 moneys as the (~~department of ecology~~) division engineer shall invest
9 from the reclamation account, under such terms and conditions as the
10 United States laws and the regulations of the interior department shall
11 provide for the repayment of reclamation costs by the lands reclaimed.

12 **Sec. 35.** RCW 89.16.070 and 1959 c 104 s 5 are each amended to read
13 as follows:

14 A diking, drainage, diking and drainage, and irrigation district,
15 and improvement districts thereof through the parent district, or such
16 other district as is authorized and organized for the reclamation or
17 development of waste or undeveloped lands, may enter into contracts
18 with the (~~director~~) division engineer for the reclamation of the
19 lands of the district in the manner provided herein, or in such manner
20 as such districts may contract with the United States or with
21 individuals or corporations, for making surveys and furnishing
22 engineering plans and supervision for the construction of all works and
23 improvements necessary for the reclamation of its lands, and for the
24 sale or delivery of its bonds, and may issue bonds of the district for
25 such purposes.

26 **Sec. 36.** RCW 89.16.080 and 1972 ex.s. c 51 s 7 are each amended to
27 read as follows:

28 Whenever in the judgment of the department of natural resources any
29 state, school, granted, or other public lands of the state will be
30 specially benefited by any proposed reclamation project approved by the
31 (~~department of ecology~~) division engineer, it may consent that such
32 lands be included in any reclamation district organized for the purpose
33 of carrying out such reclamation project, and in that event the
34 department of natural resources shall be authorized to pay, out of
35 current appropriations, the district assessments levied as provided by
36 law against such lands, and any such assessments paid shall be made a
37 charge against the lands upon which they were levied, and the amount

1 thereof, but without interest, shall be included in the appraised value
2 of such lands when sold or leased.

3 **Sec. 37.** RCW 89.30.055 and 1988 c 127 s 70 are each amended to
4 read as follows:

5 Upon the giving of notice of hearing on the petition by the clerk
6 of the county board aforesaid, there is hereby authorized and created
7 a commission composed of the chairman of the board of county
8 commissioners of each of the counties in which any of the lands to be
9 included in the proposed reclamation district are situated, and of the
10 (~~state director of ecology~~) division engineer, which commission shall
11 consider and determine said petition.

12 **Sec. 38.** RCW 89.30.058 and 1988 c 127 s 71 are each amended to
13 read as follows:

14 The (~~state director of ecology~~) division engineer shall be ex
15 officio chairman of said commission, and the clerk of the county board
16 of the county in which the petition is filed, shall be ex officio clerk
17 of said commission. A majority of the members of said commission shall
18 constitute a quorum for the transaction or exercise of any of its
19 powers, functions, duties and business.

20 **Sec. 39.** RCW 89.30.070 and 1988 c 127 s 72 are each amended to
21 read as follows:

22 Except as otherwise herein provided the necessary expenses of the
23 commission and of the members thereof in performing the duties and
24 functions of said commission shall be borne by the respective counties
25 concerned in proportion to the taxable value of the acreage of each
26 included in the proposed reclamation district and said respective
27 counties are hereby made liable for such expenses. The individual
28 expenses of the (~~state director of ecology~~) division engineer shall
29 be borne by the state.

30 **Sec. 40.** RCW 89.30.427 and 1983 c 167 s 254 are each amended to
31 read as follows:

32 (1) In any instance where the district, general improvement or
33 divisional district is selling, renting or leasing water or electric
34 energy under the provisions of this chapter and there is reasonable
35 certainty of a permanent fixed income from this source, the district

1 board shall have authority to create a special fund derived from a
2 fixed proportion of the gross income thus obtained and to issue bonds
3 of the district payable from such special fund and to sell the same to
4 raise revenue for the payment or amortization of the cost of the
5 construction and/or the operation and maintenance of the reclamation
6 district or general improvement or divisional district works and for
7 such other purposes as the state of Washington and/or the United States
8 may require: PROVIDED, That the state of Washington may, through the
9 (~~director of ecology~~) division engineer, enter into a contract with
10 the reclamation district, improvement or divisional district or
11 districts or the United States to purchase, rent or lease and to sell
12 or resell and/or distribute all or any part of the electric energy
13 developed or to be developed at the reclamation, improvement or
14 divisional district works at a price sufficient to amortize the cost of
15 power development over a period of fifty years after the completion of
16 such power development and to provide a surplus sufficient to reduce
17 the cost of reclaiming the lands of the district or districts within
18 economic limits: AND PROVIDED FURTHER, That no contract or contracts
19 as in this section provided shall be finally consummated or become
20 binding in any way whatsoever until the legislature of the state of
21 Washington in special or regular session shall approve the same, and
22 provided further in such sale and/or distribution of power by the
23 (~~director of ecology~~) division engineer preference in the purchase
24 and/or distribution thereof shall be given to municipal corporations
25 and cooperative associations: AND PROVIDED FURTHER, That general
26 improvement and divisional districts shall have (in addition to the
27 powers granted them in chapter 254 of the Session Laws of 1927 and in
28 this act) the same powers as are given to the reclamation districts
29 under RCW 89.30.007.

30 (2) Such bonds may be issued and sold in accordance with chapter
31 39.46 RCW.

32 **Sec. 41.** RCW 90.03.005 and 1989 c 348 s 2 are each amended to read
33 as follows:

34 It is the policy of the state to promote the use of the public
35 waters in a fashion which provides for obtaining maximum net benefits
36 arising from both diversionary uses of the state's public waters and
37 the retention of waters within streams and lakes in sufficient quantity
38 and quality to protect instream and natural values and rights.

1 Consistent with this policy, the state supports economically feasible
2 and environmentally sound development of physical facilities through
3 the concerted efforts of the state with the United States, public
4 corporations, Indian tribes, or other public or private entities.
5 Further, based on the tenet of water law which precludes wasteful
6 practices in the exercise of rights to the use of waters, the
7 ~~((department of ecology))~~ division engineer shall reduce these
8 practices to the maximum extent practicable, taking into account sound
9 principles of water management, the benefits and costs of improved
10 water use efficiency, and the most effective use of public and private
11 funds, and, when appropriate, to work to that end in concert with the
12 agencies of the United States and other public and private entities.

13 **Sec. 42.** RCW 90.03.015 and 1987 c 109 s 65 are each amended to
14 read as follows:

15 As used in this chapter:

16 (1) ~~((Department))~~ Commission means the ~~((department of ecology))~~
17 Washington water resources and water quality commission; and

18 (2) ~~(("Director" means the director of ecology; and~~

19 ~~{3}))~~ "Person" means any firm, association, water users'
20 association, corporation, irrigation district, or municipal
21 corporation, as well as an individual.

22 **Sec. 43.** RCW 90.03.030 and 1987 c 109 s 68 are each amended to
23 read as follows:

24 Any person may convey any water which he may have a right to use
25 along any of the natural streams or lakes of this state, but not so as
26 to raise the water thereof above ordinary highwater mark, without
27 making just compensation to persons injured thereby; but due allowance
28 shall be made for evaporation and seepage, the amount of such seepage
29 to be determined by the ~~((department))~~ division engineer, upon the
30 application of any person interested.

31 **Sec. 44.** RCW 90.03.060 and 1987 c 109 s 69 are each amended to
32 read as follows:

33 Water masters shall be appointed by the ~~((department))~~ division
34 engineer whenever it shall find the interests of the state or of the
35 water users to require them. The districts for or in which the water
36 masters serve shall be designated water master districts, which shall

1 be fixed from time to time by the ((department)) division engineer, as
2 required, and they shall be subject to revision as to boundaries or to
3 complete abandonment as local conditions may indicate to be expedient,
4 the spirit of this provision being that no district shall be created or
5 continued where the need for the same does not exist. Water masters
6 shall be supervised by the ((department)) division engineer, shall be
7 compensated for services from funds of the ((department)) division
8 engineer, and shall be technically qualified to the extent of
9 understanding the elementary principals of hydraulics and irrigation,
10 and of being able to make water measurements in streams and in open and
11 closed conduits of all characters, by the usual methods employed for
12 that purpose. Counties and municipal and public corporations of the
13 state are authorized to contribute moneys to the ((department))
14 division engineer to be used as compensation to water masters in
15 carrying out their duties. All such moneys received by the
16 ((department)) division engineer shall be used exclusively for said
17 purpose.

18 **Sec. 45.** RCW 90.03.070 and 1987 c 109 s 70 are each amended to
19 read as follows:

20 It shall be the duty of the water master, acting under the
21 direction of the ((department)) division engineer, to divide in whole
22 or in part, the water supply of his district among the several water
23 conduits and reservoirs using said supply, according to the right and
24 priority of each, respectively. He shall divide, regulate and control
25 the use of water within his district by such regulation of headgates,
26 conduits and reservoirs as shall be necessary to prevent the use of
27 water in excess of the amount to which the owner of the right is
28 lawfully entitled. Whenever, in the pursuance of his duties, the water
29 master regulates a headgate of a water conduit or the controlling works
30 of a reservoir, he shall attach to such headgate or controlling works
31 a written notice, properly dated and signed, stating that such headgate
32 or controlling works has been properly regulated and is wholly under
33 his control and such notice shall be a legal notice to all parties. In
34 addition to dividing the available waters and supervising the stream
35 patrolmen in his district, he shall enforce such rules and regulations
36 as the ((department)) division engineer shall from time to time
37 prescribe.

1 The county or counties in which water master districts are created
2 shall deputize the water masters appointed hereunder, and may without
3 charge provide to each water master suitable office space, supplies,
4 equipment and clerical assistance as are necessary to the water master
5 in the performance of his duties.

6 **Sec. 46.** RCW 90.03.100 and 1987 c 109 s 71 are each amended to
7 read as follows:

8 It shall be the duty of the prosecuting attorney of any county to
9 appear for or on behalf of the ((department)) division engineer or any
10 water master, upon request of any such officer in any case which may
11 arise in the performance of the official duties of any such officer
12 within the jurisdiction of said prosecuting attorney.

13 **Sec. 47.** RCW 90.03.110 and 1987 c 109 s 72 are each amended to
14 read as follows:

15 Upon the filing of a petition with the ((department)) division
16 engineer by one or more persons claiming the right to divert any waters
17 within the state or when, after investigation, in the judgment of the
18 ((department)) division engineer, the interest of the public will be
19 subserved by a determination of the rights thereto, it shall be the
20 duty of the ((department)) division engineer to prepare a statement of
21 the facts, together with a plan or map of the locality under
22 investigation, and file such statement and plan or map in the superior
23 court of the county in which said water is situated, or, in case such
24 water flows or is situated in more than one county, in the county which
25 the ((department)) division engineer shall determine to be the most
26 convenient to the parties interested therein. Such statement shall
27 contain substantially the following matter, to wit:

28 (1) The names of all known persons claiming the right to divert
29 said water, the right to the diversion of which is sought to be
30 determined, and

31 (2) A brief statement of the facts in relation to such water, and
32 the necessity for a determination of the rights thereto.

33 **Sec. 48.** RCW 90.03.120 and 1987 c 109 s 73 are each amended to
34 read as follows:

35 Upon the filing of the statement and map as provided in RCW
36 90.03.110 the judge of such superior court shall make an order

1 directing summons to be issued, and fixing the return day thereof,
2 which shall be not less than sixty nor more than ninety days, after the
3 making of such order: PROVIDED, That for good cause, the court, at the
4 request of the ((department)) division engineer, may modify said time
5 period. A summons shall thereupon be issued out of said superior
6 court, signed and attested by the clerk thereof, in the name of the
7 state of Washington, as plaintiff, against all known persons claiming
8 the right to divert the water involved and also all persons unknown
9 claiming the right to divert the water involved, which said summons
10 shall contain a brief statement of the objects and purpose of the
11 proceedings and shall require the defendants to appear on the return
12 day thereof, and make and file a statement of claim to, or interest in,
13 the water involved and a statement that unless they appear at the time
14 and place fixed and assert such right, judgment will be entered
15 determining their rights according to the evidence: PROVIDED, HOWEVER,
16 That any persons claiming the right to the use of water by virtue of a
17 contract with claimant to the right to divert the same, shall not be
18 necessary parties to the proceeding.

19 **Sec. 49.** RCW 90.03.130 and 1987 c 109 s 74 are each amended to
20 read as follows:

21 Service of said summons shall be made in the same manner and with
22 the same force and effect as service of summons in civil actions
23 commenced in the superior courts of the state: PROVIDED, That for good
24 cause, the court, at the request of the ((department)) division
25 engineer, as an alternative to personal service, may authorize service
26 of summons to be made by certified mail, with return receipt signed by
27 defendant, a spouse of a defendant, or another person authorized to
28 accept service. If the defendants, or either of them, cannot be found
29 within the state of Washington, of which the return of the sheriff of
30 the county in which the proceeding is pending shall be prima facie
31 evidence, upon the filing of an affidavit by the ((department))
32 division engineer, or its attorney, in conformity with the statute
33 relative to the service of summons by publication in civil actions,
34 such service may be made by publication in a newspaper of general
35 circulation in the county in which such proceeding is pending, and also
36 publication of said summons in a newspaper of general circulation in
37 each county in which any portion of the water is situated, once a week
38 for six consecutive weeks (six publications). In cases where personal

1 service can be had, such summons shall be served at least twenty days
2 before the return day thereof. The summons by publication shall state
3 that statements of claim must be filed within twenty days after the
4 last publication or before the return date, whichever is later.

5 Personal service of summons may be made by ((department of
6 ecology)) division engineer employees for actions pertaining to water
7 rights.

8 **Sec. 50.** RCW 90.03.140 and 1987 c 109 s 75 are each amended to
9 read as follows:

10 On or before the return day of such summons, each defendant shall
11 file in the office of the clerk of said court a statement, and
12 therewith a copy thereof for the ((department)) division engineer,
13 containing substantially the following:

14 (1) The name and post office address of defendant.

15 (2) The full nature of the right, or use, on which the claim is
16 based.

17 (3) The time of initiation of such right and commencement of such
18 use.

19 (4) The date of beginning and completion of construction.

20 (5) The dimensions and capacity of all ditches existing at the time
21 of making said statement.

22 (6) The amount of land under irrigation and the maximum quantity of
23 water used thereon prior to the date of said statement and if for
24 power, or other purposes, the maximum quantity of water used prior to
25 date of said statement.

26 (7) The legal description of the land upon which said water has
27 been, or may be, put to beneficial use, and the legal description of
28 the subdivision of land on which the point of diversion is located.

29 Such statement shall be verified on oath by the defendant, and in
30 the discretion of the court may be amended.

31 **Sec. 51.** RCW 90.03.160 and 1989 c 80 s 1 are each amended to read
32 as follows:

33 Upon the completion of the service of summons as hereinbefore
34 provided, the superior court in which said proceeding is pending shall
35 make an order referring said proceeding to the ((department)) division
36 engineer to take testimony by its duly authorized designee, as referee,
37 and the designee shall report to and file with the superior court of

1 the county in which such cause is pending a transcript of such
2 testimony for adjudication thereon by such court. The superior court
3 may, in any complex case with more than one thousand named defendants,
4 including the United States, retain for hearing and further processing
5 such portions of the proceeding as pertain to a discrete class or
6 classes of defendants or claims of water rights if the court determines
7 that: (1) Resolution of claims of such classes appear to involve
8 significant issues of law, either procedural or substantive; and (2)
9 such a retention will both expedite the conclusion of the case and
10 reduce the overall expenditures of the plaintiff, defendants, and the
11 court.

12 **Sec. 52.** RCW 90.03.170 and 1987 c 109 s 77 are each amended to
13 read as follows:

14 Thereupon the ((department)) division engineer shall fix a time and
15 place for such hearing and serve written notice thereof upon all
16 persons who have appeared in said proceeding, their agents or
17 attorneys. Notice of such hearing shall be served at least ten days
18 before the time fixed therefor. Such hearings may be adjourned from
19 time to time and place to place. The duly authorized designee shall
20 have authority to subpoena witnesses and administer oaths in the same
21 manner and with the same powers as referees in civil actions. The fees
22 and mileage of witnesses shall be advanced by the party at whose
23 instance they are called as in civil actions. A final decree
24 adjudicating rights or priorities, entered in any case decided prior to
25 June 6, 1917, shall be conclusive among the parties thereto and the
26 extent of use so determined shall be prima facie evidence of rights to
27 the amount of water and priorities so fixed as against any person not
28 a party to said decree.

29 **Sec. 53.** RCW 90.03.190 and 1987 c 109 s 78 are each amended to
30 read as follows:

31 Upon the completion of the taking of testimony it shall be the duty
32 of the ((department's)) division engineer's designee to prepare and
33 file with the clerk of the superior court where such proceeding is
34 pending, a transcript of the testimony taken at such hearing, in
35 triplicate, together with all papers and exhibits offered and received
36 in evidence and not already a part of the record. He shall also make
37 and file in said court a full and complete report as in other cases of

1 reference in the superior court. Two of said transcripts shall be for
2 the use of the parties as the court may direct. The court shall set a
3 time for the hearing and the designee shall thereupon prepare a notice
4 designating a time for the hearing of said report and serve a copy
5 thereof, together with a copy of his report, on all persons, their
6 agents or attorneys who have appeared in such proceeding. Such service
7 shall be made not less than twenty days before the time for said
8 hearing, either personally or by registered mail, and an affidavit of
9 such service filed with the clerk.

10 **Sec. 54.** RCW 90.03.200 and 1988 c 202 s 91 are each amended to
11 read as follows:

12 Upon the filing of the evidence and the report of the
13 ((department)) division engineer, any interested party may, on or
14 before five days prior to the date of said hearing, file exceptions to
15 such report in writing and such exception shall set forth the grounds
16 therefor and a copy thereof shall be served personally or by registered
17 mail upon all parties who have appeared in the proceeding. If no
18 exceptions be filed, the court shall enter a decree determining the
19 rights of the parties according to the evidence and the report of the
20 ((department)) division engineer, whether such parties have appeared
21 therein or not. If exceptions are filed the action shall proceed as in
22 case of reference of a suit in equity and the court may in its
23 discretion take further evidence or, if necessary, remand the case for
24 such further evidence to be taken by the ((department's)) division
25 engineer's designee, and may require further report by him. Costs, not
26 including taxable attorneys fees, may be allowed or not; if allowed,
27 may be apportioned among the parties in the discretion of the court.
28 Appellate review of the decree shall be in the same manner as in other
29 cases in equity, except that review must be sought within sixty days
30 from the entry thereof.

