
SENATE BILL 6061

State of Washington**54th Legislature****1995 Regular Session****By** Senators Rasmussen, Morton, Haugen, Swecker and Winsley

Read first time 03/20/95. Referred to Committee on Ways & Means.

1 AN ACT Relating to water; amending RCW 43.21A.064, 90.03.070,
2 90.03.470, 90.03.340, 90.03.270, 90.03.280, 90.03.290, 90.03.320,
3 90.03.260, 90.44.060, 90.03.250, 89.30.001, 90.40.090, and 90.46.020;
4 amending 1993 c 495 s 3 (uncodified); reenacting and amending RCW
5 43.84.092; adding new sections to chapter 43.27A RCW; adding new
6 sections to chapter 90.44 RCW; adding new sections to chapter 90.03
7 RCW; adding new sections to chapter 43.21B RCW; adding a new chapter to
8 Title 43 RCW; creating new sections; repealing RCW 90.03.471; making an
9 appropriation; providing effective dates; and declaring an emergency.

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

11 NEW SECTION. **Sec. 1.** The legislature finds that a comprehensive
12 policy approach is needed to address the variety of concerns related to
13 state water policy. The legislature further finds that omnibus water
14 policy legislation is needed to comprehensively guide implementation of
15 the many aspects of state water policy.

16

PART I

17

BOARD CREATED

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

10 It is the intent of the legislature to establish a state board on
11 water resources and water quality, which consists of members
12 representing all regions of the state. Further, it is the direction of
13 the legislature that the board develop policies and implement programs
14 that are balanced with the interests of all sectors of the state's
15 residents taken into account.

16 NEW SECTION. **Sec. 3.** There is hereby created a state board to be
17 known as the Washington water resources and water quality board. The
18 board shall have five members.

19 (1) Members shall be appointed by the governor, with the consent of
20 the senate. Two of the members shall reside east of the crest of the
21 Cascade mountains and two shall reside west of the crest of the Cascade
22 mountains, and one member shall represent the state at large. No more
23 than one member shall reside in any one county.

24 In making appointments to the board, the governor shall select
25 persons with recognized expertise in water-related issues, including,
26 for example, issues regarding agriculture, tribal interests,
27 hydroelectric production, fisheries, municipal and industrial supply,
28 recreational uses, and water quality and who have demonstrated the
29 ability to work constructively in group settings. No state officer or
30 state employee may be appointed by the governor as a member of the
31 board. If an elective state official is appointed, the official must
32 resign the elected office if the official accepts the appointment.

33 (2) The members of the board shall serve four-year terms except for
34 one of the initial members from eastern Washington and one of the
35 initial members from western Washington as designated by the governor
36 who shall serve two-year terms. The terms of the initial members shall
37 begin September 1, 1995. At the first meeting of the board, it shall
38 choose one of its members as chair.

1 (3) Each board member shall receive a salary as may be fixed by the
2 governor in accordance with the provisions of RCW 43.03.040. A member
3 may be dismissed by the governor prior to the expiration of his or her
4 term for cause.

5 NEW SECTION. **Sec. 4.** The board has the following powers and
6 duties:

7 (1) The board, by the adoption of rules, shall establish state-wide
8 water policy and guidelines regarding water resources, related water
9 quality matters, and water storage policy, consistent with statutory
10 law. The initial policies considered by the board shall include the
11 procedures and standards for regulating in-stream flow levels,
12 hydraulic continuity, aquifer mining, and water transfers.

13 (2) To assure consistency with state-wide policy, the board shall
14 request all state agencies to provide it with copies of any proposed
15 rules affecting water resources, water quality, or water storage issues
16 and may comment on any proposed rules within the regular comment period
17 with regard to any conflict the rule may present with regard to state
18 law, the rules and policies of the board, or any other rule or law.
19 When the board proposes to adopt a rule that is inconsistent with any
20 existing rule of the department of health or the department of ecology,
21 the proposed modification or repeal of such other rule shall be
22 considered, pursuant to the requirements of the administrative
23 procedure act in concert with the proposed board rule.

24 (3) The board shall employ staff necessary to carry on the
25 administrative work of the board.

26 (4) The board may appoint technical working groups and advisory
27 interest group committees to assist it in carrying out its duties.

28 (5) The board may conduct inquiries or hearings as appropriate.

29 (6) Except for administrative matters, rules authorized under this
30 section shall be adopted by the board prior to December 15th of any
31 year and shall not take effect before the end of the regular
32 legislative session in the next year.

33 NEW SECTION. **Sec. 5. STAFF SUPPORT.** The department of ecology
34 and the department of health shall provide staff support to the board
35 and shall cooperate fully in assuring the efficient functioning of the
36 board. The board's expenses shall be incorporated and separately
37 identified in department budgets. Other state agencies participating

1 in providing assistance to regional planning efforts or otherwise
2 involved in water resources related matters shall also cooperate with
3 the board.

4 NEW SECTION. Sec. 6. BIENNIAL REPORT. The board shall submit a
5 biennial report to the governor and the legislature containing a
6 summary of the transactions and proceedings of the board together with
7 a summary of any information gathered by the board and such other
8 facts, suggestions, and recommendations as the governor or the
9 legislature requests.

10 NEW SECTION. **Sec. 7.** LEGAL REPRESENTATION. The attorney general
11 shall represent and appear for the people of the state of Washington
12 and the board in all actions and proceedings involving any question
13 under this chapter, or under or in reference to any act or order of the
14 board.

PART II

REGIONAL PLANNING

17 NEW SECTION. **Sec. 8.** The board shall guide the state's
18 involvement in and assistance to regional water resource planning as
19 authorized by this chapter. In carrying out this duty, the board
20 shall:

21 (1) Establish guidelines and procedures for the development,
22 review, and approval of petitions to initiate regional planning
23 including a listing of items and issues that groups should be aware of
24 as they initiate their planning;

25 (2) Review, comment, and, if appropriate, approve petitions to
26 initiate regional planning;

27 (3) Approve grants and prioritize funding for regional planning
28 groups to assist in conducting planning;

29 (4) Review, comment, and, if appropriate, approve completed
30 regional plans;

31 (5) Ensure the timely implementation of approved regional plans by
32 coordinating state agency implementing actions; and

33 (6) Monitor progress of implementation of regional plans.

1 **NEW SECTION.** **Sec. 9.** The regional water resource planning process
2 shall be initiated by filing a petition with the board. The petition
3 must be signed by at least two local governments involved in water
4 resource management or at least one hundred landowners residing in the
5 same water resource inventory area. For purposes of this section, a
6 local government may be a tribal government.

7 **NEW SECTION.** **Sec. 10.** The petition under section 9 of this act
8 shall include the following:

9 (1) A description of the water resource inventory area or areas
10 that are proposed to be included in the regional planning area, and,
11 when appropriate, a justification for inclusion of more than one water
12 resource inventory area;

13 (2) A description of the subject scope of the plan;

14 (3) Identification of groups with an interest in the proposed
15 planning area and a procedure for selecting representatives from those
16 groups to form the regional planning group;

17 (4) The proposed date to start the planning process and the target
18 date by which a final draft regional water plan will be submitted to
19 the board for review;

20 (5) The proposed budget and funding sources for the planning
21 process; and

22 (6) A list of all local and tribal governments within the proposed
23 regional planning area.

24 **NEW SECTION.** **Sec. 11.** A regional planning group may request in
25 its petition to be delegated powers for the purpose of developing
26 policies applicable to the region relating to in-stream flow levels,
27 hydraulic continuity, aquifer mining, the conditioning of exempt wells
28 under RCW 90.44.050, water transfers, or other policies as determined
29 by the board. Exempt wells may be restricted by requiring metering and
30 by requiring the reduction from five thousand gallons per day to some
31 lesser amount adequate for domestic purposes. If a regional planning
32 group requests that powers be delegated, then the regional planning
33 group shall conform to the regional planning procedures in sections 14
34 through 18 of this act. The local government representatives of such
35 regional planning group must reach consensus on the plan before any
36 state powers may be delegated to the regional planning group.

1 NEW SECTION. **Sec. 12.** If a regional planning group in its
2 petition does not request delegation of the powers referenced in
3 section 11 of this act, then it shall not be required to conform to the
4 requirements in sections 15 through 18 of this act. The board may
5 approve and support the planning efforts of such a regional planning
6 group.

7 NEW SECTION. **Sec. 13.** (1) The petition shall be reviewed by the
8 board for completeness. The board shall return petitions found to be
9 incomplete to the regional planning group within twenty working days of
10 receipt, with a list of those items that need to be completed.

11 (2) The board shall send a copy of the completed petition to each
12 unit of local government within the proposed region and interested
13 tribal governments, along with a notice announcing the time and date of
14 the hearing on the proposed petition. The notice must be sent at least
15 twenty working days before the hearing. Notice of the hearing shall
16 also be published at least once a week for two consecutive weeks in a
17 daily newspaper of general circulation in the region.

18 (3) The board shall hold a hearing on the petition as submitted.
19 If required under section 11 of this act, a decision to approve or deny
20 the petition shall be made within one hundred twenty days from the date
21 of the hearing. After the hearing, the board may make changes to the
22 proposal. The board may approve the petition if it is determined that
23 there is general local support and need for initiating the planning
24 process, and a reasonable chance that the planning process will succeed
25 in producing a draft water resource plan for the region. The approval
26 shall establish a budget for the planning process, including a
27 limitation on the amount of funds to be provided by the state.

28 NEW SECTION. **Sec. 14.** If the approved petition proposes
29 development of habitat conservation measures because there are species
30 that are endangered or threatened within the regional planning area,
31 the governor shall, within thirty days of the approval, request
32 appropriate federal agencies to endorse under the endangered species
33 act the development of a habitat conservation plan for species listed
34 or that may soon be listed as endangered or threatened. In
35 coordination with the regional planning group, the governor may request
36 the federal government to enter into a memorandum of understanding or
37 cooperative agreement for the development and implementation of habitat

1 conservation measures that will, at a minimum, satisfy the requirements
2 of the endangered species act.

3 **NEW SECTION.** **Sec. 15.** Upon approval of a petition in accordance
4 with section 13 of this act, the regional planning group shall convene
5 and select its own leadership. After the group is organized, it shall
6 develop a draft final plan meeting the requirements of section 18 of
7 this act and applicable rules and guidelines developed by the board.

8 The regional planning group shall make every effort to accommodate
9 the concerns of all interests. Approval of the draft final plan shall
10 be by a majority vote prior to submission of the draft final plan to
11 the appropriate county legislative authorities under section 17 of this
12 act.

13 **NEW SECTION.** **Sec. 16.** The regional planning group shall submit
14 the draft final plan to the county legislative authorities with
15 jurisdiction in the regional planning area. The counties in the
16 regional planning area shall each have at least two public hearings on
17 the draft final plan within sixty days of receipt of the plan.

18 After all counties in the regional planning area have held the
19 required public hearings, the regional planning group will convene to
20 consider the public comments and potential revisions to the plan to
21 address those comments. The regional planning group must readopt the
22 revised plan by majority vote and then submit the final plan to the
23 counties in the regional planning area. The county legislative
24 authorities shall approve or reject the final plan within thirty days
25 of its submittal.

26 **NEW SECTION.** **Sec. 17.** Once a final draft plan has been developed
27 by the regional planning group and approved by the county pursuant to
28 section 15 of this act, the board shall, within sixty days, hold a
29 hearing on the final draft plan. For regional water resource plans
30 that have been submitted to the board's predecessor agency, the board
31 shall have one hundred eighty days from the effective date of this
32 section to hold a hearing on the proposed plan.

33 The board shall evaluate the plan based on the following criteria:
34 (1) The plan can be legally implemented within existing or by
35 specific changes to state law;

1 (2) The plan has the general support of the community and local
2 governments within the affected planning area and of affected tribal
3 governments;

4 (3) Funds are available or will be requested by the board to
5 provide for the state share of the cost of implementing the plan;

6 (4) The plan provides for adequate protection of fish habitat in
7 the region;

8 (5) The plan provides adequate water for the needs of the people in
9 the basin and for economic opportunity; and

10 (6) The plan is consistent with the comprehensive plans adopted by
11 any of the counties within the regional planning area pursuant to the
12 growth management act.

13 NEW SECTION. **Sec. 18.** (1) Within ninety days after the public
14 hearing on the final draft regional water resource plan, the board
15 shall either: (a) Approve the plan as submitted, or (b) make comments
16 and recommend changes to the plan. The board may meet with the
17 regional water resource planning committee to discuss the resolution of
18 issues between the board and the committee. If the board recommends
19 changes to the plan, the regional water resource planning committee
20 shall have an additional ninety days to modify the draft plan and to
21 resubmit it to the board.