31 **Sec. 55.** RCW 90.03.210 and 1988 c 202 s 92 are each amended to
32 read as follows:

33 During the pendency of such adjudication proceedings prior to
34 judgment or upon review by an appellate court, the stream or other
35 water involved shall be regulated or partially regulated according to
36 the schedule of rights specified in the ((department's)) division
37 engineer's report upon an order of the court authorizing such

1 regulation: PROVIDED, Any interested party may file a bond and obtain
2 an order staying the regulation of said stream as to him, in which case
3 the court shall make such order regarding the regulation of the stream
4 or other water as he may deem just. The bond shall be filed within
5 five days following the service of notice of appeal in an amount to be
6 fixed by the court and with sureties satisfactory to the court,
7 conditioned to perform the judgment of the court.

8 **Sec. 56.** RCW 90.03.230 and 1987 c 109 s 81 are each amended to
9 read as follows:

10 The clerk of the superior court, immediately upon the entry of any
11 decree by the superior court, shall transmit a certified copy thereof
12 to the ((~~director~~)) division engineer, who shall immediately enter the
13 same upon the records of the ((~~department~~)) division engineer.

14 **Sec. 57.** RCW 90.03.240 and 1987 c 109 s 82 are each amended to
15 read as follows:

16 Upon the final determination of the rights to the diversion of
17 water it shall be the duty of the ((~~department~~)) division engineer to
18 issue to each person entitled to the diversion of water by such
19 determination, a certificate under his official seal, setting forth the
20 name and post office address of such person; the priority and purpose
21 of the right; the period during which said right may be exercised, the
22 point of diversion and the place of use; the land to which said water
23 right is appurtenant and when applicable the maximum quantity of water
24 allowed.

25 **Sec. 58.** RCW 90.03.247 and 1994 c 264 s 82 are each amended to
26 read as follows:

27 Whenever an application for a permit to make beneficial use of
28 public waters is approved relating to a stream or other water body for
29 which minimum flows or levels have been adopted and are in effect at
30 the time of approval, the permit shall be conditioned to protect the
31 levels or flows. No agency may establish minimum flows and levels or
32 similar water flow or level restrictions for any stream or lake of the
33 state other than the ((~~department of ecology~~)) division engineer whose
34 authority to establish is exclusive, as provided in chapter 90.03 RCW
35 and RCW 90.22.010 and 90.54.040. The provisions of other statutes,
36 including but not limited to RCW 75.20.100 and chapter 43.21C RCW, may

1 not be interpreted in a manner that is inconsistent with this section.
2 In establishing such minimum flows, levels, or similar restrictions,
3 the ((department)) division engineer shall, during all stages of
4 development by the ((department of ecology)) division engineer of
5 minimum flow proposals, consult with, and carefully consider the
6 recommendations of, the department of fish and wildlife, the state
7 energy office, the department of agriculture, and representatives of
8 the affected Indian tribes. Nothing herein shall preclude the
9 department of fish and wildlife, the energy office, or the department
10 of agriculture from presenting its views on minimum flow needs at any
11 public hearing or to any person or agency, and the department of fish
12 and wildlife, the energy office, and the department of agriculture are
13 each empowered to participate in proceedings of the federal energy
14 regulatory commission and other agencies to present its views on
15 minimum flow needs.

16 **Sec. 59.** RCW 90.03.250 and 1987 c 109 s 83 are each amended to
17 read as follows:

18 Any person, municipal corporation, firm, irrigation district,
19 association, corporation or water users' association hereafter desiring
20 to appropriate water for a beneficial use shall make an application to
21 the ((department)) division engineer for a permit to make such
22 appropriation, and shall not use or divert such waters until he has
23 received a permit from the ((department)) division engineer as in this
24 chapter provided. The construction of any ditch, canal or works, or
25 performing any work in connection with said construction or
26 appropriation, or the use of any waters, shall not be an appropriation
27 of such water nor an act for the purpose of appropriating water unless
28 a permit to make said appropriation has first been granted by the
29 ((department)) division engineer: PROVIDED, That a temporary permit
30 may be granted upon a proper showing made to the ((department))
31 division engineer to be valid only during the pendency of such
32 application for a permit unless sooner revoked by the ((department))
33 division engineer: PROVIDED, FURTHER, That nothing in this chapter
34 contained shall be deemed to affect RCW 90.40.010 through 90.40.080
35 except that the notice and certificate therein provided for in RCW
36 90.40.030 shall be addressed to the ((department)) division engineer,
37 and the ((department)) division engineer shall exercise the powers and
38 perform the duties prescribed by RCW 90.40.030.

1 **Sec. 60.** RCW 90.03.260 and 1987 c 109 s 84 are each amended to
2 read as follows:

3 Each application for permit to appropriate water shall set forth
4 the name and post office address of the applicant, the source of water
5 supply, the nature and amount of the proposed use, the time during
6 which water will be required each year, the location and description of
7 the proposed ditch, canal, or other work, the time within which the
8 completion of the construction and the time for the complete
9 application of the water to the proposed use. If for agricultural
10 purposes, it shall give the legal subdivision of the land and the
11 acreage to be irrigated, as near as may be, and the amount of water
12 expressed in acre feet to be supplied per season. If for power
13 purposes, it shall give the nature of the works by means of which the
14 power is to be developed, the head and amount of water to be utilized,
15 and the uses to which the power is to be applied. If for construction
16 of a reservoir, it shall give the height of the dam, the capacity of
17 the reservoir, and the uses to be made of the impounded waters. If for
18 municipal water supply, it shall give the present population to be
19 served, and, as near as may be, the future requirement of the
20 municipality. If for mining purposes, it shall give the nature of the
21 mines to be served and the method of supplying and utilizing the water;
22 also their location by legal subdivisions. All applications shall be
23 accompanied by such maps and drawings, in duplicate, and such other
24 data, as may be required by the ((department)) division engineer, and
25 such accompanying data shall be considered as a part of the
26 application.

27 **Sec. 61.** RCW 90.03.270 and 1987 c 109 s 85 are each amended to
28 read as follows:

29 Upon receipt of an application it shall be the duty of the
30 ((department)) division engineer to make an endorsement thereon of the
31 date of its receipt, and to keep a record of same. If upon
32 examination, the application is found to be defective, it shall be
33 returned to the applicant for correction or completion, and the date
34 and the reasons for the return thereof shall be endorsed thereon and
35 made a record in his office. No application shall lose its priority of
36 filing on account of such defects, provided acceptable maps, drawings
37 and such data as is required by the ((department)) division engineer

1 shall be filed with the ((department)) division engineer within such
2 reasonable time as it shall require.

3 **Sec. 62.** RCW 90.03.280 and 1994 c 264 s 83 are each amended to
4 read as follows:

5 Upon receipt of a proper application, the ((department)) division
6 engineer shall instruct the applicant to publish notice thereof in a
7 form and within a time prescribed by the ((department)) division
8 engineer in a newspaper of general circulation published in the county
9 or counties in which the storage, diversion, and use is to be made, and
10 in such other newspapers as the ((department)) division engineer may
11 direct, once a week for two consecutive weeks. Upon receipt by the
12 ((department)) division engineer of an application it shall send notice
13 thereof containing pertinent information to the director of fish and
14 wildlife.

15 **Sec. 63.** RCW 90.03.290 and 1994 c 264 s 84 are each amended to
16 read as follows:

17 When an application complying with the provisions of this chapter
18 and with the rules and regulations of the ((department)) division
19 engineer has been filed, the same shall be placed on record with the
20 ((department)) division engineer, and it shall be its duty to
21 investigate the application, and determine what water, if any, is
22 available for appropriation, and find and determine to what beneficial
23 use or uses it can be applied. If it is proposed to appropriate water
24 for irrigation purposes, the ((department)) division engineer shall
25 investigate, determine and find what lands are capable of irrigation by
26 means of water found available for appropriation. If it is proposed to
27 appropriate water for the purpose of power development, the
28 ((department)) division engineer shall investigate, determine and find
29 whether the proposed development is likely to prove detrimental to the
30 public interest, having in mind the highest feasible use of the waters
31 belonging to the public. If the application does not contain, and the
32 applicant does not promptly furnish sufficient information on which to
33 base such findings, the ((department)) division engineer may issue a
34 preliminary permit, for a period of not to exceed three years,
35 requiring the applicant to make such surveys, investigations, studies,
36 and progress reports, as in the opinion of the ((department)) division
37 engineer may be necessary. If the applicant fails to comply with the

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

1 permit shall be issued thereon to the applicant, such applicant shall
2 pay the fee provided in RCW 90.03.470: PROVIDED FURTHER, That in the
3 event a permit is issued by the ((department)) division engineer upon
4 any application, it shall be its duty to notify the director of fish
5 and wildlife of such issuance.

6 **Sec. 64.** RCW 90.03.300 and 1987 c 109 s 87 are each amended to
7 read as follows:

8 No permit for the appropriation of water shall be denied because of
9 the fact that the point of diversion described in the application for
10 such permit, or any portion of the works in such application described
11 and to be constructed for the purpose of storing, conserving, diverting
12 or distributing such water, or because the place of intended use or the
13 lands to be irrigated by means of such water, or any part thereof, may
14 be situated in some other state or nation, but in all such cases where
15 either the point of diversion or any of such works or the place of
16 intended use, or the lands, or part of the lands, to be irrigated by
17 means of such water, are situated within the state of Washington, the
18 permit shall issue as in other cases: PROVIDED, HOWEVER, That the
19 ((department)) division engineer may in its discretion, decline to
20 issue a permit where the point of diversion described in the
21 application is within the state of Washington but the place of
22 beneficial use in some other state or nation, unless under the laws of
23 such state or nation water may be lawfully diverted within such state
24 or nation for beneficial use in the state of Washington.

25 **Sec. 65.** RCW 90.03.310 and 1987 c 109 s 88 are each amended to
26 read as follows:

27 Any permit to appropriate water may be assigned subject to the
28 conditions of the permit, but no such assignment shall be binding or
29 valid unless filed for record with the ((department)) division
30 engineer. Any application for permits to appropriate water prior to
31 permit issuing, may be assigned by the applicant, but no such
32 assignment shall be valid or binding unless the written consent of the
33 ((department)) division engineer is first obtained thereto, and unless
34 such assignment is filed for record with the ((department)) division
35 engineer.

1 **Sec. 66.** RCW 90.03.320 and 1987 c 109 s 67 are each amended to
2 read as follows:

3 Actual construction work shall be commenced on any project for
4 which permit has been granted within such reasonable time as shall be
5 prescribed by the ((department)) division engineer, and shall
6 thereafter be prosecuted with diligence and completed within the time
7 prescribed by the ((department)) division engineer. The ((department))
8 division engineer, in fixing the time for the commencement of the work,
9 or for the completion thereof and the application of the water to the
10 beneficial use prescribed in the permit, shall take into consideration
11 the cost and magnitude of the project and the engineering and physical
12 features to be encountered, and shall allow such time as shall be
13 reasonable and just under the conditions then existing, having due
14 regard for the public welfare and public interests affected: and, for
15 good cause shown, it shall extend the time or times fixed as aforesaid,
16 and shall grant such further period or periods as may be reasonably
17 necessary, having due regard to the good faith of the applicant and the
18 public interests affected. If the terms of the permit or extension
19 thereof, are not complied with the ((department)) division engineer
20 shall give notice by registered mail that such permit will be canceled
21 unless the holders thereof shall show cause within sixty days why the
22 same should not be so canceled. If cause be not shown, said permit
23 shall be canceled.

24 **Sec. 67.** RCW 90.03.330 and 1987 c 109 s 89 are each amended to
25 read as follows:

26 Upon a showing satisfactory to the ((department)) division engineer
27 that any appropriation has been perfected in accordance with the
28 provisions of this chapter, it shall be the duty of the ((department))
29 division engineer to issue to the applicant a certificate stating such
30 facts in a form to be prescribed by him, and such certificate shall
31 thereupon be recorded with the ((department)) division engineer. Any
32 original water right certificate issued, as provided by this chapter,
33 shall be recorded with the ((department)) division engineer and
34 thereafter, at the expense of the party receiving the same, be by the
35 ((department)) division engineer transmitted to the county auditor of
36 the county or counties where the distributing system or any part
37 thereof is located, and be recorded in the office of such county
38 auditor, and thereafter be transmitted to the owner thereof.

1 **Sec. 68.** RCW 90.03.340 and 1987 c 109 s 90 are each amended to
2 read as follows:

3 The right acquired by appropriation shall relate back to the date
4 of filing of the original application with the ((department)) division
5 engineer.

6 **Sec. 69.** RCW 90.03.345 and 1979 ex.s. c 216 s 7 are each amended
7 to read as follows:

8 The establishment of reservations of water for agriculture,
9 hydroelectric energy, municipal, industrial, and other beneficial uses
10 under RCW 90.54.050(1) or minimum flows or levels under RCW 90.22.010
11 or 90.54.040 shall constitute appropriations within the meaning of this
12 chapter with priority dates as of the effective dates of their
13 establishment. Whenever an application for a permit to make beneficial
14 use of public waters embodied in a reservation, established after
15 September 1, 1979, is filed with the ((department of ecology)) division
16 engineer after the effective date of such reservation, the priority
17 date for a permit issued pursuant to an approval by the ((department of
18 ecology)) division engineer of the application shall be the effective
19 date of the reservation.

20 **Sec. 70.** RCW 90.03.350 and 1994 c 232 s 20 are each amended to
21 read as follows:

22 Any person, corporation or association intending to construct or
23 modify any dam or controlling works for the storage of ten acre feet or
24 more of water, shall before beginning said construction or
25 modification, submit plans and specifications of the same to the
26 ((department)) division engineer for examination and approval as to its
27 safety. Such plans and specifications shall be submitted in duplicate,
28 one copy of which shall be retained as a public record, by the
29 ((department)) division engineer, and the other returned with its
30 approval or rejection endorsed thereon. No such dam or controlling
31 works shall be constructed or modified until the same or any
32 modification thereof shall have been approved as to its safety by the
33 ((department)) division engineer. Any such dam or controlling works
34 constructed or modified in any manner other than in accordance with
35 plans and specifications approved by the ((department)) division
36 engineer or which shall not be maintained in accordance with the order
37 of the ((department)) division engineer shall be presumed to be a

1 public nuisance and may be abated in the manner provided by law, and it
2 shall be the duty of the attorney general or prosecuting attorney of
3 the county wherein such dam or controlling works, or the major portion
4 thereof, is situated to institute abatement proceedings against the
5 owner or owners of such dam or controlling works, whenever he or she is
6 requested to do so by the ((department)) division engineer.

7 A metals mining and milling operation regulated under chapter 232,
8 Laws of 1994 is subject to additional dam safety inspection
9 requirements due to the special hazards associated with failure of a
10 tailings pond impoundment. The ((department)) division engineer shall
11 inspect these impoundments at least quarterly during the project's
12 operation and at least annually thereafter for the postclosure
13 monitoring period in order to ensure the safety of the dam or
14 controlling works. The ((department)) division engineer shall conduct
15 additional inspections as needed during the construction phase of the
16 mining operation in order to ensure the safe construction of the
17 tailings impoundment.

18 **Sec. 71.** RCW 90.03.360 and 1994 c 264 s 85 are each amended to
19 read as follows:

20 (1) The owner or owners of any water diversion shall maintain, to
21 the satisfaction of the ((department of ecology)) division engineer,
22 substantial controlling works and a measuring device constructed and
23 maintained to permit accurate measurement and practical regulation of
24 the flow of water diverted. Every owner or manager of a reservoir for
25 the storage of water shall construct and maintain, when required by the
26 ((department)) division engineer, any measuring device necessary to
27 ascertain the natural flow into and out of said reservoir.

28 Metering of diversions or measurement by other approved methods
29 shall be required as a condition for all new surface water right
30 permits, and except as provided in subsection (2) of this section, may
31 be required as a condition for all previously existing surface water
32 rights. The ((department)) division engineer may also require, as a
33 condition for all water rights, metering of diversions, and reports
34 regarding such metered diversions as to the amount of water being
35 diverted. Such reports shall be in a form prescribed by the
36 ((department)) division engineer.

37 (2) Where water diversions are from waters in which the salmonid
38 stock status is depressed or critical, as determined by the department

1 of fish and wildlife, or where the volume of water being diverted
2 exceeds one cubic foot per second, the ((department)) division engineer
3 shall require metering or measurement by other approved methods as a
4 condition for all new and previously existing water rights or claims.
5 The ((department)) division engineer shall attempt to integrate the
6 requirements of this subsection into its existing compliance workload
7 priorities, but shall prioritize the requirements of this subsection
8 ahead of the existing compliance workload where a delay may cause the
9 decline of wild salmonids. The ((department)) division engineer shall
10 notify the department of fish and wildlife of the status of fish
11 screens associated with these diversions.

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

15 **Sec. 72.** RCW 90.03.370 and 1987 c 109 s 93 are each amended to
16 read as follows:

17 All applications for reservoir permits shall be subject to the
18 provisions of RCW 90.03.250 through 90.03.320. But the party or
19 parties proposing to apply to a beneficial use the water stored in any
20 such reservoir shall also file an application for a permit, to be known
21 as the secondary permit, which shall be in compliance with the
22 provisions of RCW 90.03.250 through 90.03.320. Such secondary
23 application shall refer to such reservoir as its source of water supply
24 and shall show documentary evidence that an agreement has been entered
25 into with the owners of the reservoir for a permanent and sufficient
26 interest in said reservoir to impound enough water for the purposes set
27 forth in said application. When the beneficial use has been completed
28 and perfected under the secondary permit, the ((department)) division
29 engineer shall take the proof of the water users under such permit and
30 the final certificate of appropriation shall refer to both the ditch
31 and works described in the secondary permit and the reservoir described
32 in the primary permit.

33 **Sec. 73.** RCW 90.03.380 and 1991 c 347 s 15 are each amended to
34 read as follows:

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

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

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

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

32 This section shall not apply to trust water rights acquired by the
33 state through the funding of water conservation projects under chapter
34 90.38 RCW or RCW 90.42.010 through 90.42.070.

35 **Sec. 74.** RCW 90.03.383 and 1991 c 350 s 1 are each amended to read
36 as follows:

37 (1) The legislature recognizes the value of interties for improving
38 the reliability of public water systems, enhancing their management,

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

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

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

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

37 (3) Public water systems with interties existing and in use as of
38 January 1, 1991, or that have received written approval from the
39 department of health prior to that date, shall file written notice of

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

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

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

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

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

1 the sixty-day period by submitting written notice to the department of
2 health and to the applicant indicating a definite date by which its
3 determination will be made. No additional extensions shall be granted,
4 and in no event shall the total review period for the ((department of
5 ecology)) division engineer 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))
11 division engineer an application for change to the underlying water
12 right or claim as necessary to reflect the new place of use. The
13 ((department of ecology)) division engineer shall consider the
14 applications pursuant to the provisions of RCW 90.03.380 and 90.44.100
15 as appropriate. If in its review of proposed interties and associated
16 water rights the ((department of ecology)) division engineer determines
17 that additional information is required to act on the application, the
18 ((department)) division engineer may request applicants to provide
19 information necessary for its decision, consistent with agency rules
20 and written guidelines. Parties disagreeing with the decision of the
21 ((department of ecology)) division engineer on the application for
22 change in place of use may appeal the decision ((to the pollution
23 control hearings board)) under chapter 34.05 RCW.