22 (2) If the board declines to approve the plan as resubmitted, the
23 board shall return to the regional water resource planning committee a
24 proposed revised plan with specific changes or approval of specified
25 components of the plan. The regional planning group shall have sixty
26 days to either accept the board's revised plan or to withdraw the
27 proposed plan from consideration by the board. Any plan that was
28 revised by the board but rejected by the regional planning group may
29 not be adopted by the board.

30 (3) If the board approves the plan, it may do so contingent upon
31 action by the state legislature to provide adequate funding or to
32 modify state law necessary to implement the plan. The board shall
33 prepare any funding requests and proposed changes to state law
34 necessary to implement approved regional water resource plans to the
35 next session of the legislature.

36 NEW SECTION. **Sec. 19.** New regional water resource programs, in
37 existence on the effective date of this section or amendments to water

1 resource programs contained in chapters 173-501 through 173-592 WAC
2 shall be adopted as a rule under the administrative procedure act,
3 chapter 34.05 RCW.

PART III

GENERAL POLICIES

6 **Sec. 20.** RCW 43.21A.064 and 1977 c 75 s 46 are each amended to
7 read as follows:

8 The director of the department of ecology shall have the following
9 powers and duties:

10 (1) The supervision of public waters within the state and their
11 appropriation, diversion, and use, and of the various officers
12 connected therewith;

13 (2) Insofar as may be necessary to assure safety to life or
14 property, ((he shall)) inspect the construction of all dams, canals,
15 ditches, irrigation systems, hydraulic power plants, and all other
16 works, systems, and plants pertaining to the use of water, and ((he))
17 the director may require such necessary changes in the construction or
18 maintenance of said works, to be made from time to time, as will
19 reasonably secure safety to life and property;

20 (3) ((He shall)) Regulate and control the diversion of water in
21 accordance with the rights thereto. Such regulation and control shall
22 be exercised on the basis of the director's determination of the
23 various rights involved, based on a review of the department's records
24 and investigation of relevant facts as provided in section 22 of this
25 act;

26 (4) ((He shall)) Determine the discharge of streams and springs and
27 other sources of water supply, and the capacities of lakes and of
28 reservoirs whose waters are being or may be utilized for beneficial
29 purposes;

30 (5) ((He shall)) Keep such records as may be necessary for the
31 recording of the financial transactions and statistical data thereof,
32 and ((shall)) procure all necessary documents, forms, and blanks.
33 ((He)) The director shall keep a seal of the office, and all
34 certificates by him or her covering any of ((his)) the director's acts
35 or the acts of his or her office, or the records and files of his or
36 her office, under such seal, shall be taken as evidence thereof in all
37 courts;

1 (6) ((He shall)) Render when required by the governor, a full
2 written report of the work of his or her office with such
3 recommendations for legislation as he or she may deem advisable for the
4 better control and development of the water resources of the state;
5 (7) The director and duly authorized deputies may administer oaths;
6 (8) ((He shall)) Establish and ((promulgate)) adotr rules governing
7 the administration of chapter 90.03 RCW;
8 (9) ((He shall)) Perform such other duties as may be prescribed by
9 law.

10 **Sec. 21.** RCW 90.03.070 and 1987 c 109 s 70 are each amended to
11 read as follows:

12 It shall be the duty of the water master, acting under the
13 direction of the department, to divide in whole or in part, the water
14 supply of ((his)) the water master's district among the several water
15 conduits and reservoirs using said supply, according to the right and
16 priority of each, respectively. ((He)) The water master shall divide,
17 regulate and control the use of water within ((his)) the district by
18 such regulation of headgates, conduits and reservoirs as shall be
19 necessary to prevent the use of water in excess of the amount to which
20 the owner of the right is lawfully entitled. Such regulation shall be
21 exercised on the basis of the water master's tentative determination of
22 the various rights involved, based on a review of the department's
23 records and investigation of relevant facts. Whenever, in the
24 pursuance of his or her duties, the water master regulates a headgate
25 of a water conduit or the controlling works of a reservoir, ((he)) the
26 water master shall attach to such headgate or controlling works a
27 written notice, properly dated and signed, stating that such headgate
28 or controlling works has been properly regulated and is wholly under
29 ((his)) the water master's control and such notice shall be a legal
30 notice to all parties. In addition to dividing the available waters
31 and supervising the stream patrolmen in ((his)) the district, ((he))
32 the water master shall enforce such rules ((and regulations)) as the
33 department shall from time to time prescribe.

34 The county or counties in which water master districts are created
35 shall deputize the water masters appointed hereunder, and may without
36 charge provide to each water master suitable office space, supplies,
37 equipment and clerical assistance as are necessary to the water master
38 in the performance of his or her duties.

1 **NEW SECTION.** **Sec. 22.** A new section is added to chapter 43.27A
2 RCW to read as follows:

3 In issuing orders pursuant to RCW 43.27A.190 for the purpose of
4 regulating between or among the users of water, the department shall
5 first determine whether any use of water is based on a valid existing
6 water right. In making such determination, the department shall
7 investigate and make a tentative determination as to the priority,
8 quantity, place of use, and point of diversion of the water right.
9 Unless exigent circumstances exist, the department shall notify the
10 person whose use of water will be regulated prior to issuing an order
11 of regulation. The notice shall state that the order of regulation
12 shall be issued in seven days after receipt of the notice, unless the
13 person can show cause in writing to the department why the department's
14 decision is in error. The order of regulation shall be effective
15 immediately upon issuance, unless otherwise stated in the order. The
16 department's determination of the validity of a water right is not
17 binding in any subsequent general adjudication.

18 **NEW SECTION.** **Sec. 23.** A new section is added to chapter 43.27A
19 RCW to read as follows:

20 In any appeal of a regulatory order issued pursuant to RCW
21 43.27A.190 it is not a defense that any of the rights recognized have
22 not been confirmed in a general water rights adjudication.

23 **NEW SECTION.** **Sec. 24.** The legislature finds that there are a
24 number of small water supply wells that currently exist in the state
25 for which water rights have been established pursuant to statute but
26 that have not been recorded with the state, nor has the holder of the
27 water right been issued a water right certificate.

28 The purpose of this section and section 25 of this act is to
29 establish a mechanism whereby a person who has established a water
30 right for a small well that is exempt from the ground water permit
31 process may obtain a certificate of water right and that the state may
32 obtain data and register the location of small water wells.