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

31 **Sec. 75.** RCW 90.03.386 and 1991 c 350 s 2 are each amended to read
32 as follows:

33 Within service areas established pursuant to chapters 43.20 and
34 70.116 RCW, the ((department of ecology)) division engineer and the
35 department of health shall coordinate approval procedures to ensure
36 compliance and consistency with the approved water system plan.

1 **Sec. 76.** RCW 90.03.390 and 1991 c 350 s 3 are each amended to read
2 as follows:

3 RCW 90.03.380 shall not be construed to prevent water users from
4 making a seasonal or temporary change of point of diversion or place of
5 use of water when such change can be made without detriment to existing
6 rights, but in no case shall such change be made without the permission
7 of the water master of the district in which such proposed change is
8 located, or of the ((department)) division engineer. Nor shall RCW
9 90.03.380 be construed to prevent construction of emergency interties
10 between public water systems to permit exchange of water during short-
11 term emergency situations, or rotation in the use of water for bringing
12 about a more economical use of the available supply, provided however,
13 that the department of health in consultation with the ((department of
14 ecology)) division engineer shall adopt rules or develop written
15 guidelines setting forth standards for determining when a short-term
16 emergency exists and the circumstances in which emergency interties are
17 permitted. The rules or guidelines shall be consistent with the
18 procedures established in RCW 43.83B.400 through 43.83B.420. Water
19 users owning lands to which water rights are attached may rotate in the
20 use of water to which they are collectively entitled, or an individual
21 water user having lands to which are attached water rights of a
22 different priority, may in like manner rotate in use when such rotation
23 can be made without detriment to other existing water rights, and has
24 the approval of the water master or ((department)) division engineer.

25 **Sec. 77.** RCW 90.03.430 and 1987 c 109 s 96 are each amended to
26 read as follows:

27 In all cases where irrigating ditches are owned by two or more
28 persons and one or more of such persons shall fail or neglect to do
29 his, her or their proportionate share of the work necessary for the
30 proper maintenance and operation of such ditch or ditches or to
31 construct suitable headgates or measuring devices at the points where
32 water is diverted from the main ditch, such owner or owners desiring
33 the performance of such work as is reasonably necessary to maintain the
34 ditch, may, after having given ten days' written notice to such owner
35 or owners who have failed to perform his, her or their proportionate
36 share of such work, necessary for the operation and maintenance of said
37 ditch or ditches, perform his, her or their share of such work, and
38 recover therefor from such person or persons so failing to perform his,

1 her or their share of such work in any court having jurisdiction of the
2 matter the expense or value of such work or labor so performed:
3 PROVIDED, That no improvement involving an expenditure in excess of one
4 hundred dollars shall be made without the written approval of the
5 ((department)) division engineer having first been obtained.

6 **Sec. 78.** RCW 90.03.440 and 1987 c 109 s 97 are each amended to
7 read as follows:

8 When two or more persons, joint owners in an irrigation ditch or
9 reservoir, not incorporated, or their lessees, are unable to agree
10 relative to the division or distribution of water received through
11 their ditch or from their reservoir, and where there is no disagreement
12 as to the ownership of said water, it shall be lawful for any such
13 owner or owners, his or their lessee or lessees, or either of them, to
14 apply to the ((department)) division engineer, in writing, setting
15 forth such fact and giving such information as shall enable the
16 ((department)) division engineer to estimate the probable expense of
17 such service, asking the ((department)) division engineer to appoint
18 some suitable person to take charge of such ditch or reservoir for the
19 purpose of making a just division or distribution of the water from the
20 same to the parties entitled to the use thereof. The ((department))
21 division engineer shall upon the receipt of such application notify the
22 applicant of the probable expense of such division and upon receipt of
23 certified check for said amount, the ((department)) division engineer
24 shall appoint a suitable person to make such division. The person so
25 appointed shall take exclusive charge of such ditch or reservoir for
26 the purpose of dividing the water therefrom in accordance with the
27 established rights of the diverters therefrom, and continue the said
28 work until the necessity therefor shall cease to exist. The expense of
29 such investigation and division shall be a charge upon all of the co-
30 owners and the person advancing the payment to the ((department))
31 division engineer shall be entitled to recover in any court of
32 competent jurisdiction from his co-owners their proportionate share of
33 the expense.

34 **Sec. 79.** RCW 90.03.470 and 1993 c 495 s 2 are each amended to read
35 as follows:

1 Except as otherwise provided in subsection (15) of this section,
2 the following fees shall be collected by the ((department)) division
3 engineer in advance:

4 (1) For the examination of an application for permit to appropriate
5 water or on application to change point of diversion, withdrawal,
6 purpose or place of use, a minimum of ten dollars, to be paid with the
7 application. For each second foot between one and five hundred second
8 feet, two dollars per second foot; for each second foot between five
9 hundred and two thousand second feet, fifty cents per second foot; and
10 for each second foot in excess thereof, twenty cents per second foot.
11 For each acre foot of storage up to and including one hundred thousand
12 acre feet, one cent per acre foot, and for each acre foot in excess
13 thereof, one-fifth cent per acre foot. The ten dollar fee payable with
14 the application shall be a credit to that amount whenever the fee for
15 direct diversion or storage totals more than ten dollars under the
16 above schedule and in such case the further fee due shall be the total
17 computed amount less ten dollars.

18 Within five days from receipt of an application the ((department))
19 division engineer shall notify the applicant by registered mail of any
20 additional fees due under the above schedule and any additional fees
21 shall be paid to and received by the ((department)) division engineer
22 within thirty days from the date of filing the application, or the
23 application shall be rejected.

24 (2) For filing and recording a permit to appropriate water for
25 irrigation purposes, forty cents per acre for each acre to be irrigated
26 up to and including one hundred acres, and twenty cents per acre for
27 each acre in excess of one hundred acres up to and including one
28 thousand acres, and ten cents for each acre in excess of one thousand
29 acres; and also twenty cents for each theoretical horsepower up to and
30 including one thousand horsepower, and four cents for each theoretical
31 horsepower in excess of one thousand horsepower, but in no instance
32 shall the minimum fee for filing and recording a permit to appropriate
33 water be less than five dollars. For all other beneficial purposes the
34 fee shall be twice the amount of the examination fee except that for
35 individual household and domestic use, which may include water for
36 irrigation of a family garden, the fee shall be five dollars.

37 (3) For filing and recording any other water right instrument, four
38 dollars for the first hundred words and forty cents for each additional
39 hundred words or fraction thereof.

1 (4) For making a copy of any document recorded or filed in his
2 office, forty cents for each hundred words or fraction thereof, but
3 when the amount exceeds twenty dollars, only the actual cost in excess
4 of that amount shall be charged.

5 (5) For certifying to copies, documents, records or maps, two
6 dollars for each certification.

7 (6) For blueprint copies of a map or drawing, or, for such other
8 work of a similar nature as may be required of the ((department))
9 division engineer, at actual cost of the work.

10 (7) For granting each extension of time for beginning construction
11 work under a permit to appropriate water, an amount equal to one-half
12 of the filing and recording fee, except that the minimum fee shall be
13 not less than five dollars for each year that an extension is granted,
14 and for granting an extension of time for completion of construction
15 work or for completing application of water to a beneficial use, five
16 dollars for each year that an extension is granted.

17 (8) For the inspection of any hydraulic works to insure safety to
18 life and property, the actual cost of the inspection, including the
19 expense incident thereto.

20 (9) For the examination of plans and specifications as to safety of
21 controlling works for storage of ten acre feet or more of water, a
22 minimum fee of ten dollars, or the actual cost.

23 (10) For recording an assignment either of a permit to appropriate
24 water or of an application for such a permit, a fee of five dollars.

25 (11) For preparing and issuing all water right certificates, five
26 dollars.

27 (12) For filing and recording a protest against granting any
28 application, two dollars.

29 (13) The ((department)) division engineer shall provide timely
30 notification by certified mail with return receipt requested to
31 applicants that fees are due. No action may be taken until the fee is
32 paid in full. Failure to remit fees within sixty days of the
33 ((department's)) division engineer's notification shall be grounds for
34 rejecting the application or canceling the permit. Cash shall not be
35 accepted. Fees must be paid by check or money order and are
36 nonrefundable.

37 (14) For purposes of calculating fees for ground water filings, one
38 cubic foot per second shall be regarded as equivalent to four hundred
39 fifty gallons per minute.

1 (15) For the period beginning July 1, 1993, and ending June 30,
2 1994, there is imposed and the ((department)) division engineer shall
3 collect a one hundred dollar surcharge on all water rights applications
4 or changes filed under this section, and upon all water rights
5 applications or changes pending as of July 1, 1993. This charge shall
6 be in addition to any other fees imposed under this section.

7 **Sec. 80.** RCW 90.03.471 and 1987 c 109 s 99 are each amended to
8 read as follows:

9 All fees, collections, and revenues derived under RCW 90.03.470 or
10 by virtue of RCW 90.03.180, shall be used exclusively for the purpose
11 of carrying out the work and performing the functions of the ((division
12 of water resources of the department)) division engineer.

13 **Sec. 81.** RCW 90.03.600 and 1987 c 109 s 157 are each amended to
14 read as follows:

15 The power is granted to the ((department of ecology)) division
16 engineer to levy civil penalties of up to one hundred dollars per day
17 for violation of any of the provisions of this chapter and chapters
18 43.83B, 90.22, and 90.44 RCW, and rules, permits, and similar documents
19 and regulatory orders of the ((department of ecology)) division
20 engineer adopted or issued pursuant to such chapters. The procedures
21 of RCW 90.48.144 shall be applicable to all phases of the levying of a
22 penalty as well as review and appeal of the same.

23 **Sec. 82.** RCW 90.08.040 and 1977 c 22 s 1 are each amended to read
24 as follows:

25 Where water rights of a stream have been adjudicated a stream
26 patrolman shall be appointed by the ((director of the department of
27 ecology)) division engineer upon application of water users having
28 adjudicated water rights in each particular water resource making a
29 reasonable showing of the necessity therefor, which application shall
30 have been approved by the district water master if one has been
31 appointed, at such time, for such stream, and for such periods of
32 service as local conditions may indicate to be necessary to provide the
33 most practical supervision and to secure to water users and owners the
34 best protection in their rights.

35 The stream patrolman shall have the same powers as a water master
36 appointed under RCW 90.03.060, but his or her district shall be

1 confined to the regulation of waters of a designated stream or streams.
2 Such patrolman shall be under the supervision of the ((director))
3 division engineer or his or her designated representative. He or she
4 shall also enforce such special rules and regulations as the
5 ((director)) division engineer may prescribe from time to time.

6 **Sec. 83.** RCW 90.08.050 and 1977 c 22 s 2 are each amended to read
7 as follows:

8 Each stream patrolman shall receive a wage per day for each day
9 actually employed in the duties of his office, or if employed by the
10 month, he shall receive a salary per month, which wage or salary shall
11 be fixed in the manner provided by law for the fixing of the salaries
12 or compensation of other state officers or employees, plus travel
13 expenses in accordance with RCW 43.03.050 and 43.03.060 as now existing
14 or hereafter amended, to be paid by the county in which the work is
15 performed. In case the service extends over more than one county, each
16 county shall pay its equitable part of such wage to be apportioned by
17 the ((director)) division engineer. He shall be reimbursed for actual
18 necessary expenses when absent from his designated headquarters in the
19 performance of his duties, such expense to be paid by the county in
20 which he renders the service. The accounts of the stream patrolman
21 shall be audited and certified by the ((director)) division engineer
22 and the county auditor shall issue a warrant therefor upon the current
23 expense fund.

24 **Sec. 84.** RCW 90.14.041 and 1988 c 127 s 73 are each amended to
25 read as follows:

26 All persons using or claiming the right to withdraw or divert and
27 make beneficial use of public surface or ground waters of the state,
28 except as hereinafter provided in this section, shall file with the
29 ((department of ecology)) division engineer not later than June 30,
30 1974, a statement of claim for each water right asserted on a form
31 provided by the ((department)) division engineer. This section shall
32 not apply to any water rights which are based on the authority of a
33 permit or certificate issued by the ((department of ecology)) division
34 engineer or one of its predecessors.

35 **Sec. 85.** RCW 90.14.051 and 1973 1st ex.s. c 113 s 1 are each
36 amended to read as follows:

1 The statement of claim for each right shall include substantially
2 the following:

3 (1) The name and mailing address of the claimant.

4 (2) The name of the watercourse or water source from which the
5 right to divert or make use of water is claimed, if available.

6 (3) The quantities of water and times of use claimed.

7 (4) The legal description, with reasonable certainty, of the point
8 or points of diversion and places of use of waters.

9 (5) The purpose of use, including, if for irrigation, the number of
10 acres irrigated.

11 (6) The approximate dates of first putting water to beneficial use
12 for the various amounts and times claimed in subsection (3).

13 (7) The legal doctrine or doctrines upon which the right claimed is
14 based, including if statutory, the specific statute.

15 (8) The sworn statement that the claim set forth is true and
16 correct to the best of claimant's knowledge and belief.

17 Except, however, that any claim for diversion or withdrawal of
18 surface or ground water for those uses described in the exemption from
19 the permit requirements of RCW 90.44.050 may be filed on a short form
20 to be provided by the (~~department~~) division engineer. Such short
21 form shall only require inclusion of sufficient data to identify the
22 claimant, source of water, purpose of use and legal description of the
23 land upon which the water is used: PROVIDED, That the provisions of
24 RCW 90.14.081 pertaining to evidentiary value of filed claims shall not
25 apply to claims submitted in short form: AND PROVIDED FURTHER, That
26 claimants for such minimal uses may, at their option, file statements
27 of claim on the standard form used by all other claimants.

28 **Sec. 86.** RCW 90.14.061 and 1988 c 127 s 74 are each amended to
29 read as follows:

30 Filing of a statement of a claim shall take place and be completed
31 upon receipt by the (~~department of ecology~~) division engineer, at its
32 office in Olympia, of an original statement signed by the claimant or
33 his or her authorized agent, and two copies thereof. Any person
34 required to file hereunder may file through a designated
35 representative. A company, district, public or municipal corporation,
36 or the United States when furnishing to persons water pertaining to
37 water rights required to be filed under RCW 90.14.041, shall have the
38 right to file one claim on behalf of said persons on a form prepared by

1 the ((department)) division engineer for the total benefits of each
2 person served; provided that a separate claim shall be filed by such
3 company, district, public or private corporation, or the United States
4 for each operating unit of the filing entity providing such water and
5 for each water source. Within thirty days after receipt of a statement
6 of claim the ((department)) division engineer shall acknowledge the
7 same by a notation on one copy indicating receipt thereof and the date
8 of receipt, together with the wording of the first sentence of RCW
9 90.14.081, and shall return said copy by certified or registered mail
10 to the claimant at the address set forth in the statement of claim. No
11 statement of claim shall be accepted for filing by the ((department of
12 ecology)) division engineer unless accompanied by a two dollar filing
13 fee.

14 **Sec. 87.** RCW 90.14.065 and 1987 c 93 s 1 are each amended to read
15 as follows:

16 Any person or entity, or successor to such person or entity, having
17 a statement of claim on file with the water rights claims registry on
18 April 20, 1987, may submit to the ((department of ecology)) division
19 engineer for filing, an amendment to such a statement of claim if the
20 submitted amendment is based on:

21 (1) An error in estimation of the quantity of the applicant's water
22 claim prescribed in RCW 90.14.051 if the applicant provides reasons for
23 the failure to claim such right in the original claim;

24 (2) A change in circumstances not foreseeable at the time the
25 original claim was filed, if such change in circumstances relates only
26 to the manner of transportation or diversion of the water and not to
27 the use or quantity of such water; or

28 (3) The amendment is ministerial in nature.

29 The ((department)) division engineer shall accept any such
30 submission and file the same in the registry unless the ((department))
31 division engineer by written determination concludes that the
32 requirements of subsection (1), (2), or (3) of this section have not
33 been satisfied. Any person aggrieved by a determination of the
34 ((department)) division engineer may obtain a review thereof by filing
35 a petition for review ((with the pollution control hearings board))
36 under chapter 34.05 RCW within thirty days of the date of the
37 determination by the ((department)) division engineer. The provisions
38 of RCW 90.14.081 shall apply to any amendment filed under this section.

1 in the United States and viewed in the state, and by at least one
2 commercial radio station operating from each county of the state having
3 such a station regularly at six month intervals for five consecutive
4 years.

5 (3) It shall cause a notice in writing to be placed in a prominent
6 and conspicuous location in each county court house in the state.

7 (4) The county treasurer of each county shall enclose with each
8 mailing of one or more statements of taxes due issued in 1972 a copy of
9 a notice in writing and a declaration that it shall be the duty of the
10 recipient of the statement of taxes due to forward the notice to the
11 beneficial owner of the property. A sufficient number of copies of the
12 notice and declaration shall be supplied to each county treasurer by
13 the ((~~director of ecology~~)) division engineer before the fifteenth day
14 of January, 1972. In the implementation of this subsection the
15 ((~~department of ecology~~)) division engineer shall provide reimbursement
16 to the county treasurer for the reasonable additional costs, if any
17 there may be, incurred by said treasurer arising from the inclusion of
18 a notice in writing as required herein.

19 (5) It shall provide copies of the notice in writing to the press
20 services with offices located in Thurston county during January of the
21 years 1970, 1971, 1972, 1973 and 1974.

22 The ((~~director of the department~~)) division engineer may also in
23 ((~~his~~)) its discretion give notice in any other manner which will carry
24 out the purposes of this section. Where notice in writing is given
25 pursuant to subsections (1) and (3) of this section, RCW 90.14.041,
26 90.14.051 and 90.14.071 shall be set forth and quoted in full.

27 **Sec. 90.** RCW 90.14.111 and 1988 c 127 s 77 are each amended to
28 read as follows:

29 The ((~~department of ecology~~)) division engineer is directed to
30 establish a registry entitled the "Water Rights Claims Registry". All
31 claims set forth pursuant to RCW 90.14.041, 90.14.051 and 90.14.061
32 shall be filed in the registry alphabetically and consecutively by
33 control number, and by such other manner as deemed appropriate by the
34 ((~~department~~)) division engineer.

35 **Sec. 91.** RCW 90.14.130 and 1987 c 109 s 13 are each amended to
36 read as follows:

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

27 **Sec. 92.** RCW 90.14.150 and 1987 c 109 s 100 are each amended to
28 read as follows:

29 Nothing in this chapter shall be construed to affect any rights or
30 privileges arising from any permit to withdraw public waters or any
31 application for such permit, but the (~~department of ecology~~) division
32 engineer shall grant extensions of time to the holder of a preliminary
33 permit only as provided by RCW 90.03.290.

34 **Sec. 93.** RCW 90.14.180 and 1987 c 109 s 101 are each amended to
35 read as follows:

36 Any person hereafter entitled to divert or withdraw waters of the
37 state through an appropriation authorized under RCW 90.03.330,

1 90.44.080, or 90.44.090 who abandons the same, or who voluntarily
2 fails, without sufficient cause, to beneficially use all or any part of
3 said right to withdraw for any period of five successive years shall
4 relinquish such right or portion thereof, and such right or portion
5 thereof shall revert to the state, and the waters affected by said
6 right shall become available for appropriation in accordance with RCW
7 90.03.250. All certificates hereafter issued by the (~~department of~~
8 ~~ecology~~) division engineer pursuant to RCW 90.03.330 shall expressly
9 incorporate this section by reference.

10 **Sec. 94.** RCW 90.14.190 and 1987 c 109 s 14 are each amended to
11 read as follows:

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

24 **Sec. 95.** RCW 90.14.200 and 1989 c 175 s 180 are each amended to
25 read as follows:

26 (1) All matters relating to the implementation and enforcement of
27 this chapter by the (~~department of ecology~~) division engineer shall
28 be carried out in accordance with chapter 34.05 RCW, the Administrative
29 Procedure Act, except where the provisions of this chapter expressly
30 conflict with chapter 34.05 RCW. Proceedings held pursuant to RCW
31 90.14.130 are adjudicative proceedings within the meaning of chapter
32 34.05 RCW. (~~Final decisions of the department of ecology in these~~
33 ~~proceedings are subject to review in accordance with chapter 43.21B~~
34 ~~RCW.~~)

35 (2) RCW 90.14.130 provides nonexclusive procedures for determining
36 a relinquishment of water rights under RCW 90.14.160, 90.14.170, and
37 90.14.180. RCW 90.14.160, 90.14.170, and 90.14.180 may be applied in,

1 among other proceedings, general adjudication proceedings initiated
2 under RCW 90.03.110 or 90.44.220: PROVIDED, That nothing herein shall
3 apply to litigation involving determinations of the (~~department of~~
4 ~~ecology~~) division engineer under RCW 90.03.290 relating to the
5 impairment of existing rights.

6 **Sec. 96.** RCW 90.14.215 and 1991 c 347 s 14 are each amended to
7 read as follows:

8 This chapter shall not apply to trust water rights held or
9 exercised by the (~~department of ecology~~) division engineer under
10 chapter 90.38 or 90.42 RCW.

11 **Sec. 97.** RCW 90.14.230 and 1987 c 109 s 102 are each amended to
12 read as follows:

13 The (~~department of ecology~~) division engineer is authorized to
14 (~~promulgate~~) adopt such rules (~~and regulations~~) as are necessary to
15 carry out the provisions of this chapter.

16 **Sec. 98.** RCW 90.16.060 and 1988 c 127 s 78 are each amended to
17 read as follows:

18 The license fee herein required shall be paid in advance to the
19 (~~state department of ecology~~) division engineer and shall be
20 accompanied by written statement, showing the extent of the claim.
21 Said statement shall set forth the name and address of the claimant,
22 the name of the stream from which the water is appropriated or claimed
23 for power development, a description of the forty acres or smallest
24 legal subdivision in which the point of diversion and point of return
25 are located, the date of the right as claimed, the maximum amount of
26 water claimed, expressed in cubic feet per second of time, the total
27 average fall utilized under such claim, the manner of developing power
28 and the use to which the power is applied. If the regular flow is
29 supplemented by water stored in a reservoir, the location of such
30 reservoir, its capacity in acre feet, and the stream from which it is
31 filled and fed, should be given, also the date of the right as claimed
32 for storage purposes.

33 Should any claimant fail or neglect to file such statement within
34 the time specified, or fail or neglect to pay such fees within the time
35 specified, the fees due and payable shall be at the schedule rates set
36 out in RCW 90.16.050, increased twenty-five percent, and the state

1 shall have preference lien therefor, with interest at the rate of ten
2 percent per annum from the date of delinquency, upon the property of
3 claimant used or necessary for use in the development of the right or
4 claim, together with any improvements erected thereon for such
5 development, and upon request from the (~~director of ecology~~) division
6 engineer the attorney general shall proceed to foreclose the lien, and
7 collect the amount due, as herein provided, in the same manner as other
8 liens for general state and county taxes on real property are
9 foreclosed.

10 The filing of a claim to water in excess of the amount to which the
11 claimant is legally entitled shall not operate to vest in such claimant
12 any right to the use of such excess water, nor shall the payment of the
13 annual license fees, provided for herein, operate to vest in any
14 claimant any right to the use of such water beyond the amount to which
15 claimant is legally entitled. The filing of such claim, or claims to
16 water shall be conclusive evidence of abandonment by the claimant of
17 all right to water for power purposes not covered by the claim, or
18 claims, as filed; and the failure to file statement and pay the fees,
19 as herein required, for any power site or claim of power rights on
20 account of riparian ownership within two years after June 12, 1929,
21 shall be conclusive evidence of abandonment. The amount of the
22 theoretical horsepower upon which fees shall be paid shall be computed
23 by multiplying the maximum amount of water claimed, expressed in cubic
24 feet per second of time, by the average fall utilized, expressed in
25 feet, and dividing the product by 8.8.

26 **Sec. 99.** RCW 90.16.090 and 1988 c 127 s 79 are each amended to
27 read as follows:

28 All fees paid under provisions of this chapter, shall be credited
29 by the state treasurer to the reclamation revolving account and subject
30 to legislative appropriation, be allocated and expended by the
31 (~~director of ecology~~) division engineer for investigations and
32 surveys of natural resources in cooperation with the federal
33 government, or independently thereof, including stream gaging,
34 hydrographic, topographic, river, underground water, mineral and
35 geological surveys: PROVIDED, That in any one biennium all said
36 expenditures shall not exceed total receipts from said power license
37 fees collected during said biennium: AND PROVIDED FURTHER, That the
38 portion of money allocated by said (~~director~~) division engineer to be

1 expended in cooperation with the federal government shall be contingent
2 upon the federal government making available equal amounts for such
3 investigations and surveys.

4 **Sec. 100.** RCW 90.22.010 and 1994 c 264 s 86 are each amended to
5 read as follows:

6 The (~~department of ecology~~) division engineer may establish
7 minimum water flows or levels for streams, lakes or other public waters
8 for the purposes of protecting fish, game, birds or other wildlife
9 resources, or recreational or aesthetic values of said public waters
10 whenever it appears to be in the public interest to establish the same.
11 In addition, the (~~department of ecology~~) division engineer shall,
12 when requested by the department of fish and wildlife to protect fish,
13 game or other wildlife resources under the jurisdiction of the
14 requesting state agency, or if the (~~department of ecology~~) division
15 engineer finds it necessary to preserve water quality, establish such
16 minimum flows or levels as are required to protect the resource or
17 preserve the water quality described in the request or determination.
18 Any request submitted by the department of fish and wildlife shall
19 include a statement setting forth the need for establishing a minimum
20 flow or level. When the (~~department~~) division engineer acts to
21 preserve water quality, it shall include a similar statement with the
22 proposed rule filed with the code reviser. This section shall not
23 apply to waters artificially stored in reservoirs, provided that in the
24 granting of storage permits by the (~~department of ecology~~) division
25 engineer in the future, full recognition shall be given to downstream
26 minimum flows, if any there may be, which have theretofore been
27 established hereunder.

28 The current guidelines, standards, or criteria governing the
29 instream flow programs established pursuant to this chapter shall not
30 be altered or amended after March 15, 1988, in accordance with RCW
31 90.54.022(5).

32 **Sec. 101.** RCW 90.22.020 and 1994 c 264 s 87 are each amended to
33 read as follows:

34 Flows or levels authorized for establishment under RCW 90.22.010,
35 or subsequent modification thereof by the (~~department~~) division
36 engineer shall be provided for through the adoption of rules. Before
37 the establishment or modification of a water flow or level for any

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

11 (1) The name of each stream, lake, or other water source under
12 consideration;

13 (2) The place and time of the hearing;

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

17 Notice of the hearing shall also be served upon the administrators
18 of the departments of social and health services, natural resources,
19 fish and wildlife, and transportation.

20 **Sec. 102.** RCW 90.22.030 and 1988 c 127 s 81 are each amended to
21 read as follows:

22 The establishment of levels and flows pursuant to RCW 90.22.010
23 shall in no way affect existing water and storage rights and the use
24 thereof, including but not limited to rights relating to the operation
25 of any hydroelectric or water storage reservoir or related facility.
26 No right to divert or store public waters shall be granted by the
27 ((department of ecology)) division engineer which shall conflict with
28 regulations adopted pursuant to RCW 90.22.010 and 90.22.020
29 establishing flows or levels. All regulations establishing flows or
30 levels shall be filed in a "Minimum Water Level and Flow Register" of
31 the ((department of ecology)) division engineer.

32 **Sec. 103.** RCW 90.22.040 and 1987 c 109 s 104 are each amended to
33 read as follows:

34 It shall be the policy of the state, and the ((department of
35 ecology)) division engineer shall be so guided in the implementation of
36 RCW 90.22.010 and 90.22.020, to retain sufficient minimum flows or
37 levels in streams, lakes or other public waters to provide adequate

1 waters in such water sources to satisfy stockwatering requirements for
2 stock on riparian grazing lands which drink directly therefrom where
3 such retention shall not result in an unconscionable waste of public
4 waters. The policy hereof shall not apply to stockwatering relating to
5 feed lots and other activities which are not related to normal
6 stockgrazing land uses.

7 **Sec. 104.** RCW 90.22.060 and 1993 sp.s. c 4 s 13 are each amended
8 to read as follows:

9 By December 31, 1993, the (~~(department of ecology)~~) division
10 engineer shall, in cooperation with the Indian tribes(~~(7)~~) and the
11 department(~~(s)~~) of (~~(fisheries)~~) fish and wildlife, establish a state-
12 wide list of priorities for evaluation of instream flows. In
13 establishing these priorities, the (~~(department)~~) division engineer
14 shall consider the achievement of wild salmonid production as its
15 primary goal.

16 The priority list shall be presented to the appropriate legislative
17 committees and to the water resources forum by December 31, 1993.

18 **Sec. 105.** RCW 90.24.010 and 1985 c 398 s 28 are each amended to
19 read as follows:

20 Ten or more owners of real property abutting on a meandered lake
21 may petition the superior court of the county in which the lake is
22 situated, for an order to provide for the regulation of the outflow of
23 the lake in order to maintain a certain water level therein. The
24 court, after hearing, is authorized to make an order fixing the water
25 level thereof and directing the (~~(department of ecology)~~) division
26 engineer to regulate the outflow therefrom in accordance with the
27 purposes described in the petition. This section shall not apply to
28 any meandered lake or reservoir used for the storage of water for
29 irrigation or other beneficial purposes, or to lakes navigable from the
30 sea.

31 **Sec. 106.** RCW 90.24.030 and 1994 c 264 s 88 are each amended to
32 read as follows:

33 The petition shall be entitled "In the matter of fixing the level
34 of Lake in county, Washington", and shall be
35 filed with the clerk of the court and a copy thereof, together with a
36 copy of the order fixing the time for hearing the petition, shall be

1 served on each owner of property abutting on the lake, not less than
2 ten days before the hearing. Like copies shall also be served upon the
3 director of fish and wildlife and the (~~director of ecology~~) division
4 engineer. The copy of the petition and of the order fixing time for
5 hearing shall be served in the manner provided by law for the service
6 of summons in civil actions, or in such other manner as may be
7 prescribed by order of the court. For the benefit of every riparian
8 owner abutting on a stream or river flowing from such lake, a copy of
9 the notice of hearing shall be published at least once a week for two
10 consecutive weeks before the time set for hearing in a newspaper in
11 each county or counties wherein located, said notice to contain a brief
12 statement of the reasons and necessity for such application.

13 **Sec. 107.** RCW 90.24.040 and 1985 c 398 s 29 are each amended to
14 read as follows:

15 At the hearing evidence shall be introduced in support of the
16 petition and all interested parties may be heard for or against it.
17 The court shall make findings and conclusions and enter an order
18 granting or refusing the petition, and if the petition is granted,
19 shall fix the water level to be maintained and direct the (~~department~~
20 ~~of ecology~~) division engineer to regulate and control the outflow of
21 the lake so as to properly maintain the water level so far as
22 practicable within maximum and minimum limits when the proper control
23 devices are installed: PROVIDED, That the court shall have continuing
24 jurisdiction after a petition is once granted and shall, upon
25 subsequent petition filed and heard in accordance with the preceding
26 sections, make such further findings and conclusions and enter such
27 further orders as are necessary to accomplish fully the objectives
28 sought in the initial petition: AND PROVIDED FURTHER, That shall the
29 court find any such riparian owners abutting on a stream or river
30 flowing from such lake be adversely affected in any way by the granting
31 of such a petition, such petition shall be refused.

32 **Sec. 108.** RCW 90.24.050 and 1988 c 127 s 82 are each amended to
33 read as follows:

34 In the event the court shall find that to protect fish and game
35 fish in said lake that fish ladders or other devices should be
36 constructed therein or that other construction shall be necessary in
37 order to maintain the determined lake level, the court shall find the

1 proper device to be constructed, the probable cost thereof and by its
2 order and judgment shall apportion the cost thereof among the persons
3 whose property abuts on said lake in proportion to the lineal feet of
4 waterfront owned by each, which sum so found shall constitute a lien
5 against said real property and shall be paid to the county treasurer
6 and by him or her placed in a special fund to be known as "Lake
7 Improvement Fund." The (~~director of ecology~~) division
8 engineer shall appoint a suitable person to be compensated by the
9 property owners to regulate the determined level as decreed by the
10 court.

11 **Sec. 109.** RCW 90.24.060 and 1994 c 264 s 89 are each amended to
12 read as follows:

13 Such improvement or device in said lake for the protection of the
14 fish and game fish therein shall be installed by and under the
15 direction of the board of county commissioners of said county with the
16 approval of the respective director(~~s~~) of the department of fish and
17 wildlife and the (~~department of ecology~~) division engineer of the
18 state of Washington and paid for out of the special fund provided for
19 in RCW 90.24.050.

20 **Sec. 110.** RCW 90.38.010 and 1989 c 429 s 2 are each amended to
21 read as follows:

22 Unless the context clearly requires otherwise, the definitions in
23 this section apply throughout this chapter.

24 (1) (~~"Department" means the department of ecology~~) division
25 engineer.

26 (2) "Net water savings" means the amount of water that through
27 hydrological analysis is determined to be conserved and usable for
28 other purposes without impairing existing water rights, reducing the
29 ability to deliver water, or reducing the supply of water that
30 otherwise would have been available to other water users.

31 (3) "Trust water right" means that portion of an existing water
32 right, constituting net water savings, that is no longer required to be
33 diverted for beneficial use due to the installation of a water
34 conservation project that improves an existing system. The term "trust
35 water right" also applies to any other water right acquired by the
36 (~~department~~) division engineer under this chapter for management in
37 the Yakima river basin trust water rights program.

1 (4) "Water conservation project" means any project funded to
2 further the purposes of this chapter and that achieves physical or
3 operational improvements of efficiency in existing systems for
4 diversion, conveyance, or application of water under existing water
5 rights.

6 **Sec. 111.** RCW 90.38.020 and 1989 c 429 s 3 are each amended to
7 read as follows:

8 (1) The ((department)) division engineer may acquire water rights,
9 including but not limited to storage rights, by purchase, gift, or
10 other appropriate means other than by condemnation, from any person or
11 entity or combination of persons or entities. Once acquired, such
12 rights are trust water rights.

13 (2) The ((department)) division engineer may make such other
14 arrangements, including entry into contracts with other persons or
15 entities as appropriate to ensure that trust water rights acquired in
16 accordance with this chapter can be exercised to the fullest possible
17 extent.

18 (3) The trust water rights may be acquired on a temporary or
19 permanent basis.

20 **Sec. 112.** RCW 90.38.030 and 1989 c 429 s 4 are each amended to
21 read as follows:

22 (1) For the purposes of this chapter, the ((department)) division
23 engineer is authorized to enter into contracts with water users for the
24 purpose of providing moneys to users to assist in the financing of
25 water conservation projects. In exchange for the financial assistance
26 provided for the purposes of this chapter, the water users shall convey
27 the trust water rights, created as a result of the assistance, to the
28 ((department of ecology)) division engineer.

29 (2) No contract shall be entered into by the ((department))
30 division engineer with a water user under this chapter unless it
31 appears to the ((department)) division engineer that, upon the
32 completion of a water conservation project financed with moneys as
33 provided in this section, a valid water right exists for conveyance to
34 the ((department)) division engineer.

35 (3) The ((department)) division engineer shall cooperate fully with
36 the United States in the implementation of this chapter. Trust water
37 rights may be acquired through expenditure of funds provided by the

1 United States and shall be treated in the same manner as trust water
2 rights resulting from the expenditure of state funds.

3 (4) When water is proposed to be acquired by or conveyed to the
4 ((department)) division engineer as a trust water right by an
5 irrigation district, evidence of the district's authority to represent
6 the water right holders must be submitted to, and for the satisfaction
7 of, the ((department)) division engineer.

8 (5) The ((department)) division engineer shall not acquire an
9 individual's water right under this chapter that is appurtenant to land
10 lying within an irrigation district without the approval of the board
11 of directors of the irrigation district.

12 **Sec. 113.** RCW 90.38.040 and 1994 c 264 s 90 are each amended to
13 read as follows:

14 (1) All trust water rights acquired by the ((department)) division
15 engineer shall be placed in the Yakima river basin trust water rights
16 program to be managed by the ((department)) division engineer. The
17 ((department)) division engineer shall issue a water right certificate
18 in the name of the state of Washington for each trust water right it
19 acquires.

20 (2) Trust water rights shall retain the same priority date as the
21 water right from which they originated. Trust water rights may be
22 modified as to purpose or place of use or point of diversion, including
23 modification from a diversionary use to a nondiversionary instream use.

24 (3) Trust water rights may be held by the ((department)) division
25 engineer for instream flows and/or irrigation use.

26 (4) A schedule of the amount of net water saved as a result of
27 water conservation projects carried out in accordance with this
28 chapter, shall be developed annually to reflect the predicted
29 hydrologic and water supply conditions, as well as anticipated water
30 demands, for the upcoming irrigation season. This schedule shall serve
31 as the basis for the distribution and management of trust water rights
32 each year.