33 **NEW SECTION.** **Sec. 25.** A new section is added to chapter 90.44 RCW
34 to read as follows:

35 (1) A person or agency making a small withdrawal exempt under RCW
36 90.44.050 shall be entitled to a right equal to that established under

1 chapter 90.44 RCW and may submit an application for a certificate of
2 water right to the department of ecology. The applicant shall pay a
3 fee of one hundred dollars at the time the application is submitted.
4 The application must include the location of the well and information
5 sufficient to establish that the person or agency has a valid claim to
6 the water. The department of ecology shall develop a simple
7 application form to be used by the applicant in meeting the
8 requirements of this section. Information that may be provided by the
9 applicant includes: The date that the water was first put to use; a
10 well log, if one exists, prepared in accordance with chapter 18.104
11 RCW; the date the dwelling was constructed or first occupied and the
12 date water from the well was supplied to the dwelling; records of power
13 usage; invoices of well construction or of pump installation; or a
14 sworn affidavit attesting to the pertinent facts concerning the well.

15 (2) The department shall issue a certificate of water right and a
16 well identification tag to a person or agency who has provided
17 sufficient information to establish a use under this section. The
18 person or agency must affix the well identification tag to the well.
19 The department shall file a copy of the certificate of water right with
20 the department's data system.

21 (3) False representations under this section are subject to chapter
22 9A.72 RCW.

23 (4) A certificate under this section that is obtained through false
24 representations is void.

25 (5) Fees collected under this section shall be deposited into the
26 department's basic data fund, to be used specifically for data
27 processing and watershed planning and the expenses for verification and
28 processing of certificates and well tags.

29 (6) The department shall provide public notice of the application
30 process in this section through press releases, publicity campaigns,
31 public education, letters to adjoining landowners, and other media
32 actions.

33 (7) Nothing in this section shall authorize the impairment or
34 operate to impair any existing water rights.

35 (8) The department shall not accept applications under this section
36 after December 31, 2001.

37 NEW SECTION. Sec. 26. The legislature finds that the present
38 delay in the processing of water right applications is not beneficial

1 to the citizens of the state nor is it in keeping with the goal of
2 managing the resource to the highest possible standard and maximum net
3 benefit.

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

8 **NEW SECTION.** **Sec. 27.** A new section is added to chapter 90.03 RCW
9 to read as follows:

10 (1) The department shall develop a general permit system for
11 appropriating small quantities of surface and ground water. This
12 system must be designed and used to streamline the consideration of
13 applications for small water uses. The general permit system may be
14 applicable state-wide or within a specified geographic area. For a
15 state-wide general permit, all waters of the state shall be eligible
16 for coverage under the system unless the department in consultation
17 with the affected county or counties determines that insufficient
18 waters are available in specific areas to allow additional allocations
19 based on concerns for (a) impairment of existing water rights, (b)
20 declining ground water levels, or (c) fish and wildlife habitat
21 impacts.

22 (2) The evaluation and report required for an application under RCW
23 90.03.290 are not required for applications processed under the general
24 permit system.

25 (3) The notice requirements of RCW 90.03.280, including the receipt
26 of protests of the application, apply for applications to acquire water
27 under a general permit. If a protest appears to have merit and cannot
28 be readily resolved, the department shall remove the application from
29 further consideration under the general permit and shall instead
30 process the application as a standard application to appropriate public
31 water.

32 (4) The fee for general permits authorized under chapter . . . ,
33 Laws of 1995 (this act) shall be the same as the fee charged for the
34 same quantity of water established under chapter 90.03 RCW.

35 (5) The department's decision to approve, condition, or deny an
36 application under a general permit is appealable as provided in RCW
37 43.21B.110.

1 **NEW SECTION.** **Sec. 28.** A new section is added to chapter 90.03 RCW
2 to read as follows:

3 (1) For the purposes of this section:

4 (a) "Agricultural use" means a use of not more than one-tenth of
5 one cubic foot per second of ground or surface water for any purpose
6 generally accepted as integral to agricultural production;

7 (b) "Multiunit residential use" means a use of not more than one
8 thousand gallons of ground water per domestic living unit to provide
9 domestic water to housing developments of more than one unit;

10 (c) "Nonconsumptive, nonbypass use" means a use of water in which
11 water is diverted from a stream or withdrawn from an aquifer and
12 following its use is discharged, as determined by the department, back
13 to or near the point of diversion or withdrawal without diminishment in
14 quantity or quality. Hydraulic permit approval by the department of
15 fish and wildlife, in accordance with chapter 75.20 RCW, shall be
16 evidence of satisfactory consideration of fish and wildlife habitat
17 protection for any use; and

18 (d) "Without diminishment of quality" means that, before being
19 discharged back to its source, the water being discharged meets state
20 water quality standards adopted under chapter 90.48 RCW.

21 (2) The department shall immediately commence efforts to establish
22 state-wide general permits for nonconsumptive, nonbypass uses,
23 agricultural uses, and multiunit residential uses by adopting rules in
24 accordance with chapter 34.05 RCW. Before the adoption of rules for a
25 general permit system, the department shall consult with
26 representatives of the following groups: Agriculture; aquaculture;
27 home construction and development; county government; city government;
28 tribal governments; other local governmental entities with water system
29 authority; and the environmental and water recreation communities. At
30 least four public hearings must be held at various locations around the
31 state. The rules must identify criteria for proposed uses of water for
32 which applications will be processed under the system and must
33 establish procedures for filing and processing applications under the
34 general permit system.

35 (3) Before January 1, 1996, the department shall file a report with
36 the appropriate standing committees of the legislature regarding
37 progress made toward adoption of the rules required by this section.

1 **NEW SECTION.** **Sec. 29.** A new section is added to chapter 90.03 RCW
2 to read as follows:

3 (1) An application for appropriating water under a general permit
4 system established under chapter . . ., Laws of 1995 (this act) must be
5 made on a form adopted and provided by the department. Within sixty
6 days of the completion of the protest period, the department shall
7 determine whether the proposed use is eligible to be processed under
8 the general permit system. If the department determines that the
9 proposed use is eligible to be processed under the system, the
10 application must be processed under the system within the following
11 sixty days.

12 (2) The priority date of the water right established pursuant to
13 this section is the date that the application is submitted.

14 (3) If the department determines that the proposed use is not
15 eligible for the processing, the department shall explain to the
16 applicant in writing the reasons for its determination. For a proposed
17 use determined ineligible for the processing, if the department finds
18 that the information contained on the application form substantially
19 satisfies the information requirements for an application for a use
20 that would normally be filed for processing the application outside of
21 the general permit system, the department shall notify the applicant of
22 its finding and shall process the application as if it were filed for
23 processing outside of the system. If the department finds that the
24 information does not substantially satisfy the requirements, the
25 application must be considered to be incomplete for the processing and
26 the applicant must be notified of this consideration.