33 (5) No exercise of a trust water right may be authorized unless the
34 ((department)) division engineer first determines that no existing
35 water rights, junior or senior in priority, will be impaired as to
36 their exercise or injured in any manner whatever by such authorization.
37 Before any trust water right is exercised, the ((department)) division
38 engineer shall publish notice thereof in a newspaper of general

1 circulation published in the county or counties in which the storage,
2 diversion, and use are to be made, and in such other newspapers as the
3 ((department)) division engineer determines are necessary, once a week
4 for two consecutive weeks. At the same time the ((department))
5 division engineer may also send notice thereof containing pertinent
6 information to the director of fish and wildlife.

7 (6) RCW 90.03.380 and 90.14.140 through 90.14.910 shall have no
8 applicability to trust water rights held by the ((department)) division
9 engineer under this chapter or exercised under this section.

10 **Sec. 114.** RCW 90.38.050 and 1989 c 429 s 6 are each amended to
11 read as follows:

12 The ((department)) division engineer may adopt rules as appropriate
13 to ensure full implementation of this chapter.

14 **Sec. 115.** RCW 90.40.090 and 1988 c 127 s 83 are each amended to
15 read as follows:

16 An application filed by the ((~~department of ecology~~)) division
17 engineer or its assignee, the United States Bureau of Reclamation, for
18 a permit to appropriate waters of the Columbia River under chapter
19 90.03 RCW, for the development of the Grand Coulee project shall be
20 perfected in the same manner and to the same extent as though such
21 appropriation had been made by a private person, corporation or
22 association, but no fees, as provided for in RCW 90.03.470, shall be
23 required.

24 **Sec. 116.** RCW 90.42.010 and 1993 sp.s. c 4 s 14 and 1993 c 98 s 1
25 are each reenacted and amended to read as follows:

26 (1) The legislature finds that a need exists to develop and test a
27 means to facilitate the voluntary transfer of water and water rights,
28 including conserved water, to provide water for presently unmet needs
29 and emerging needs. Further, the legislature finds that water
30 conservation activities have the potential of affecting the quantity of
31 return flow waters to which existing water right holders have a right
32 to and rely upon. It is the intent of the legislature that persons
33 holding rights to water, including return flows, not be adversely
34 affected in the implementation of the provisions of this chapter.

35 (2) The ((department)) division engineer shall provide to the
36 appropriate legislative committees by December 31, 1993, a written

1 evaluation of the implementation of RCW 90.42.010 through 90.42.090 and
2 recommendations for future application. Recommendations shall include
3 methods of applying RCW 90.42.010 through 90.42.090 to the rivers that
4 are designated as high priority by the ((department of ecology))
5 division engineer under RCW 90.22.060 in order to use net water savings
6 to enhance stream flows.

7 **Sec. 117.** RCW 90.42.020 and 1991 c 347 s 6 are each amended to
8 read as follows:

9 Unless the context clearly requires otherwise, the definitions in
10 this section apply throughout this chapter.

11 (1) ((("Department")) "Engineer" means the ((department of ecology))
12 division engineer.

13 (2) "Net water savings" means the amount of water that is
14 determined to be conserved and usable within a specified stream reach
15 or reaches for other purposes without impairment or detriment to water
16 rights existing at the time that a water conservation project is
17 undertaken, reducing the ability to deliver water, or reducing the
18 supply of water that otherwise would have been available to other
19 existing water uses.

20 (3) "Trust water right" means any water right acquired by the state
21 under this chapter for management in the state's trust water rights
22 program.

23 (4) "Pilot planning areas" means the geographic areas designated
24 under RCW 90.54.045(2).

25 (5) "Water conservation project" means any project or program that
26 achieves physical or operational improvements that provide for
27 increased water use efficiency in existing systems of diversion,
28 conveyance, application, or use of water under water rights existing on
29 July 28, 1991.

30 **Sec. 118.** RCW 90.42.030 and 1993 c 98 s 2 are each amended to read
31 as follows:

32 (1) For purposes of this chapter, the state may enter into
33 contracts to provide moneys to assist in the financing of water
34 conservation projects. In consideration for the financial assistance
35 provided, the state shall obtain public benefits defined in guidelines
36 developed under RCW 90.42.050.

1 (2) If the public benefits to be obtained require conveyance or
2 modification of a water right, the recipient of funds shall convey to
3 the state the recipient's interest in that part of the water right or
4 claim constituting all or a portion of the resulting net water savings
5 for deposit in the trust water rights program. The amount to be
6 conveyed shall be finitely determined by the parties, in accordance
7 with the guidelines developed under RCW 90.42.050, before the
8 expenditure of state funds. Conveyance may consist of complete
9 transfer, lease contracts, or other legally binding agreements. When
10 negotiating for the acquisition of conserved water or net water
11 savings, or a portion thereof, the state may require evidence of a
12 valid water right.

13 (3) As part of the contract, the water right holder and the state
14 shall specify the process to determine the amount of water the water
15 right holder would continue to be entitled to once the water
16 conservation project is in place.

17 (4) The state shall cooperate fully with the United States in the
18 implementation of this chapter. Trust water rights may be acquired
19 through expenditure of funds provided by the United States and shall be
20 treated in the same manner as trust water rights resulting from the
21 expenditure of state funds.

22 (5) If water is proposed to be acquired by or conveyed to the state
23 as a trust water right by an irrigation district, evidence of the
24 district's authority to represent the water right holders shall be
25 submitted to and for the satisfaction of the ((department)) division
26 engineer.

27 (6) The state shall not contract with any person to acquire a water
28 right served by an irrigation district without the approval of the
29 board of directors of the irrigation district. Disapproval by a board
30 shall be factually based on probable adverse effects on the ability of
31 the district to deliver water to other members or on maintenance of the
32 financial integrity of the district.

33 **Sec. 119.** RCW 90.42.040 and 1993 c 98 s 3 are each amended to read
34 as follows:

35 (1) All trust water rights acquired by the state shall be placed in
36 the state trust water rights program to be managed by the
37 ((department)) division engineer. Trust water rights acquired by the
38 state shall be held or authorized for use by the ((department))

1 division engineer for instream flows, irrigation, municipal, or other
2 beneficial uses consistent with applicable regional plans for pilot
3 planning areas, or to resolve critical water supply problems.

4 (2) The ((department)) division engineer shall issue a water right
5 certificate in the name of the state of Washington for each permanent
6 trust water right conveyed to the state indicating the reach or reaches
7 of the stream, the quantity, and the use or uses to which it may be
8 applied. A superseding certificate shall be issued that specifies the
9 amount of water the water right holder would continue to be entitled to
10 as a result of the water conservation project. The superseding
11 certificate shall retain the same priority date as the original right.
12 For nonpermanent conveyances, the ((department)) division engineer
13 shall issue certificates or such other instruments as are necessary to
14 reflect the changes in purpose or place of use or point of diversion or
15 withdrawal. Water rights for which such nonpermanent conveyances are
16 arranged shall not be subject to relinquishment for nonuse.

17 (3) A trust water right retains the same priority date as the water
18 right from which it originated, but as between them the trust right
19 shall be deemed to be inferior in priority unless otherwise specified
20 by an agreement between the state and the party holding the original
21 right.

22 (4) Exercise of a trust water right may be authorized only if the
23 ((department)) division engineer first determines that neither water
24 rights existing at the time the trust water right is established, nor
25 the public interest will be impaired. If impairment becomes apparent
26 during the time a trust water right is being exercised, the
27 ((department)) division engineer shall cease or modify the use of the
28 trust water right to eliminate the impairment.

29 (5) Before any trust water right is created or modified, the
30 ((department)) division engineer shall, at a minimum, require that a
31 notice be published in a newspaper of general circulation published in
32 the county or counties in which the storage, diversion, and use are to
33 be made, and in other newspapers as the ((department)) division
34 engineer determines is necessary, once a week for two consecutive
35 weeks. At the same time the ((department)) division engineer shall
36 send a notice containing pertinent information to all appropriate state
37 agencies, potentially affected local governments and federally
38 recognized tribal governments, and other interested parties.

1 (6) RCW 90.14.140 through 90.14.230 have no applicability to trust
2 water rights held by the ((department)) division engineer under this
3 chapter or exercised under this section.

4 (7) RCW 90.03.380 has no applicability to trust water rights
5 acquired by the state through the funding of water conservation
6 projects.

7 **Sec. 120.** RCW 90.42.050 and 1991 c 347 s 9 are each amended to
8 read as follows:

9 The ((department)) division engineer, in cooperation with federally
10 recognized Indian tribes, local governments, state agencies, and other
11 interested parties, shall establish guidelines by July 1, 1992,
12 governing the acquisition, administration, and management of trust
13 water rights. The guidelines shall address at a minimum the following:

14 (1) Methods for determining the net water savings resulting from
15 water conservation projects or programs carried out in accordance with
16 this chapter, and other factors to be considered in determining the
17 quantity or value of water available for potential designation as a
18 trust water right;

19 (2) Criteria for determining the portion of net water savings to be
20 conveyed to the state under this chapter;

21 (3) Criteria for prioritizing water conservation projects;

22 (4) A description of potential public benefits that will affect
23 consideration for state financial assistance in RCW 90.42.030;

24 (5) Procedures for providing notification to potentially interested
25 parties;

26 (6) Criteria for the assignment of uses of trust water rights
27 acquired in areas of the state not addressed in a regional water
28 resource plan or critical area agreement; and

29 (7) Contracting procedures and other procedures not specifically
30 addressed in this section.

31 These guidelines shall be submitted to the joint select committee
32 on water resource policy before adoption.

33 **Sec. 121.** RCW 90.42.080 and 1993 c 98 s 4 are each amended to read
34 as follows:

35 (1) The state may acquire all or portions of existing water rights,
36 by purchase, gift, or other appropriate means other than by

1 condemnation, from any person or entity or combination of persons or
2 entities. Once acquired, such rights are trust water rights.

3 (2) The (~~(department)~~) division engineer may enter into leases,
4 contracts, or such other arrangements with other persons or entities as
5 appropriate, to ensure that trust water rights acquired in accordance
6 with this chapter may be exercised to the fullest possible extent.

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

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

11 (5) No funds may be expended for the purchase of water rights by
12 the state pursuant to this section unless specifically appropriated for
13 this purpose by the legislature.

14 **Sec. 122.** RCW 90.44.035 and 1987 c 109 s 107 are each amended to
15 read as follows:

16 For purposes of this chapter:

17 (1) (~~(Department)~~) Commission" means the (~~(department of ecology)~~)
18 Washington water resources and water quality commission;

19 (2) (~~("Director" means the director of ecology;~~

20 ~~{3})) "Ground waters" means all waters that exist beneath the land
21 surface or beneath the bed of any stream, lake or reservoir, or other
22 body of surface water within the boundaries of this state, whatever may
23 be the geological formation or structure in which such water stands or
24 flows, percolates or otherwise moves. There is a recognized
25 distinction between natural ground water and artificially stored ground
26 water;~~

27 (~~{4})) (3) "Natural ground water" means water that exists in
28 underground storage owing wholly to natural processes; and~~

29 (~~{5})) (4) "Artificially stored ground water" means water that is
30 made available in underground storage artificially, either
31 intentionally, or incidentally to irrigation and that otherwise would
32 have been dissipated by natural waste.~~

33 **Sec. 123.** RCW 90.44.050 and 1987 c 109 s 108 are each amended to
34 read as follows:

35 After June 6, 1945, no withdrawal of public ground waters of the
36 state shall be begun, nor shall any well or other works for such
37 withdrawal be constructed, unless an application to appropriate such

1 waters has been made to the ((department)) division engineer and a
2 permit has been granted by it as herein provided: EXCEPT, HOWEVER,
3 That any withdrawal of public ground waters for stock-watering
4 purposes, or for the watering of a lawn or of a noncommercial garden
5 not exceeding one-half acre in area, or for single or group domestic
6 uses in an amount not exceeding five thousand gallons a day, or for an
7 industrial purpose in an amount not exceeding five thousand gallons a
8 day, is and shall be exempt from the provisions of this section, but,
9 to the extent that it is regularly used beneficially, shall be entitled
10 to a right equal to that established by a permit issued under the
11 provisions of this chapter: PROVIDED, HOWEVER, That the ((department))
12 division engineer from time to time may require the person or agency
13 making any such small withdrawal to furnish information as to the means
14 for and the quantity of that withdrawal: PROVIDED, FURTHER, That at
15 the option of the party making withdrawals of ground waters of the
16 state not exceeding five thousand gallons per day, applications under
17 this section or declarations under RCW 90.44.090 may be filed and
18 permits and certificates obtained in the same manner and under the same
19 requirements as is in this chapter provided in the case of withdrawals
20 in excess of five thousand gallons a day.

21 **Sec. 124.** RCW 90.44.060 and 1987 c 109 s 109 are each amended to
22 read as follows:

23 Applications for permits for appropriation of underground water
24 shall be made in the same form and manner provided in RCW 90.03.250
25 through 90.03.340, as amended, the provisions of which sections are
26 hereby extended to govern and to apply to ground water, or ground water
27 right certificates and to all permits that shall be issued pursuant to
28 such applications, and the rights to the withdrawal of ground water
29 acquired thereby shall be governed by RCW 90.03.250 through 90.03.340,
30 inclusive: PROVIDED, That each application to withdraw public ground
31 water by means of a well or wells shall set forth the following
32 additional information: (1) the name and post office address of the
33 applicant; (2) the name and post office address of the owner of the
34 land on which such well or wells or works will be located; (3) the
35 location of the proposed well or wells or other works for the proposed
36 withdrawal; (4) the ground water area, sub-area, or zone from which
37 withdrawal is proposed, provided the ((department)) division engineer
38 has designated such area, sub-area, or zone in accord with RCW

1 90.44.130; (5) the amount of water proposed to be withdrawn, in gallons
2 a minute and in acre feet a year, or millions of gallons a year; (6)
3 the depth and type of construction proposed for the well or wells or
4 other works: AND PROVIDED FURTHER, That any permit issued pursuant to
5 an application for constructing a well or wells to withdraw public
6 ground water may specify an approved type and manner of construction
7 for the purposes of preventing waste of said public waters and of
8 conserving their head.

9 **Sec. 125.** RCW 90.44.070 and 1987 c 109 s 110 are each amended to
10 read as follows:

11 No permit shall be granted for the development or withdrawal of
12 public ground waters beyond the capacity of the underground bed or
13 formation in the given basin, district, or locality to yield such water
14 within a reasonable or feasible pumping lift in case of pumping
15 developments, or within a reasonable or feasible reduction of pressure
16 in the case of artesian developments. The ((department)) division
17 engineer shall have the power to determine whether the granting of any
18 such permit will injure or damage any vested or existing right or
19 rights under prior permits and may in addition to the records of the
20 ((department)) division engineer, require further evidence, proof, and
21 testimony before granting or denying any such permits.

22 **Sec. 126.** RCW 90.44.080 and 1987 c 109 s 111 are each amended to
23 read as follows:

24 Upon a showing to the ((department)) division engineer that
25 construction has been completed in compliance with the terms of any
26 permit issued under the provisions of this chapter, it shall be the
27 duty of the ((department)) division engineer to issue to the permittee
28 a certificate of ground water right stating that the appropriation has
29 been perfected under such permit: PROVIDED, HOWEVER, That such showing
30 shall include the following information: (1) the location of each well
31 or other means of withdrawal constructed under the permit, both with
32 respect to official land surveys and in terms of distance and direction
33 to any preexisting well or wells or works constructed under an earlier
34 permit or approved declaration of a vested right, provided the distance
35 to such pre-existing well or works is not more than a quarter of a
36 mile; (2) the depth and diameter of each well or the depth and general
37 specifications of any other works constructed under the terms of the

1 permit; (3) the thickness in feet and the physical character of each
2 bed, stratum, or formation penetrated by each well; (4) the length and
3 position, in feet below the land surface, and the commercial
4 specifications of all casing, also of each screen or perforated zone in
5 the casing of each well constructed; (5) the tested capacity of each
6 well in gallons a minute, as determined by measuring the discharge of
7 the pump or pumps after continuous operation for at least four hours
8 or, in the case of a flowing well, by measuring the natural flow at the
9 land surface; (6) for each nonflowing well, the depth to the static
10 ground water level as measured in feet below the land surface
11 immediately before the well-capacity test herein provided, also the
12 draw-down of the water level, in feet, at the end of said well-capacity
13 test; (7) for each flowing well, the shut-in pressure measured in feet
14 above the land surface or in pounds per square inch at the land
15 surface; and (8) such additional factual information as reasonably may
16 be required by the ((department)) division engineer to establish
17 compliance with the terms of the permit and with the provisions of this
18 chapter.

19 The well driller or other constructor of works for the withdrawal
20 of public ground waters shall be obligated to furnish the permittee a
21 certified record of the factual information necessary to show
22 compliance with the provisions of this section.

23 **Sec. 127.** RCW 90.44.090 and 1987 c 109 s 112 are each amended to
24 read as follows:

25 Any person, firm or corporation claiming a vested right to withdraw
26 public ground waters of the state by virtue of prior beneficial use of
27 such water shall, within three years after June 6, 1945, be entitled to
28 receive from the ((department)) division engineer a certificate of
29 ground water right to that effect: PROVIDED, That the issuance by the
30 ((department)) division engineer of any such certificate of vested
31 right shall be contingent on a declaration by the claimant in a form
32 prescribed by the ((department)) division engineer, which declaration
33 shall set forth: (1) the beneficial use for which such withdrawal has
34 been made; (2) the date or approximate date of the earliest beneficial
35 use of the water so withdrawn, and the continuity of such beneficial
36 use; (3) the amount of water claimed; (4) if the beneficial use has
37 been for irrigation, the description of the land to which such water
38 has been applied and the name of the owner thereof; and (5) so far as

1 it may be available, descriptive information concerning each well or
2 other works for the withdrawal of public ground water, as required of
3 original permittees under the provisions of RCW 90.44.080: PROVIDED,
4 HOWEVER, That in case of failure to comply with the provisions of this
5 section within the three years allotted, the claimant may apply to the
6 ((department)) division engineer for a reasonable extension of time,
7 which shall not exceed two additional years and which shall be granted
8 only upon a showing of good cause for such failure.

9 Each such declaration shall be certified, either on the basis of
10 the personal knowledge of the declarant or on the basis of information
11 and belief. With respect to each such declaration there shall be
12 publication, and findings in the same manner as provided in RCW
13 90.44.060 in the case of an original application to appropriate water.
14 If the ((department's)) division engineer's findings sustain the
15 declaration, the ((department)) division engineer shall approve said
16 declaration, which then shall be recorded at length with the
17 ((department)) division engineer and may also be recorded in the office
18 of the county auditor of the county within which the claimed withdrawal
19 and beneficial use of public ground water have been made. When duly
20 approved and recorded as herein provided, each such declaration or
21 copies thereof shall have the same force and effect as an original
22 permit granted under the provisions of RCW 90.44.060, with a priority
23 as of the date of the earliest beneficial use of the water.

24 Declarations heretofore filed with the ((department)) division
25 engineer in substantial compliance with the provisions of this section
26 shall have the same force and effect as if filed after June 6, 1945.

27 The same fees shall be collected by the ((department)) division
28 engineer in the case of applications for the issuance of certificates
29 of vested rights, as are required to be collected in the case of
30 application for permits for withdrawal of ground waters and for the
31 issuance of certificates of ground water withdrawal rights under this
32 chapter.

33 **Sec. 128.** RCW 90.44.100 and 1987 c 109 s 113 are each amended to
34 read as follows:

35 After an application to, and upon the issuance by the
36 ((department)) division engineer of an amendment to the appropriate
37 permit or certificate of ground water right, the holder of a valid
38 right to withdraw public ground waters may, without losing his priority

1 of right, construct wells or other means of withdrawal at a new
2 location in substitution for or in addition to those at the original
3 location, or he may change the manner or the place of use of the water:
4 PROVIDED, HOWEVER, That such amendment shall be issued only after
5 publication of notice of the application and findings as prescribed in
6 the case of an original application. Such amendment shall be issued by
7 the ((department)) division engineer only on the conditions that: (1)
8 The additional or substitute well or wells shall tap the same body of
9 public ground water as the original well or wells; (2) use of the
10 original well or wells shall be discontinued upon construction of the
11 substitute well or wells; (3) the construction of an additional well or
12 wells shall not enlarge the right conveyed by the original permit or
13 certificate; and (4) other existing rights shall not be impaired. The
14 ((department)) division engineer may specify an approved manner of
15 construction and shall require a showing of compliance with the terms
16 of the amendment, as provided in RCW 90.44.080 in the case of an
17 original permit.

18 **Sec. 129.** RCW 90.44.110 and 1987 c 109 s 114 are each amended to
19 read as follows:

20 No public ground waters that have been withdrawn shall be wasted
21 without economical beneficial use. The ((department)) division
22 engineer shall require all wells producing waters which contaminate
23 other waters to be plugged or capped. The ((department)) division
24 engineer shall also require all flowing wells to be so capped or
25 equipped with valves that the flow of water can be completely stopped
26 when the wells are not in use under the terms of their respective
27 permits or approved declarations of vested rights. Likewise, the
28 ((department)) division engineer shall also require both flowing and
29 nonflowing wells to be so constructed and maintained as to prevent the
30 waste of public ground waters through leaky casings, pipes, fittings,
31 valves, or pumps--either above or below the land surface: PROVIDED,
32 HOWEVER, That the withdrawal of reasonable quantities of public ground
33 water in connection with the construction, development, testing, or
34 repair of a well shall not be construed as waste; also, that the
35 inadvertent loss of such water owing to breakage of a pump, valve,
36 pipe, or fitting shall not be construed as waste if reasonable
37 diligence is shown by the permittee in effecting the necessary repair.

1 In the issuance of an original permit, or of an amendment to an
2 original permit or certificate of vested right to withdraw and
3 appropriate public ground waters under the provisions of this chapter,
4 the ((department)) division engineer may, as in his judgment is
5 necessary, specify for the proposed well or wells or other works a
6 manner of construction adequate to accomplish the provisions of this
7 section.

8 **Sec. 130.** RCW 90.44.120 and 1987 c 109 s 115 are each amended to
9 read as follows:

10 The unauthorized use of ground water to which another person is
11 entitled, or the wilful or negligent waste of ground water, or the
12 failure, when required by the ((department)) division engineer, to cap
13 flowing wells or equip the same with valves, fittings, or casings to
14 prevent waste of ground waters, or to cap or plug wells producing
15 waters which contaminate other waters, shall be a misdemeanor.

16 **Sec. 131.** RCW 90.44.130 and 1987 c 109 s 116 are each amended to
17 read as follows:

18 As between appropriators of public ground water, the prior
19 appropriator shall as against subsequent appropriators from the same
20 ground water body be entitled to the preferred use of such ground water
21 to the extent of his appropriation and beneficial use, and shall enjoy
22 the right to have any withdrawals by a subsequent appropriator of
23 ground water limited to an amount that will maintain and provide a safe
24 sustaining yield in the amount of the prior appropriation. The
25 ((department)) division engineer shall have jurisdiction over the
26 withdrawals of ground water and shall administer the ground water
27 rights under the principle just set forth, and it shall have the
28 jurisdiction to limit withdrawals by appropriators of ground water so
29 as to enforce the maintenance of a safe sustaining yield from the
30 ground water body. For this purpose, the ((department)) division
31 engineer shall have authority and it shall be its duty from time to
32 time, as adequate factual data become available, to designate ground
33 water areas or sub-areas, to designate separate depth zones within any
34 such area or sub-area, or to modify the boundaries of such existing
35 area, or sub-area, or zones to the end that the withdrawals therefrom
36 may be administratively controlled as prescribed in RCW 90.44.180 in
37 order that overdraft of public ground waters may be prevented so far as

1 is feasible. Each such area or zone shall, as nearly as known facts
2 permit, be so designated as to enclose a single and distinct body of
3 public ground water. Each such sub-area may be so designated as to
4 enclose all or any part of a distinct body of public ground water, as
5 the ((department)) division engineer deems will most effectively
6 accomplish the purposes of this chapter.

7 Designation of, or modification of the boundaries of such a ground
8 water area, sub-area, or zone may be proposed by the ((department))
9 division engineer on its own motion or by petition to the
10 ((department)) division engineer signed by at least fifty or one-
11 fourth, whichever is the lesser number, of the users of ground water in
12 a proposed ground water area, sub-area, or zone. Before any proposed
13 ground water area, sub-area, or zone shall be designated, or before the
14 boundaries or any existing ground water area, sub-area, or zone shall
15 be modified the ((department)) division engineer shall publish a notice
16 setting forth: (1) In terms of the appropriate legal subdivisions a
17 description of all lands enclosed within the proposed area, sub-area,
18 or zone, or within the area, sub-area, or zone whose boundaries are
19 proposed to be modified; (2) the object of the proposed designation or
20 modification of boundaries; and (3) the day and hour, and the place
21 where written objections may be submitted and heard. Such notice shall
22 be published in three consecutive weekly issues of a newspaper of
23 general circulation in the county or counties containing all or the
24 greater portion of the lands involved, and the newspaper of publication
25 shall be selected by the ((department)) division engineer. Publication
26 as just prescribed shall be construed as sufficient notice to the
27 landowners and water users concerned.

28 Objections having been heard as herein provided, the ((department))
29 division engineer shall make and file in its office written findings of
30 fact with respect to the proposed designation or modification and, if
31 the findings are in the affirmative, shall also enter a written order
32 designating the ground water area, or sub-area, or zone or modifying
33 the boundaries of the existing area, sub-area, or zone. Such findings
34 and order shall also be published substantially in the manner herein
35 prescribed for notice of hearing, and when so published shall be final
36 and conclusive unless an appeal therefrom is taken within the period
37 and in the manner prescribed by RCW 43.21B.310. Publication of such
38 findings and order shall give force and effect to the remaining

1 provisions of this section and to the provisions of RCW 90.44.180, with
2 respect to the particular area, sub-area, or zone.

3 Priorities of right to withdraw public ground water shall be
4 established separately for each ground water area, sub-area, or zone
5 and, as between such rights, the first in time shall be the superior in
6 right. The priority of the right acquired under a certificate of
7 ground water right shall be the date of filing of the original
8 application for a withdrawal with the ((department)) division engineer,
9 or the date or approximate date of the earliest beneficial use of water
10 as set forth in a certificate of a vested ground water right, under the
11 provisions of RCW 90.44.090.

12 Within ninety days after the designation of a ground water area,
13 sub-area or zone as herein provided, any person, firm or corporation
14 then claiming to be the owner of artificially stored ground water
15 within such area, sub-area, or zone shall file a certified declaration
16 to that effect with the ((department)) division engineer on a form
17 prescribed by the ((department)) division engineer. Such declaration
18 shall cover: (1) The location and description of the works by whose
19 operation such artificial ground water storage is purported to have
20 been created, and the name or names of the owner or owners thereof; (2)
21 a description of the lands purported to be underlain by such
22 artificially stored ground water, and the name or names of the owner or
23 owners thereof; (3) the amount of such water claimed; (4) the date or
24 approximate date of the earliest artificial storage; (5) evidence
25 competent to show that the water claimed is in fact water that would
26 have been dissipated naturally except for artificial improvements by
27 the claimant; and (6) such additional factual information as reasonably
28 may be required by the ((department)) division engineer. If any of the
29 purported artificially stored ground water has been or then is being
30 withdrawn, the claimant also shall file (1) the declarations which this
31 chapter requires of claimants to a vested right to withdraw public
32 ground waters, and (2) evidence competent to show that none of the
33 water withdrawn under those declarations is in fact public ground water
34 from the area, sub-area, or zone concerned: PROVIDED, HOWEVER, That in
35 case of failure to file a declaration within the ninety-day period
36 herein provided, the claimant may apply to the ((department)) division
37 engineer for a reasonable extension of time, which shall not exceed two
38 additional years and which shall be granted only upon a showing of good
39 cause for such failure.

1 Following publication of the declaration and findings--as in the
2 case of an original application, permit, or certificate of right to
3 appropriate public ground waters--the ((department)) division engineer
4 shall accept or reject such declaration or declarations with respect to
5 ownership or withdrawal of artificially stored ground water.
6 Acceptance of such declaration or declarations by the ((department))
7 division engineer shall convey to the declarant no right to withdraw
8 public ground waters from the particular area, sub-area, or zone, nor
9 to impair existing or subsequent rights to such public waters.

10 Any person, firm or corporation hereafter claiming to be the owner
11 of ground water within a designated ground water area, sub-area, or
12 zone by virtue of its artificial storage subsequent to such designation
13 shall, within three years following the earliest artificial storage
14 file a declaration of claim with the ((department)) division engineer,
15 as herein prescribed for claims based on artificial storage prior to
16 such designation: PROVIDED, HOWEVER, That in case of such failure the
17 claimant may apply to the ((department)) division engineer for a
18 reasonable extension of time, which shall not exceed two additional
19 years and which shall be granted upon a showing of good cause for such
20 failure.

21 Any person, firm or corporation hereafter withdrawing ground water
22 claimed to be owned by virtue of artificial storage subsequent to
23 designation of the relevant ground water area, sub-area, or zone shall,
24 within ninety days following the earliest such withdrawal, file with
25 the ((department)) division engineer the declarations required by this
26 chapter with respect to withdrawals of public ground water.

27 **Sec. 132.** RCW 90.44.180 and 1987 c 109 s 117 are each amended to
28 read as follows:

29 At any time the ((department)) division engineer may hold a hearing
30 on its own motion, and shall hold a hearing upon petition of at least
31 fifty or one-fourth, whichever is the lesser number, of the holders of
32 valid rights to withdraw public ground waters from any designated
33 ground water area, sub-area, or zone, to determine whether the water
34 supply in such area, sub-area, or zone is adequate for the current
35 needs of all such holders. Notice of any such hearing, and the
36 findings and order resulting therefrom shall be published in the manner
37 prescribed in RCW 90.44.130 with respect to the designation or
38 modification of a ground water area, or sub-area, or zone.

1 If such hearing finds that the total available supply is inadequate
2 for the current needs of all holders of valid rights to withdraw public
3 ground waters from the particular ground water area, sub-area, or zone,
4 the ((department)) division engineer shall order the aggregate
5 withdrawal from such area, sub-area, or zone decreased so that it shall
6 not exceed such available supply. Such decrease shall conform to the
7 priority of the pertinent valid rights and shall prevail for the term
8 of shortage in the available supply. Except that by mutual agreement
9 among the respective holders and with the ((department)) division
10 engineer, the ordered decrease in aggregate withdrawal may be
11 accomplished by the waiving of all or some specified part of a senior
12 right or rights in favor of a junior right or rights: PROVIDED, That
13 such waiving of a right or rights by agreement shall not modify the
14 relative priorities of such right or rights as recorded in the
15 ((department)) division engineer.

16 **Sec. 133.** RCW 90.44.200 and 1987 c 109 s 118 are each amended to
17 read as follows:

18 The ((department)) division engineer, as in its judgment is deemed
19 necessary and advisable, may appoint one or more ground water
20 supervisors for each designated ground water area, sub-area, or zone,
21 or may appoint one or more ground water supervisors-at-large. Within
22 their respective jurisdictions and under the direction of the
23 ((department)) division engineer, such supervisor and supervisors-at-
24 large shall supervise the withdrawal of public ground waters and the
25 carrying out of orders issued by the ((department)) division engineer
26 under the provisions of this chapter.

27 The duties, compensation, and authority of such supervisors or
28 supervisors-at-large shall be those prescribed for water masters under
29 the terms of RCW 90.03.060 and 90.03.070.

30 **Sec. 134.** RCW 90.44.220 and 1987 c 109 s 119 are each amended to
31 read as follows:

32 In its discretion or upon the application of any party claiming
33 right to the withdrawal and use of public ground water, the
34 ((department)) division engineer may file a petition with the superior
35 court of the county for the determination of the rights of
36 appropriators of any particular ground water body and all the
37 provisions of RCW 90.03.110 through 90.03.240 as heretofore amended,

1 shall govern and apply to the adjudication and determination of such
2 ground water body and to the ownership thereof. Hereafter, in any
3 proceedings for the adjudication and determination of water rights--
4 either rights to the use of surface water or to the use of ground
5 water, or both--pursuant to chapter 90.03 RCW as heretofore amended,
6 all appropriators of ground water or of surface water in the particular
7 basin or area may be included as parties to such adjudication, as
8 pertinent.

9 **Sec. 135.** RCW 90.44.230 and 1987 c 109 s 120 are each amended to
10 read as follows:

11 In any determination of the right to withdrawal of ground water
12 under RCW 90.44.220, the ((department's)) division engineer's findings
13 and the court's findings and judgment shall determine the priority of
14 right and the quantity of water to which each appropriator who is a
15 party to the proceedings shall be entitled, shall determine the level
16 below which the ground water body shall not be drawn down by
17 appropriators, or shall reserve jurisdiction for the determination of
18 a safe sustaining water yield as necessary from time to time to
19 preserve the rights of the several appropriators and to prevent
20 depletion of the ground water body.

21 **Sec. 136.** RCW 90.44.250 and 1987 c 109 s 121 are each amended to
22 read as follows:

23 The ((department)) division engineer is hereby authorized to make
24 such investigations as may be necessary to determine the location,
25 extent, depth, volume, and flow of all ground waters within the state
26 and in making such examination, hereby is authorized and directed to
27 cooperate with the federal government, with any county or municipal
28 corporation, or any person, firm, association or corporation, and upon
29 such terms as may seem appropriate to it.

30 In connection with such investigation, the ((department)) division
31 engineer from time to time may require reports from each ground water
32 appropriator as to the amount of public ground water being withdrawn
33 and as to the manner and extent of the beneficial use. Such reports
34 shall be in a form prescribed by the ((department)) division engineer.

35 **Sec. 137.** RCW 90.44.400 and 1985 c 453 s 1 are each amended to
36 read as follows:

1 (1) This legislation is enacted for the purpose of identifying
2 ground water management procedures that are consistent with both local
3 needs and state water resource policies and management objectives;
4 including the protection of water quality, assurance of quantity, and
5 efficient management of water resources to meet future needs.

6 In recognition of existing water rights and the need to manage
7 ground water aquifers for future use, the (~~department of ecology~~)
8 division engineer shall, by rule, establish standards, criteria, and a
9 process for the designation of specific ground water areas or sub-
10 areas, or separate depth zones within such area or sub-area, and
11 provide for either the (~~department of ecology~~) division engineer,
12 local governments, or ground water users of the area to initiate
13 development of a ground water management program for each area or sub-
14 area, consistent with state and local government objectives, policies,
15 and authorities. The (~~department~~) division engineer shall develop
16 and adopt these rules by January 1, 1986.

17 (2) The (~~department of ecology~~) division engineer, in cooperation
18 with other state agencies, local government, and user groups, shall
19 identify probable ground water management areas or sub-areas. The
20 (~~department~~) division engineer shall also prepare a general schedule
21 for the development of ground water management programs that recognizes
22 the available local or state agency staff and financial resources to
23 carry out the intent of RCW 90.44.400 through 90.44.420. The
24 (~~department~~) division engineer shall also provide the option for
25 locally initiated studies and for local government to assume the lead
26 agency role in developing the ground water management program and in
27 implementing the provisions of RCW 90.44.400 through 90.44.420. The
28 criteria to guide identification of the ground water areas or sub-areas
29 shall include but not be limited to, the following:

30 (a) Aquifer systems that are declining due to restricted recharge
31 or over-utilization;

32 (b) Aquifer systems in which over-appropriation may have occurred
33 and adjudication of water rights has not yet been completed;

34 (c) Aquifer systems currently being considered for water supply
35 reservation under chapter 90.54 RCW for future beneficial uses;

36 (d) Aquifers identified as the primary source of supply for public
37 water supply systems;

38 (e) Aquifers designated as a sole source aquifer by the federal
39 environmental protection agency; and

1 (f) Geographical areas where land use may result in contamination
2 or degradation of the ground water quality.

3 (3) In developing the ground water management programs, priority
4 shall be given to areas or sub-areas where water quality is imminently
5 threatened.

6 **Sec. 138.** RCW 90.44.410 and 1985 c 453 s 2 are each amended to
7 read as follows:

8 (1) To assist in the development of ground water management
9 programs, a ground water management advisory committee, with
10 representation from major user and public interest groups, and state
11 and local governments shall be appointed by the ((department)) division
12 engineer for each area or sub-area. The procedure for advisory
13 committee appointment, terms of appointment, and committee
14 responsibilities shall be addressed in the rules prepared under RCW
15 90.44.400.

16 (2) The ground water area or sub-area management programs shall
17 include:

18 (a) A description of the specific ground water area or sub-areas,
19 or separate depth zones within any such area or sub-area, and the
20 relationship of this zone or area to the land use management
21 responsibilities of county government;

22 (b) A management program based on long-term monitoring and resource
23 management objectives for the area or sub-area;

24 (c) Identification of water resources and the allocation of the
25 resources to meet state and local needs;

26 (d) Projection of water supply needs for existing and future
27 identified user groups and beneficial uses;

28 (e) Identification of water resource management policies and/or
29 practices that may impact the recharge of the designated area or
30 policies that may affect the safe yield and quantity of water available
31 for future appropriation;

32 (f) Identification of land use and other activities that may impact
33 the quality and efficient use of the ground water, including domestic,
34 industrial, solid, and other waste disposal, underground storage
35 facilities, or storm water management practices;

36 (g) The design of the program necessary to manage the resource to
37 assure long-term benefits to the citizens of the state;

1 (h) Identification of water quality objectives for the aquifer
2 system which recognize existing and future uses of the aquifer and that
3 are in accordance with ((~~department of ecology~~)) division engineer and
4 department of social and health services drinking and surface water
5 quality standards;

6 (i) Long-term policies and construction practices necessary to
7 protect existing water rights and subsequent facilities installed in
8 accordance with the ground water area or sub-area management programs
9 and/or other water right procedures;

10 (j) Annual withdrawal rates and safe yield guidelines which are
11 directed by the long-term management programs that recognize annual
12 variations in aquifer recharge;

13 (k) A description of conditions and potential conflicts and
14 identification of a program to resolve conflicts with existing water
15 rights;

16 (l) Alternative management programs to meet future needs and
17 existing conditions, including water conservation plans; and

18 (m) A process for the periodic review of the ground water
19 management program and monitoring of the implementation of the program.