27 (4) Nothing in sections 27 and 28 of this act and this section is
28 intended to authorize the impairment or operate to impair any existing
29 water rights. A water right holder who establishes a right under the
30 provisions of sections 27 and 28 of this act and this section shall not
31 make withdrawals that impair a senior water right. A holder of a
32 senior water right who believes his or her water right is impaired may
33 file a complaint with the department of ecology. Where such complaints
34 of impairment have been received, the department of ecology shall make
35 all reasonable efforts to resolve them in a timely manner through
36 agreement of the parties or through available administrative remedies.

37 **NEW SECTION.** **Sec. 30.** A new section is added to chapter 90.44 RCW
38 to read as follows:

1 An individual well serving a group domestic use and pumping not
2 more than five thousand gallons per day that is established under the
3 small use exemption provided in RCW 90.44.050 may provide water service
4 for up to twelve housing units unless expressly prohibited by the
5 county or city with land use jurisdiction. The department shall
6 require metering of these wells unless it determines that in certain
7 locations or situations metering is not appropriate. This section
8 expires December 31, 1996.

PART IV

WATER RIGHTS ADJUDICATION

11 NEW SECTION. **Sec. 31.** (1) The water escrow account is established
12 in the state treasury. Funds in the water escrow account may be
13 expended, subject to appropriation in the 1995-97 and subsequent fiscal
14 biennia for the costs of basin-wide water rights adjudications.

15 (2) By June 30, 1995, the state treasurer shall transfer five
16 hundred thousand dollars from the state general fund to the water
17 escrow account.

18 **Sec. 32.** RCW 43.84.092 and 1994 c 2 s 6 (Initiative Measure No.
19 601), 1993 sp.s. c 25 s 511, 1993 sp.s. c 8 s 1, 1993 c 500 s 6, 1993
20 c 492 s 473, 1993 c 445 s 4, 1993 c 329 s 2, and 1993 c 4 s 9 are each
21 reenacted and amended to read as follows:

22 (1) All earnings of investments of surplus balances in the state
23 treasury shall be deposited to the treasury income account, which
24 account is hereby established in the state treasury.

(2) The treasury income account shall be utilized to pay or receive funds associated with federal programs as required by the federal cash management improvement act of 1990. The treasury income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for refunds or allocations of interest earnings required by the cash management improvement act. Refunds of interest to the federal treasury required under the cash management improvement act fall under RCW 43.88.180 and shall not require appropriation. The office of financial management shall determine the amounts due to or from the federal government pursuant to the cash management improvement act. The office of financial management may direct transfers of funds between accounts as deemed necessary to implement the provisions of the

1 cash management improvement act, and this subsection. Refunds or
2 allocations shall occur prior to the distributions of earnings set
3 forth in subsection (4) of this section.

4 (3) Except for the provisions of RCW 43.84.160, the treasury income
5 account may be utilized for the payment of purchased banking services
6 on behalf of treasury funds including, but not limited to, depository,
7 safekeeping, and disbursement functions for the state treasury and
8 affected state agencies. The treasury income account is subject in all
9 respects to chapter 43.88 RCW, but no appropriation is required for
10 payments to financial institutions. Payments shall occur prior to
11 distribution of earnings set forth in subsection (4) of this section.

12 (4) Monthly, the state treasurer shall distribute the earnings
13 credited to the treasury income account. The state treasurer shall
14 credit the general fund with all the earnings credited to the treasury
15 income account except:

16 (a) The following accounts and funds shall receive their
17 proportionate share of earnings based upon each account's and fund's
18 average daily balance for the period: The capitol building
19 construction account, the Cedar River channel construction and
20 operation account, the Central Washington University capital projects
21 account, the charitable, educational, penal and reformatory
22 institutions account, the common school construction fund, the county
23 criminal justice assistance account, the county sales and use tax
24 equalization account, the data processing building construction
25 account, the deferred compensation administrative account, the deferred
26 compensation principal account, the department of retirement systems
27 expense account, the Eastern Washington University capital projects
28 account, the education construction fund, the emergency reserve fund,
29 the federal forest revolving account, the health services account, the
30 public health services account, the health system capacity account, the
31 personal health services account, the industrial insurance premium
32 refund account, the judges' retirement account, the judicial retirement
33 administrative account, the judicial retirement principal account, the
34 local leasehold excise tax account, the local real estate excise tax
35 account, the local sales and use tax account, the medical aid account,
36 the municipal criminal justice assistance account, the municipal sales
37 and use tax equalization account, the natural resources deposit
38 account, the perpetual surveillance and maintenance account, the public
39 employees' retirement system plan I account, the public employees'

1 retirement system plan II account, the Puyallup tribal settlement
2 account, the resource management cost account, the site closure
3 account, the special wildlife account, the state employees' insurance
4 account, the state employees' insurance reserve account, the state
5 investment board expense account, the state investment board commingled
6 trust fund accounts, the supplemental pension account, the teachers'
7 retirement system plan I account, the teachers' retirement system plan
8 II account, the tuition recovery trust fund, the University of
9 Washington bond retirement fund, the University of Washington building
10 account, the volunteer fire fighters' relief and pension principal
11 account, the volunteer fire fighters' relief and pension administrative
12 account, the Washington judicial retirement system account, the
13 Washington law enforcement officers' and fire fighters' system plan I
14 retirement account, the Washington law enforcement officers' and fire
15 fighters' system plan II retirement account, the Washington state
16 patrol retirement account, the Washington State University building
17 account, the Washington State University bond retirement fund, the
18 water escrow account, the water pollution control revolving fund, and
19 the Western Washington University capital projects account. Earnings
20 derived from investing balances of the agricultural permanent fund, the
21 normal school permanent fund, the permanent common school fund, the
22 scientific permanent fund, and the state university permanent fund
23 shall be allocated to their respective beneficiary accounts. All
24 earnings to be distributed under this subsection (4)(a) shall first be
25 reduced by the allocation to the state treasurer's service fund
26 pursuant to RCW 43.08.190.

27 (b) The following accounts and funds shall receive eighty percent
28 of their proportionate share of earnings based upon each account's or
29 fund's average daily balance for the period: The marine operating
30 fund, the motor vehicle fund, and the transportation fund.

31 (5) In conformance with Article II, section 37 of the state
32 Constitution, no treasury accounts or funds shall be allocated earnings
33 without the specific affirmative directive of this section.