20 (3) The ground water area or sub-area management programs shall be
21 submitted for review in accordance with the state environmental policy
22 act.

23 **Sec. 139.** RCW 90.44.410 and 1988 c 186 s 1 are each amended to
24 read as follows:

25 (1) The ground water area or sub-area management programs shall
26 include:

27 (a) A description of the specific ground water area or sub-areas,
28 or separate depth zones within any such area or sub-area, and the
29 relationship of this zone or area to the land use management
30 responsibilities of county government;

31 (b) A management program based on long-term monitoring and resource
32 management objectives for the area or sub-area;

33 (c) Identification of water resources and the allocation of the
34 resources to meet state and local needs;

35 (d) Projection of water supply needs for existing and future
36 identified user groups and beneficial uses;

37 (e) Identification of water resource management policies and/or
38 practices that may impact the recharge of the designated area or

1 policies that may affect the safe yield and quantity of water available
2 for future appropriation;

3 (f) Identification of land use and other activities that may impact
4 the quality and efficient use of the ground water, including domestic,
5 industrial, solid, and other waste disposal, underground storage
6 facilities, or storm water management practices;

7 (g) The design of the program necessary to manage the resource to
8 assure long-term benefits to the citizens of the state;

9 (h) Identification of water quality objectives for the aquifer
10 system which recognize existing and future uses of the aquifer and that
11 are in accordance with ((~~department of ecology~~)) division engineer and
12 department of social and health services drinking and surface water
13 quality standards;

14 (i) Long-term policies and construction practices necessary to
15 protect existing water rights and subsequent facilities installed in
16 accordance with the ground water area or sub-area management programs
17 and/or other water right procedures;

18 (j) Annual withdrawal rates and safe yield guidelines which are
19 directed by the long-term management programs that recognize annual
20 variations in aquifer recharge;

21 (k) A description of conditions and potential conflicts and
22 identification of a program to resolve conflicts with existing water
23 rights;

24 (l) Alternative management programs to meet future needs and
25 existing conditions, including water conservation plans; and

26 (m) A process for the periodic review of the ground water
27 management program and monitoring of the implementation of the program.

28 (2) The ground water area or sub-area management programs shall be
29 submitted for review in accordance with the state environmental policy
30 act.

31 **Sec. 140.** RCW 90.44.420 and 1985 c 453 s 3 are each amended to
32 read as follows:

33 The ((~~department of ecology~~)) division engineer shall consider the
34 ground water area or sub-area management plan for adoption in
35 accordance with this chapter and chapter 90.54 RCW.

36 Upon completion of the ground water area or sub-area management
37 program, the ((~~department of ecology~~)) division engineer shall hold a
38 public hearing within the designated ground water management area for

1 the purpose of taking public testimony on the proposed program.
2 Following the public hearing, the ((department of ecology)) division
3 engineer and affected local governments shall (1) prepare findings
4 which either provide for the subsequent adoption of the program as
5 proposed or identify the revisions necessary to ensure that the program
6 is consistent with the intent of this chapter, and (2) adopt
7 regulations, ordinances, and/or programs for implementing those
8 provisions of the ground water management program which are within
9 their respective jurisdictional authorities.

10 **Sec. 141.** RCW 90.44.430 and 1985 c 453 s 4 are each amended to
11 read as follows:

12 The ((department of ecology)) division engineer, the department of
13 social and health services, and affected local governments shall be
14 guided by the adopted program when reviewing and considering approval
15 of all studies, plans, and facilities that may utilize or impact the
16 implementation of the program.

17 **Sec. 142.** RCW 90.44.445 and 1993 c 99 s 1 are each amended to read
18 as follows:

19 In any acreage expansion program adopted by the ((department))
20 division engineer as an element of a ground water management program,
21 the authorization for a water right certificate holder to participate
22 in the program shall be on an annual basis for the first two years.
23 After the two-year period, the ((department)) division engineer may
24 authorize participation for ten-year periods. The ((department))
25 division engineer may authorize participation for ten-year periods for
26 certificate holders who have already participated in an acreage
27 expansion program for two years. The ((department)) division engineer
28 may require annual certification that the certificate holder has
29 complied with all requirements of the program. The ((department))
30 division engineer may terminate the authority of a certificate holder
31 to participate in the program for one calendar year if the certificate
32 holder fails to comply with the requirements of the program.

33 **Sec. 143.** RCW 90.44.450 and 1989 c 348 s 7 are each amended to
34 read as follows:

35 The ((department of ecology)) division engineer may require
36 withdrawals of ground water to be metered, or measured by other

1 approved methods, as a condition for a new water right permit. The
2 ((department)) division engineer may also require, as a condition for
3 such permits, reports regarding such withdrawals as to the amount of
4 water being withdrawn. These reports shall be in a form prescribed by
5 the ((department)) division engineer.

6 **Sec. 144.** RCW 90.46.005 and 1992 c 204 s 1 are each amended to
7 read as follows:

8 The legislature finds that by encouraging the use of reclaimed
9 water while assuring the health and safety of all Washington citizens
10 and the protection of its environment, the state of Washington will
11 continue to use water in the best interests of present and future
12 generations.

13 To facilitate the opportunity to use reclaimed water as soon as is
14 practicable, the legislature encourages the cooperative efforts of the
15 public and private sectors and the use of pilot projects to effectuate
16 the goals of this chapter. The legislature further directs the
17 department of health and the ((department of ecology)) division
18 engineer to coordinate efforts towards developing an efficient and
19 streamlined process for creating and implementing processes for the use
20 of reclaimed water.

21 **Sec. 145.** RCW 90.46.020 and 1992 c 204 s 3 are each amended to
22 read as follows:

23 (1) The ((department of ecology)) division engineer shall, in
24 coordination with the department of health, develop interim standards
25 for pilot projects under subsection (3) of this section on or before
26 July 1, 1992, for the use of reclaimed water in land applications.

27 (2) The department of health shall, in coordination with the
28 ((department of ecology)) division engineer, develop interim standards
29 for pilot projects under subsection (3) of this section on or before
30 November 15, 1992, for the use of reclaimed water in commercial and
31 industrial activities.

32 (3) The ((department of ecology)) division engineer and the
33 department of health shall assist interested parties in the development
34 of pilot projects to aid in achieving the purposes of this chapter.

35 **Sec. 146.** RCW 90.46.030 and 1992 c 204 s 4 are each amended to
36 read as follows:

1 (1) The department of health shall, in coordination with the
2 (~~department of ecology~~) division engineer, adopt a single set of
3 standards, procedures, and guidelines on or before August 1, 1993, for
4 the industrial and commercial use of reclaimed water.

5 (2) The department of health may issue a reclaimed water permit for
6 industrial and commercial uses of reclaimed water to the generator of
7 reclaimed water who may then distribute the water, subject to
8 provisions in the permit governing the location, rate, water quality,
9 and purposes of use.

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

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

25 (5) The authority and duties created in this section are in
26 addition to any authority and duties already provided in law with
27 regard to sewage and wastewater collection, treatment, and disposal for
28 the protection of health and safety of the state's waters. Nothing in
29 this section limits the powers of the state or any political
30 subdivision to exercise such authority.

31 **Sec. 147.** RCW 90.46.040 and 1992 c 204 s 5 are each amended to
32 read as follows:

33 (1) The (~~department of ecology~~) division engineer shall, in
34 coordination with the department of health, adopt a single set of
35 standards, procedures, and guidelines, on or before August 1, 1993, for
36 land applications of reclaimed water.

37 (2) A permit is required for any land application of reclaimed
38 water. The (~~department of ecology~~) division engineer may issue a

1 reclaimed water permit under chapter 90.48 RCW to the generator of
2 reclaimed water who may then distribute the water, subject to
3 provisions in the permit governing the location, rate, water quality,
4 and purpose of use. The ((department of ecology)) division engineer
5 shall not issue more than one permit for any individual land
6 application of reclaimed water to a single generator.

7 (3) In cases where the ((department of ecology)) division engineer
8 determines, in land applications of reclaimed water, that a significant
9 risk to the public health exists, the ((department)) division engineer
10 shall refer the application to the department of health for review and
11 consultation and the department of health may require fees appropriate
12 for review and consultation from the applicant pursuant to RCW
13 43.70.250.

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

18 (5) The authority and duties created in this section are in
19 addition to any authority and duties already provided in law. Nothing
20 in this section limits the powers of the state or any political
21 subdivision to exercise such authority.

22 **Sec. 148.** RCW 90.46.050 and 1992 c 204 s 6 are each amended to
23 read as follows:

24 (1) The department of health shall, before May 1, 1992, form an
25 advisory committee, in coordination with the ((department of ecology))
26 division engineer and the department of agriculture, which will provide
27 technical assistance in the development of standards, procedures, and
28 guidelines required by this chapter. Such committee shall be composed
29 of individuals from the public wastewater utilities, landscaping
30 enhancement industry, commercial and industrial application community,
31 and any other persons deemed technically helpful by the department of
32 health.

33 (2) The department of health shall report to the joint select
34 committee on water resource policy by December 1, 1992, on the fee
35 structure which has been recommended under RCW 90.46.030(3) and review
36 fees authorized under RCW 90.46.040(3).

1 **Sec. 149.** RCW 90.54.010 and 1990 c 295 s 1 are each amended to
2 read as follows:

3 (1) The legislature finds that:

4 (a) Proper utilization of the water resources of this state is
5 necessary to the promotion of public health and the economic well-being
6 of the state and the preservation of its natural resources and
7 aesthetic values. Although water is a renewable resource, its supply
8 and availability are becoming increasingly limited, particularly during
9 summer and fall months and dry years when demand is greatest. Growth
10 and prosperity have significantly increased the competition for this
11 limited resource. Adequate water supplies are essential to meet the
12 needs of the state's growing population and economy. At the same time
13 instream resources and values must be preserved and protected so that
14 future generations can continue to enjoy them.

15 (b) All citizens of Washington share an interest in the proper
16 stewardship of our invaluable water resources. To ensure that
17 available water supplies are managed to best meet both instream and
18 offstream needs, a comprehensive planning process is essential. The
19 people of the state have the unique opportunity to work together to
20 plan and manage our water. Through a comprehensive planning process
21 that includes the state, Indian tribes, local governments, and
22 interested parties, it is possible to make better use of available
23 water supplies and achieve better management of water resources.
24 Through comprehensive planning, conflicts among water users and
25 interests can be reduced or resolved. It is in the best interests of
26 the state that comprehensive water resource planning be given a high
27 priority so that water resources and associated values can be utilized
28 and enjoyed today and protected for tomorrow.

29 (c) Diverse hydrologic, climatic, cultural, and socioeconomic
30 conditions exist throughout the regions of the state. Water resource
31 issues vary significantly across regions. Comprehensive water resource
32 planning is best accomplished through a regional planning process
33 sensitive to the unique characteristics and issues of each region.

34 (d) Comprehensive water resource planning must provide interested
35 parties adequate opportunity to participate. Water resource issues are
36 best addressed through cooperation and coordination among the state,
37 Indian tribes, local governments, and interested parties.

38 (e) The long-term needs of the state require ongoing assessment of
39 water availability, use, and demand. A thorough inventory of available

1 resources is essential to water resource management. Current state
2 water resource data and data management is inadequate to meet changing
3 needs and respond to competing water demands. Therefore, a state water
4 resource data program is needed to support an effective water resource
5 management program. Efforts should be made to coordinate and
6 consolidate into one resource data system all relevant information
7 developed by the ((~~department of ecology~~)) division engineer and other
8 agencies relating to the use, protection, and management of the state's
9 water resources.

10 (2) It is the purpose of this chapter to set forth fundamentals of
11 water resource policy for the state to insure that waters of the state
12 are protected and fully utilized for the greatest benefit to the people
13 of the state of Washington and, in relation thereto, to provide
14 direction to the ((~~department of ecology~~)) division engineer, other
15 state agencies and officials, and local government in carrying out
16 water and related resources programs. It is the intent of the
17 legislature to work closely with the executive branch, Indian tribes,
18 local government, and interested parties to ensure that water resources
19 of the state are wisely managed.

20 **Sec. 150.** RCW 90.54.030 and 1990 c 295 s 2 are each amended to
21 read as follows:

22 For the purpose of ensuring that the ((~~department~~)) division
23 engineer is fully advised in relation to the performance of the water
24 resources program provided in RCW 90.54.040, and to provide information
25 and support to the joint select committee established in RCW 90.54.024,
26 the ((~~department~~)) division engineer is directed to become informed
27 with regard to all phases of water and related resources of the state.
28 To accomplish this objective the ((~~department~~)) division engineer
29 shall:

30 (1) Develop a comprehensive water resource data program that
31 provides the information necessary for effective planning and
32 management on a regional and state-wide basis. The data program shall
33 include an information management plan describing the data requirements
34 for effective water resource planning, and a system for collecting and
35 providing access to water resource data on a regional and state-wide
36 basis. The water resource data program shall also include a resource
37 inventory and needs assessment pursuant to subsection (5) of this
38 section;

1 (2) Collect, organize and catalog existing information and studies
2 available to it from all sources, both public and private, pertaining
3 to water and related resources of the state;

4 (3) Develop such additional data and studies pertaining to water
5 and related resources as are necessary to accomplish the objectives of
6 this chapter;

7 (4) Develop alternate courses of action to solve existing and
8 foreseeable problems of water and related resources and include
9 therein, to the extent feasible, the economic and social consequences
10 of each such course, and the impact on the natural environment;

11 (5) Establish a water resources data management task force to
12 evaluate data management needs, advise the joint select committee on
13 water resource policy, the legislature, and the ((department)) division
14 engineer in developing an information management plan, and conduct a
15 water resource inventory and needs assessment. The task force shall
16 include representatives of appropriate state agencies, Indian tribes,
17 local governments, and interested parties. The task force shall
18 include expertise in both water resources and resource data management.
19 The task force shall make recommendations to the ((department))
20 division engineer on developing a data base for water resource planning
21 throughout the state. In conducting the water resource inventory and
22 needs assessment, the task force shall oversee the inventory of
23 existing data and determine what additional data is needed for
24 effective water resource planning and management. The task force shall
25 otherwise provide continuing guidance to the joint select committee on
26 water resource policy, the legislature, and the ((department)) division
27 engineer in developing and maintaining an effective information
28 management plan. The ((department)) division engineer shall coordinate
29 the water resource data program to provide water resource information
30 that meets the needs of the comprehensive water resources program and
31 planning process provided for in RCW 90.54.040;

32 (6) Prior to September 1, 1990, provide a report to the chairs of
33 the appropriate legislative committees based on the preliminary
34 findings and recommendations of the water resources data management
35 task force. The report shall document the current information flows
36 and data collection processes for state water resources data, and shall
37 include an analysis of task force recommendations for developing
38 additional information to meet water resource data needs. The report
39 shall further include an estimate of funding requirements to implement

1 the water resources data program for consideration in future biennial
2 budget decisions;

3 (7) Prior to implementation of any preliminary findings and
4 recommendations pursuant to subsection (6) of this section, and
5 contingent on legislative appropriation, develop a five-year plan for
6 data collection and information management approved by the department
7 of information services. Commencing July 1, 1991, the ((department))
8 division engineer shall provide annual reports to the chairs of the
9 appropriate legislative committees on the development and
10 implementation of the five-year plan and progress toward completion of
11 the water resource inventory and needs assessment; and

12 (8) Establish pursuant to task force recommendations a process to
13 resolve technical issues in the development and implementation of the
14 water resource inventory and needs assessment.

15 All the foregoing shall be included in a "water resources
16 information system" established and maintained by the ((department))
17 division engineer. The ((department)) division engineer shall develop
18 a system of cataloging, storing and retrieving the information and
19 studies of the information system so that they may be made readily
20 available to and effectively used not only by the ((department))
21 division engineer but by the public generally.

22 **Sec. 151.** RCW 90.54.040 and 1988 c 47 s 5 are each amended to read
23 as follows:

24 (1) The ((department)) division engineer, through the adoption of
25 appropriate rules, is directed, as a matter of high priority to insure
26 that the waters of the state are utilized for the best interests of the
27 people, to develop and implement in accordance with the policies of
28 this chapter a comprehensive state water resources program which will
29 provide a process for making decisions on future water resource
30 allocation and use. The ((department)) division engineer may develop
31 the program in segments so that immediate attention may be given to
32 waters of a given physioeconomic region of the state or to specific
33 critical problems of water allocation and use.

34 The current guidelines, standards, or criteria governing the
35 elements of the water resource program established pursuant to this
36 subsection shall not be altered or amended after March 15, 1988, in
37 accordance with RCW 90.54.022(5).

1 (2) In relation to the management and regulatory programs relating
2 to water resources vested in it, the ((department)) division engineer
3 is further directed to modify existing regulations and adopt new
4 regulations, when needed and possible, to insure that existing
5 regulatory programs are in accord with the water resource policy of
6 this chapter and the program established in subsection (1) of this
7 section. The current guidelines, standards, or criteria governing the
8 ((department's)) division engineer's implementation of this subsection
9 shall not be altered or amended after March 15, 1988, in accordance
10 with subsection (1) of this section.

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

24 **Sec. 152.** RCW 90.54.045 and 1991 c 347 s 4 are each amended to
25 read as follows:

26 (1) In the development and implementation of the comprehensive
27 state water resources program required in RCW 90.54.040(1), the process
28 described therein shall involve participation of appropriate state
29 agencies, Indian tribes, local governments, and interested parties, and
30 shall be applied on a regional basis pursuant to subsection (2) of this
31 section.

32 (2) Prior to July 1, 1991, the ((department)) division engineer,
33 with advice from appropriate state agencies, Indian tribes, local
34 government, and interested parties, shall identify regions and
35 establish regional boundaries for water resource planning and shall
36 designate two regions in which the process shall be initiated on a
37 pilot basis. One region shall encompass an area within the Puget Sound

1 basin in which critical water resource issues exist. A concurrent
2 pilot process may encompass a region east of the Cascade mountains.