34
35

PART V
FEES

36 **Sec. 33.** RCW 90.03.470 and 1993 c 495 s 2 are each amended to read
37 as follows:

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

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

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

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

36 (3) For filing and recording any other water right instrument, four
37 dollars for the first hundred words and forty cents for each additional
38 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, at
9 actual cost of the work.

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

18 ((+8)) (2) For the inspection of any hydraulic works to insure
19 safety to life and property, the actual cost of the inspection,
20 including the expense incident thereto.

21 ((+9)) (3) For the examination of plans and specifications as to
22 safety of controlling works for storage of ten acre feet or more of
23 water, a minimum fee of ((ten)) fifty dollars, or the actual cost.

24 ((+10)) (4) For recording an assignment either of a permit to
25 appropriate water or of an application for such a permit, a fee of
26 ((five)) one hundred dollars.

27 ((+11) For preparing and issuing all water right certificates, five
28 dollars.

29 ((12)) (5) For filing and recording a protest against granting any
30 application, ((two)) fifty dollars.

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

38 (+14)) (6) For filing an application for and authorizing a seasonal
39 change or rotation, one hundred dollars.

1 (7) For filing an application for and authorizing a temporary or
2 short-term water use, one hundred dollars.

3 (8) For a consolidated application covering multiple sources or
4 changes:

5 (a) The filing fee must be based upon either the total amount of
6 water or the total number of changes requested, or both;

7 (b) The examination fee is the total of the examination fees
8 calculated for the individual applications and changes; and

9 (c) The certificate fee is as is appropriate for the individual
10 certificates, since separate permits would issue and, therefore,
11 separate certificates would result.

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

15 ((+15) For the period beginning July 1, 1993, and ending June 30,
16 1994, there is imposed and the department shall collect a one hundred
17 dollar surcharge on all water rights applications or changes filed
18 under this section, and upon all water rights applications or changes
19 pending as of July 1, 1993. This charge shall be in addition to any
20 other fees imposed under this section.))

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

23 (1) The department shall collect the following fees in advance:

24 (a) Application filing fees for the following:

25 (i) Surface water and ground water applications:

26 (A) Greater than 0.0 and less than or equal
27 to 0.02 cubic feet per second \$ 100

28 (B) Greater than 0.02 and less than or equal to
29 0.1 cubic feet per second \$ 150

30 (C) Greater than 0.1 and less than or equal to
31 0.2 cubic feet per second \$ 200

32 (D) Greater than 0.2 and less than or equal to
33 0.5 cubic feet per second \$ 250

34 (E) Greater than 0.5 and less than or equal to 1
35 cubic feet per second \$ 300

36 (F) Greater than 1 and less than or equal to 3
37 cubic feet per second \$ 400

38 (G) Greater than 3 and less than or equal to 5

1	cubic feet per second	\$ 1500
2	(H) Greater than 5 and less than or equal to 20 cubic feet per second	\$ 1700
3	(I) Greater than 20 and less than or equal to 100 cubic feet per second	\$ 2,000
4	(J) Greater than 100 cubic feet per second	\$ 2,200
5	(ii) Reservoir applications:	
6	(A) Greater than 0.0 and less than or equal to 10 acre-feet	\$ 100
7	(B) Greater than 10 and less than or equal to 100 acre-feet	\$ 200
8	(C) Greater than 100 and less than or equal to 1,000 acre-feet	\$ 600
9	(D) Greater than 1,000 acre-feet	\$ 1,500
10	(iii) Change applications:	
11	(A) Changing a single element	\$ 150
12	(B) Changing multiple elements	\$ 250
13	(b) Examination fees for the following:	
14	(i) Surface water applications:	
15	(A) Greater than 0.0 and less than or equal to 0.02 cubic feet per second	\$ 100
16	(B) Greater than 0.02 and less than or equal to 0.1 cubic feet per second	\$ 200
17	(C) Greater than 0.01 and less than or equal to 0.2 cubic feet per second	\$ 250
18	(D) Greater than 0.2 and less than or equal to 0.5 cubic feet per second	\$ 300
19	(E) Greater than 0.5 and less than or equal to 1 cubic feet per second	\$ 400
20	(F) Greater than 1 and less than or equal to 3 cubic feet per second	\$ 500
21	(G) Greater than 3 and less than or equal to 5 cubic feet per second	\$ 2,200
22	(H) Greater than 5 and less than or equal to 20 cubic feet per second	\$ 2,500
23	(I) Greater than 20 and less than or equal to 100 cubic feet per second	\$ 2,800
24	(J) Greater than 100 cubic feet per second	\$ 3,200
25	(ii) Ground water applications:	

1	(A) Greater than 0.0 and less than or equal to 0.02 cubic feet per second	\$ 100
2	(B) Greater than 0.02 and less than or equal to 0.1 cubic feet per second	\$ 250
3	(C) Greater than 0.1 and less than or equal to 0.2 cubic feet per second	\$ 300
4	(D) Greater than 0.2 and less than or equal to 0.5 cubic feet per second	\$ 400
5	(E) Greater than 0.5 and less than or equal to 1 cubic feet per second	\$ 500
6	(F) Greater than 1 or less than or equal to 3 cubic feet per second	\$ 600
7	(G) Greater than 3 and less than or equal to 5 cubic feet per second	\$ 2,600
8	(H) Greater than 5 and less than or equal to 20 cubic feet per second	\$ 3,000
9	(I) Greater than 20 and less than or equal to 100 cubic feet per second	\$ 3,400
10	(J) Greater than 100 cubic feet per second	\$ 3,800
11	(iii) Reservoir applications:	
12	(A) Greater than 0.0 and less than or equal to 10 acre-feet	\$ 100
13	(B) Greater than 10 and less than or equal to 100 acre-feet	\$ 250
14	(C) Greater than 100 and less than or equal to 1,000 acre-feet	\$ 900
15	(D) Greater than 1,000 acre-feet	\$ 2,200
16	(iv) Changes to permits and certificates:	
17	(A) Changing a single element	\$ 200
18	(B) Changing multiple elements	\$ 300
19	(c) Certificate fees:	
20	(i) Surface water and ground water applications:	
21	(A) Greater than 0.0 and less than or equal to 0.02 cubic feet per second	\$ 100
22	(B) Greater than 0.02 and less than or equal to 0.1 cubic feet per second	\$ 150
23	(C) Greater than 0.1 and less than or equal to 0.2 cubic feet per second	\$ 200
24	(D) Greater than 0.2 and less than or equal to	