3 (3) The ((department)) division engineer shall report to the chairs
4 of the appropriate legislative committees prior to July 1st each year
5 summarizing the progress of the pilot process in the two regions. The
6 pilot process in each region shall be completed and shall produce a
7 regional water plan by December 31, 1993.

8 (4) Appropriate state agencies, Indian tribes, local governments,
9 and interested parties in regions not selected for the pilot program
10 are strongly encouraged to commence water resource planning within
11 their regions.

12 **Sec. 153.** RCW 90.54.050 and 1988 c 47 s 7 are each amended to read
13 as follows:

14 In conjunction with the programs provided for in RCW 90.54.040(1),
15 whenever it appears necessary to the ((director)) division engineer in
16 carrying out the policy of this chapter, the ((department)) division
17 engineer may by rule adopted pursuant to chapter 34.05 RCW:

18 (1) Reserve and set aside waters for beneficial utilization in the
19 future, and

20 (2) When sufficient information and data are lacking to allow for
21 the making of sound decisions, withdraw various waters of the state
22 from additional appropriations until such data and information are
23 available.

24 Prior to the adoption of a rule under this section, the
25 ((department)) division engineer shall conduct a public hearing in each
26 county in which waters relating to the rule are located. The public
27 hearing shall be preceded by a notice placed in a newspaper of general
28 circulation published within each of said counties. Rules adopted
29 hereunder shall be subject to review in accordance with the provisions
30 of RCW ((34.05.538 or)) 34.05.240.

31 No new rules or changes to existing rules to reserve or set aside
32 water may be adopted pursuant to this section, as provided in RCW
33 90.54.022(5).

34 **Sec. 154.** RCW 90.54.060 and 1971 ex.s. c 225 s 6 are each amended
35 to read as follows:

36 To insure that all of the various persons and entities having an
37 interest in the water resources of the state and the programs of the

1 chapter are provided with a full opportunity for involvement not only
2 with the development of the program but the implementation by the
3 ((department)) division engineer under this chapter, the following
4 directions are given:

5 (1) The ((department)) division engineer shall make reasonable
6 efforts to inform the people of the state about the state's water and
7 related resources and their management. The ((department)) division
8 engineer in the performance of the responsibilities provided in this
9 chapter shall not only invite but actively encourage participation by
10 all persons and private groups and entities showing an interest in
11 water resources programs of this chapter.

12 (2) The ((department)) division engineer shall similarly invite and
13 encourage participation by all agencies of federal, state and local
14 government, including counties, municipal and public corporations,
15 having interests or responsibilities relating to water resources. Said
16 state and local agencies are directed to fully participate to insure
17 that their interests are considered by the ((department)) division
18 engineer. The ((department)) division engineer shall, when funds are
19 made available to it for such purposes, provide assistance grants to
20 said state and local agencies for the purposes of financing activities
21 directed to be performed by them under this subsection.

22 **Sec. 155.** RCW 90.54.100 and 1971 ex.s. c 225 s 11 are each amended
23 to read as follows:

24 The ~~((department of ecology))~~ division engineer shall as a matter
25 of high priority evaluate the needs for water resource development
26 projects and the alternative methods of financing of the same by public
27 and private agencies, including financing by federal, state and local
28 governments and combinations thereof. Such evaluations shall be
29 broadly based and be included as a part of the comprehensive state
30 water resources program relating to uses and management as defined in
31 RCW 90.54.030. A report of the ((department)) division engineer
32 relating to such evaluations, including any recommendations, shall be
33 submitted to the legislature ~~((in accordance with RCW 90.54.070))~~.

34 **Sec. 156.** RCW 90.54.110 and 1971 ex.s. c 225 s 12 are each amended
35 to read as follows:

36 The ~~((department of ecology))~~ division engineer is authorized to
37 obtain the benefits including acceptance of grants, of any program of

1 the federal government or any other source to carry out the provisions
2 of this chapter and is empowered to take such actions as are necessary
3 and appropriate to secure such benefits.

4 **Sec. 157.** RCW 90.54.120 and 1971 ex.s. c 225 s 13 are each amended
5 to read as follows:

6 For the purposes of this chapter, unless the context is clearly to
7 the contrary, the following definitions shall be used:

8 (1) (~~"Department"~~) "Engineer" means (~~(department of ecology)~~)
9 division engineer.

10 (2) "Utilize" or "utilization" shall not only mean use of water for
11 such long recognized consumptive or nonconsumptive beneficial purposes
12 as domestic, stock watering, industrial, commercial, agricultural,
13 irrigation, hydroelectric power production, thermal power production,
14 mining, recreational, maintenance of wildlife and fishlife purposes,
15 but includes the retention of water in lakes and streams for the
16 protection of environmental, scenic, aesthetic and related purposes,
17 upon which economic values have not been placed historically and are
18 difficult to quantify.

19 **Sec. 158.** RCW 90.54.130 and 1984 c 253 s 4 are each amended to
20 read as follows:

21 The (~~(department of ecology)~~) division engineer may recommend land
22 use management policy modifications it finds appropriate for the
23 further protection of ground and surface water resources in this state.
24 Such advisory recommendations may be made to other state regulatory
25 agencies, local governments, water systems, and other appropriate
26 bodies.

27 **Sec. 159.** RCW 90.54.140 and 1984 c 253 s 5 are each amended to
28 read as follows:

29 The legislature hereby declares that the protection of ground water
30 aquifers which are the sole drinking water source for a given
31 jurisdiction shall be of the uppermost priority of the (~~(state~~
32 ~~department of ecology)~~) division engineer, department of social and
33 health services, and all local government agencies with jurisdiction
34 over such areas. In administration of programs related to the disposal
35 of wastes and other practices which may impact such water quality, the
36 (~~(department of ecology)~~) division engineer, department of social and

1 health services, and such affected local agencies shall explore all
2 possible measures for the protection of the aquifer, including any
3 appropriate incentives, penalties, or other measures designed to bring
4 about practices which provide for the least impact on the quality of
5 the ground water.

6 **Sec. 160.** RCW 90.54.150 and 1979 ex.s. c 216 s 9 are each amended
7 to read as follows:

8 When feasible, the (~~department of ecology~~) division engineer
9 shall cooperate with the United States and other public entities,
10 including Indian tribes, in the planning, development, and operation of
11 comprehensive water supply projects designed primarily to resolve
12 controversies and conflicts over water use by increasing water quantity
13 and improving water quality within a stream or river system, or other
14 bodies of water, as well as to enhance opportunities for both instream
15 and diversionary water uses within the system, and, in relation
16 thereto, the (~~department~~) division engineer may:

17 (1) Participate with the federal government and other public
18 entities in the planning, development, operation, and management of
19 various phases of water projects hereafter authorized by congress;

20 (2) Provide rights to the use of public waters under the state's
21 surface and ground water codes for these projects when the waters are
22 available for allocation; and

23 (3) Provide financial assistance through grants and loans for
24 projects when moneys are made available to the (~~department~~) division
25 engineer for this assistance by other provisions of this code.

26 **Sec. 161.** RCW 90.54.160 and 1984 c 83 s 1 are each amended to read
27 as follows:

28 The (~~department of ecology~~) division engineer shall report to the
29 legislature on the last working day of December of 1984, 1985, and
30 1986, and thereafter as deemed appropriate by the (~~department~~)
31 division engineer, on dam facilities that exhibit safety deficiencies
32 sufficient to pose a significant threat to the safety of life and
33 property. The report shall identify the owner or owners of such
34 facilities, detail the owner's ability and attitude towards correcting
35 such deficiencies, and provide an estimate of the cost of correcting
36 the deficiencies if a study has been completed.

1 **Sec. 162.** RCW 90.54.170 and 1985 c 444 s 6 are each amended to
2 read as follows:

3 In addition to other requirements of this chapter, when the
4 proposed water resource development project involves a new water supply
5 combined with an electric generation facility where such electricity
6 generated may be sold to an entity authorized by law to distribute
7 electricity, the ((department)) division engineer shall evaluate and
8 utilize, in connection with any application to appropriate water
9 pursuant to the water code, chapter 90.03 RCW, sufficient information
10 furnished by the project applicant regarding the need for the project,
11 alternative means of serving the purposes of the project, the
12 cumulative effects of the project and similar projects that are built,
13 under construction or permitted in the relevant river basin or basins,
14 the impact, if any, on flood control plans and an estimate of the
15 impact, if any, of the sale of the project's electricity on the rates
16 of utility customers of the Bonneville power administration. Such
17 information shall be furnished at the project applicant's own cost and
18 expense.

19 **Sec. 163.** RCW 90.54.190 and 1994 sp.s. c 9 s 856 are each amended
20 to read as follows:

21 (1) The ((department)) division engineer shall establish a list of
22 basin and stream efficiency initiatives and select an irrigation area
23 for a voluntary demonstration project.

24 (2) Prior to conducting conservation assessments and developing
25 conservation plans, the ((department of ecology)) division engineer
26 shall secure technical and financial assistance from the bureau of
27 reclamation to reduce the costs to the state to the extent possible.

28 (3) A "conservation assessment" as described in this section shall
29 be conducted before a demonstration project to increase the efficiency
30 of irrigated agriculture is undertaken for an irrigated area, a basin,
31 subbasin, or stream. The conservation assessment should:

32 (a) Evaluate existing patterns, including current reuse of return
33 flows, and priorities of water use;

34 (b) Assess conflicting needs for future water allocations and
35 claims to reserved rights;

36 (c) Evaluate hydrologic characteristics of surface and ground water
37 including return flow characteristics;

38 (d) Assess alternative efficiency measures;

1 (e) Determine the likely net water savings of efficiency
2 improvements including the amount and timing of water that would be
3 saved and potential benefits and impacts to other water uses and
4 resources including effects on artificial recharge of ground water and
5 wetland impacts;

6 (f) Evaluate the full range of costs and benefits that would accrue
7 from various measures; and

8 (g) Evaluate the potential for integrating conservation efforts
9 with operation of existing or potential storage facilities.

10 (4) The conservation assessment shall be used as the basis for
11 development of a demonstration conservation plan to rank conservation
12 elements based on relative costs, benefits, and impacts. It shall also
13 estimate the costs of implementing the plan and propose a specific
14 basis for cost share distributions.

15 The demonstration conservation plan shall be developed jointly by
16 the ((department)) division engineer and a conservation plan
17 formulation committee consisting of representatives of a cross-section
18 of affected local water users, members of the public, and tribal
19 governments. Other public agencies with expertise in water resource
20 management may participate as nonvoting committee members. A proposed
21 demonstration conservation plan may be approved by the ((department))
22 division engineer and the committee only after public comment has been
23 received.

24 (5) The ((department)) division engineer shall reimburse any
25 members of the committee in subsection (4) of this section who are not
26 representing governmental agencies or entities for their travel
27 expenses in accordance with RCW 43.03.050 and 43.03.060.

28 **Sec. 164.** RCW 90.54.200 and 1993 sp.s. c 4 s 11 are each amended
29 to read as follows:

30 The ((department)) division engineer, in cooperation with the
31 Washington state water resources association, shall accomplish the
32 following:

33 (1) Determine and evaluate rate structures currently used by
34 irrigation districts in the state of Washington;

35 (2) Identify economic and institutional constraints to implementing
36 conservation rate structures; and

37 (3) Develop model conservation rate structures for consideration by
38 irrigation districts.

1 The ((department)) division engineer shall provide its findings to
2 the appropriate committees of the legislature no later than December
3 31, 1993.

4 **Sec. 165.** RCW 90.54.900 and 1971 ex.s. c 225 s 9 are each amended
5 to read as follows:

6 Nothing in this chapter shall affect any existing water rights,
7 riparian, appropriative, or otherwise; nor shall it affect existing
8 rights relating to the operation of any hydroelectric or water storage
9 reservoir or related facility; nor shall it affect any exploratory
10 work, construction or operation of a thermal power plant by an electric
11 utility in accordance with the provisions of chapter 80.50 RCW.
12 Nothing in this chapter shall enlarge or reduce the ((department of
13 ecology's)) division engineer's authority to regulate the surface use
14 of waters of this state or structures on the underlying beds, tidelands
15 or shorelands.

16 **Sec. 166.** RCW 90.66.040 and 1979 c 3 s 4 are each amended to read
17 as follows:

18 For the purposes of this chapter, the following definitions shall
19 be applicable:

20 (1) "Family farm" means a geographic area including not more than
21 two thousand acres of irrigated agricultural lands, whether contiguous
22 or noncontiguous, the controlling interest in which is held by a person
23 having a controlling interest in no more than two thousand acres of
24 irrigated agricultural lands in the state of Washington which are
25 irrigated under rights acquired after the effective date of this act.

26 (2) "Person" means any individual, corporation, partnership,
27 limited partnership, organization, or other entity whatsoever, whether
28 public or private. The term "person" shall include as one person all
29 corporate or partnership entities with a common ownership of more than
30 one-half of the assets of each of any number of such entities.

31 (3) "Controlling interest" means a property interest that can be
32 transferred to another person, the percentage interest so transferred
33 being sufficient to effect a change in control of the landlord's rights
34 and benefits. Ownership of property held in trust shall not be deemed
35 a controlling interest where no part of the trust has been established
36 through expenditure or assignment of assets of the beneficiary of the
37 trust and where the rights of the family farm permit which is a part of

1 the trust cannot be transferred to another by the beneficiary of the
2 trust under terms of the trust. Each trust of a separate donor origin
3 shall be treated as a separate entity and the administration of
4 property under trust shall not represent a controlling interest on the
5 part of the trust officer.

6 (4) (~~("Department")~~) "Engineer" means the (~~(department of ecology)~~)
7 division engineer of the state of Washington.

8 (5) "Application", "permit" and "public waters" shall have the
9 meanings attributed to these terms in chapters 90.03 and 90.44 RCW.

10 (6) "Public water entity" means any public or governmental entity
11 with authority to administer and operate a system to supply water for
12 irrigation of agricultural lands.

13 **Sec. 167.** RCW 90.66.050 and 1979 c 3 s 5 are each amended to read
14 as follows:

15 After the effective date of this act, all permits issued for the
16 withdrawal of public waters for the purpose of irrigating agricultural
17 lands shall be classified as follows and issued with the conditions set
18 forth in this chapter:

19 (1) "Family farm permits". Such permits shall limit the use of
20 water withdrawn for irrigation of agricultural lands to land qualifying
21 as a family farm.

22 (2) "Family farm development permits". Such permits may be issued
23 to persons without any limit on the number of acres to be irrigated
24 during a specified period of time permitted for the development of such
25 land into family farms and the transfer of the controlling interest of
26 such irrigated lands to persons qualifying for family farm permits.
27 The initial period of time allowed for development and transfer of such
28 lands to family farm status shall not exceed ten years. Such time
29 limit may be extended by the (~~(department)~~) division engineer for not
30 to exceed an additional ten years upon a showing to the (~~(department)~~)
31 division engineer that an additional period of time is needed for
32 orderly development and transfer of controlling interests to persons
33 who can qualify for family farm permits.

34 (3) "Publicly owned land permits". Such permits shall be issued
35 only to governmental entities permitting the irrigation of publicly
36 owned lands.

37 (4) "Public water entity permits". Such permits may be issued to
38 public water entities under provisions requiring such public water

1 entity, with respect to delivery of water for use in the irrigation of
2 agricultural lands, to make water deliveries under the same provisions
3 as would apply if separate permits were issued for persons eligible for
4 family farm permits, permits to develop family farms, or for the
5 irrigation of publicly owned land: PROVIDED, HOWEVER, That such
6 provisions shall not apply with respect to water deliveries on
7 federally authorized reclamation projects if such federally authorized
8 projects provide for acreage limitations in water delivery contracts.

9 **Sec. 168.** RCW 90.66.060 and 1979 c 3 s 6 are each amended to read
10 as follows:

11 (1) The right to withdraw water for use for the irrigation of
12 agricultural lands under authority of a family farm permit shall have
13 no time limit but shall be conditioned upon the land being irrigated
14 complying with the definition of a family farm as defined at the time
15 the permit is issued: PROVIDED, HOWEVER, That if the acquisition by
16 any person of land and water rights by gift, devise, bequest, or by way
17 of bona fide satisfaction of a debt, would otherwise cause land being
18 irrigated pursuant to a family farm permit to lose its status as a
19 family farm, such acquisition shall be deemed to have no effect upon
20 the status of family farm water permits pertaining to land held or
21 acquired by the person acquiring such land and water rights if all
22 lands held or acquired are again in compliance with the definition of
23 a family farm within five years from the date of such acquisition.

24 (2) If the ((department)) division engineer determines that water
25 is being withdrawn under a family farm permit for use on land not in
26 conformity with the definition of a family farm, the ((department))
27 division engineer shall notify the holder of such family farm permit by
28 personal service of such fact and the permit shall be suspended two
29 years from the date of receipt of notice unless the person having a
30 controlling interest in said land satisfies the ((department)) division
31 engineer that such land is again in conformity with the definition of
32 a family farm. The ((department)) division engineer may, upon a
33 showing of good cause and reasonable effort to attain compliance on the
34 part of the person having the controlling interest in such land, extend
35 the two year period prior to suspension. If conformity is not achieved
36 prior to five years from the date of notice the rights of withdrawal
37 shall be canceled.

1 **Sec. 169.** RCW 90.66.070 and 1979 c 3 s 7 are each amended to read
2 as follows:

3 (1) At any time that the holder of a family farm development permit
4 or a publicly owned land permit shall transfer the controlling interest
5 of all or any portion of the land entitled to water under such permit
6 to a person who can qualify to receive water for irrigation of such
7 land under a family farm permit, the ((department)) division engineer
8 shall, upon request, issue a family farm permit to such person under
9 the same conditions as would have been applicable if such request had
10 been made at the time of the granting of the original family farm
11 development permit. If the permit under which water is available is
12 held by a public water entity prior to the transfer of the controlling
13 interest to a person who qualifies for a family farm permit, such
14 entity shall continue delivery of water to such land without any
15 restriction on the length of time of delivery not applicable generally
16 to all its water customers.

17 (2) The issuance of a family farm permit secured through the
18 acquisition of land and water rights from the holder of a family farm
19 development permit, or from the holder of a publicly owned land permit,
20 where water delivery prior to the transfer is from a public water
21 entity, may be conditioned upon the holder of the family farm permit
22 issued continuing to receive water through the facilities of the public
23 water entity.

24 **Sec. 170.** RCW 90.66.080 and 1979 c 3 s 8 are each amended to read
25 as follows:

26 The ((department)) division engineer is hereby empowered to
27 promulgate such rules as may be necessary to carry out the provisions
28 of this chapter. Decisions of the ((department)) division engineer,
29 other than rule making, shall be subject to review in accordance with
30 chapter 43.21B RCW.

31 **PART III**
32 **CODIFICATION**

33 NEW SECTION. **Sec. 171.** Sections 1 through 9 of this act are each
34 added to chapter 43.27A RCW.