1	0.5 cubic feet per second	\$ 250
2	(E) Greater than 0.5 and less than or equal to 1 cubic feet per second	\$ 300
4	(F) Greater than 1 and less than or equal to 3 cubic feet per second	\$ 400
6	(G) Greater than 3 and less than or equal to 5 cubic feet per second	\$ 1,500
8	(H) Greater than 5 and less than or equal to 20 cubic feet per second	\$ 1,700
10	(I) Greater than 20 and less than or equal to 100 cubic feet per second	\$ 2,000
12	(J) Greater than 100 cubic feet per second	\$ 2,200
13	(ii) Reservoir applications:	
14	(A) Greater than 0.0 and less than or equal to 10 acre-feet	\$ 200
16	(B) Greater than 10 and less than or equal to 100 acre-feet	\$ 300
18	(C) Greater than 100 and less than or equal to 1,000 acre-feet	\$ 1,000
20	(D) Greater than 1,000 acre-feet	\$ 1,500
21	(iii) Changes to permits and certificates:	
22	(A) Changing a single element	\$ 150
23	(B) Changing multiple elements	\$ 250
24	The department shall provide timely notification by certified mail	
25	with return receipt requested to applicants that fees are due. No	
26	action may be taken until the fee is paid in full. Failure to remit	
27	fees within sixty days of the department's notification shall be	
28	grounds for rejecting the application or canceling the permit. Cash	
29	shall not be accepted. Fees must be paid by check or money order and	
30	are nonrefundable.	

31 For purposes of calculating fees for ground water filings, one
 32 cubic foot per second shall be regarded as equivalent to four hundred
 33 fifty gallons per minute.

34 (2) The water right permit processing account is created in the
 35 state treasury. All receipts collected under RCW 90.03.470 and this
 36 section shall be deposited into the account. Moneys in the account may
 37 be spent only after appropriation. Expenditures from the account may
 38 be used only for functions of the department of ecology related to:
 39 Filing, examination, and certification of water right permits, changes

1 to water right permits, and transfer of water rights; and a
2 proportionate share of indirect costs allocated to these functions
3 necessary to fund the general administrative functions of the
4 department. The department may expend funds from the water right
5 permit processing account in an amount that is substantially equal to
6 the amount expended of funds appropriated from the general fund for
7 water right permit processing.

8

PART VI

WATER RIGHTS ADMINISTRATION

10 **Sec. 35.** RCW 90.03.340 and 1987 c 109 s 90 are each amended to
11 read as follows:

12 After January 1, 1996, the priority date of the right acquired by
13 appropriation ((shall relate back to)) is the date ((of filing of)) the
14 ((original)) completed application form for the right is filed with the
15 department. For the purposes of this section and RCW 90.03.270, a
16 completed application form is one that contains all of the information
17 requested on the form and is accompanied by the application fee.

18 **Sec. 36.** RCW 90.03.270 and 1987 c 109 s 85 are each amended to
19 read as follows:

20 Upon receipt of ((an)) a completed water right application form, it
21 shall be the duty of the department to ((make an endorsement thereon of
22 the)) date ((of its receipt,)) stamp and ((to)) keep a record of
23 ((same)) it. If ((upon examination,)) an application form is filed
24 with the department but the information requested on the application
25 form is ((found to be defective,)) not complete or the form is not
26 accompanied by the proper application fee, the form and any application
27 fee filed with it shall be returned to the applicant ((for correction
28 or completion,)) and the date and the reasons for the return thereof
29 shall be ((endorsed thereon and made a record in his office. No
30 application shall lose its priority of filing on account of such
31 defects, provided acceptable maps, drawings and such data as is
32 required by the department shall be filed with the department within
33 such reasonable time as it shall require)) noted in the department's
34 records and in a letter returning the form. The department may not
35 require an applicant to provide information in support of an
36 application for a water right permit that is not necessary for the

1 department's investigations, determinations, or findings regarding that
2 particular application.

3 **Sec. 37.** RCW 90.03.280 and 1994 c 264 s 83 are each amended to
4 read as follows:

5 Upon receipt of a ((proper)) completed application, the department
6 shall instruct the applicant to publish notice ((thereof)) in a form
7 and within a time prescribed by the department in a newspaper of
8 general circulation published in the county or counties in which the
9 storage, diversion or withdrawal, and use is to be made, and in such
10 other newspapers as the department may direct, once a week for two
11 consecutive weeks. The notice shall include information pertinent to
12 the proposed appropriation, including the location, the source, the
13 purpose or purposes of use, and the quantity proposed to be diverted or
14 withdrawn. The notice shall state that persons wishing to protest the
15 proposed appropriation must do so in writing to the department within
16 thirty days of the last date of publication of the notice. In order to
17 be considered by the department, a protest must be received by the
18 department within thirty days of the last date of publication of the
19 notice. Upon receipt by the department of an application it shall send
20 notice thereof containing pertinent information to the director of fish
21 and wildlife.

22 NEW SECTION. **Sec. 38.** A new section is added to chapter 43.21B
23 RCW to read as follows:

24 In a proceeding before the pollution control hearings board
25 challenging a decision of the department related to the issuance,
26 conditioning, transfer, amendment, or denial of a water right permit
27 under Title 90 RCW, the burden of proof is on the person filing the
28 appeal.

29 NEW SECTION. **Sec. 39.** A new section is added to chapter 43.21B
30 RCW to read as follows:

31 Only a person with standing as defined in RCW 34.05.530 may appeal
32 to the pollution control hearings board a decision of the department to
33 issue, condition, transfer, amend, or deny a water right under Title 90
34 RCW.

1 **NEW SECTION.** **Sec. 40.** A new section is added to chapter 43.21B
2 RCW to read as follows:

3 One member of the pollution control hearings board may hear and
4 render a decision on an appeal from a water right applicant regarding
5 the nature and extent of the information needed to make determinations
6 regarding the application for or the processing of a water right
7 permit.

8 **NEW SECTION.** **Sec. 41.** A new section is added to chapter 90.03 RCW
9 to read as follows:

10 A water right applicant may appeal to the pollution control
11 hearings board a determination by the department regarding the nature
12 and extent of the information needed to make determinations regarding
13 the application for or the processing of a water right permit.

14 **Sec. 42.** RCW 90.03.290 and 1994 c 264 s 84 are each amended to
15 read as follows:

16 (1) When ((an)) a completed application complying with the
17 provisions of this chapter and with the rules ((and regulations)) of
18 the department has been filed, the ((same)) application shall be placed
19 on record with the department, and it shall be ((its)) the department's
20 duty to ((investigate the application, and)) determine what water, if
21 any, is available for appropriation, and find and determine to what
22 beneficial use or uses it can be applied.

23 The department shall investigate the application. The applicant
24 shall provide a completed application form. In addition to providing
25 the information requested on the form, however, the applicant shall
26 also provide such information as may be required for the department's
27 investigation, determinations, and findings regarding the application
28 and may provide additional information. The information provided by
29 the applicant must satisfy the protocols, that is, study plans and
30 criteria, established by the department for obtaining and providing the
31 information. If an applicant provides the information and the
32 protocols set by the department for obtaining and providing it have
33 been satisfied, the department shall review the information and may
34 take actions to verify that the information is accurate, but it may
35 not, except to replace inaccurate information, take actions that would
36 constitute obtaining major portions of the information anew.

37 (2) With regard to an application:

1 (a) If it is proposed to appropriate water for irrigation purposes,
2 the department shall investigate, determine and find what lands are
3 capable of irrigation by means of water found available for
4 appropriation.

5 (b) If it is proposed to appropriate water for the purpose of power
6 development, the department shall investigate, determine and find
7 whether the proposed development is likely to prove detrimental to the
8 public interest, having in mind the highest feasible use of the waters
9 belonging to the public.

10 (3) If the application does not contain, and the applicant does not
11 promptly furnish sufficient information on which to base such findings,
12 the department may issue a preliminary permit, for a period of not to
13 exceed three years, requiring the applicant to make such surveys,
14 investigations, studies, and progress reports, as in the opinion of the
15 department may be necessary. If the applicant fails to comply with the
16 conditions of the preliminary permit, it and the application or
17 applications on which it is based shall be automatically canceled and
18 the applicant so notified. If the holder of a preliminary permit
19 shall, before its expiration, file with the department a verified
20 report of expenditures made and work done under the preliminary permit,
21 which, in the opinion of the department, establishes the good faith,
22 intent and ability of the applicant to carry on the proposed
23 development, the preliminary permit may, with the approval of the
24 governor, be extended, but not to exceed a maximum period of five years
25 from the date of the issuance of the preliminary permit.

26 (4) The department shall make and file as part of the record in the
27 matter, written findings of fact concerning all things investigated,
28 and if it shall find that there is water available for appropriation
29 for a beneficial use, and the appropriation thereof as proposed in the
30 application will not impair existing rights or be detrimental to the
31 public welfare, it shall issue a permit stating the amount of water to
32 which the applicant shall be entitled and the beneficial use or uses to
33 which it may be applied: PROVIDED, That where the water applied for is
34 to be used for irrigation purposes, it shall become appurtenant only to
35 such land as may be reclaimed thereby to the full extent of the soil
36 for agricultural purposes. But where there is no unappropriated water
37 in the proposed source of supply, or where the proposed use conflicts
38 with existing rights, or threatens to prove detrimental to the public
39 interest, having due regard to the highest feasible development of the

1 use of the waters belonging to the public, it shall be duty of the
2 department to reject such application and to refuse to issue the permit
3 asked for. If the permit is refused because of conflict with existing
4 rights and such applicant shall acquire same by purchase or
5 condemnation under RCW 90.03.040, the department may thereupon grant
6 such permit. Any application may be approved for a less amount of
7 water than that applied for, if there exists substantial reason
8 therefor, and in any event shall not be approved for more water than
9 can be applied to beneficial use for the purposes named in the
10 application. In determining whether or not a permit shall issue upon
11 any application, it shall be the duty of the department to investigate
12 all facts relevant and material to the application. After the
13 department approves said application in whole or in part and before any
14 permit shall be issued thereon to the applicant, such applicant shall
15 pay the fee provided in RCW 90.03.470: PROVIDED FURTHER, That in the
16 event a permit is issued by the department upon any application, it
17 shall be its duty to notify the director of fish and wildlife and
18 affected federally recognized Indian tribes of such issuance.

19 **Sec. 43.** RCW 90.03.320 and 1987 c 109 s 67 are each amended to
20 read as follows:

21 (1) Actual construction work shall be commenced on any project for
22 which permit has been granted within such reasonable time as shall be
23 prescribed by the department, and shall thereafter be prosecuted with
24 diligence and completed within the time prescribed by the department.
25 The department, in fixing the time for the commencement of the work, or
26 for the completion thereof and the application of the water to the
27 beneficial use prescribed in the permit, shall take into consideration
28 the cost and magnitude of the project and the engineering and physical
29 features to be encountered, and shall allow such time as shall be
30 reasonable and just under the conditions then existing, having due
31 regard for the public welfare and public interests affected: and, for
32 good cause shown, it shall extend the time or times fixed as aforesaid,
33 and shall grant such further period or periods as may be reasonably
34 necessary, having due regard to the good faith of the applicant and the
35 public interests affected.

36 (2) For the purposes of this section, "good cause" includes but is
37 not limited to the following circumstances that prevent work completion
38 within the prescribed period:

- 1 (a) Active service in the armed forces of the United States during
2 a military crisis;
3 (b) Nonvoluntary service in the armed forces of the United States;
4 (c) The operation of legal proceedings;
5 (d) Delays in securing other permits necessary to proceed with the
6 development;
7 (e) A single transfer in ownership of the property;
8 (f) Implementation of water efficiency measures, including
9 conservation and reclaimed water use;
10 (g) Encountering unanticipated physical impediments to
11 construction; and
12 (h) Encountering generally depressed economic conditions.

13 (3) If the terms of the permit or extension thereof((r)) are not
14 complied with, the department shall give notice by ((registered))
15 certified mail that ((such)) the permit will be canceled unless the
16 ((holders thereof shall)) permittee shows cause within sixty days why
17 the ((same)) permit should not be ((so)) canceled. If cause ((be)) is
18 not shown, ((said)) the permit shall be canceled.

19 **Sec. 44.** RCW 90.03.260 and 1987 c 109 s 84 are each amended to
20 read as follows:

21 ((Each application for permit to appropriate water shall set forth
22 the name and post office address of the applicant, the source of water
23 supply, the nature and amount of the proposed use, the time during
24 which water will be required each year, the location and description of
25 the proposed ditch, canal, or other work, the time within which the
26 completion of the construction and the time for the complete
27 application of the water to the proposed use. If for agricultural
28 purposes, it shall give the legal subdivision of the land and the
29 acreage to be irrigated, as near as may be, and the amount of water
30 expressed in acre feet to be supplied per season. If for power
31 purposes, it shall give the nature of the works by means of which the
32 power is to be developed, the head and amount of water to be utilized,
33 and the uses to which the power is to be applied. If for construction
34 of a reservoir, it shall give the height of the dam, the capacity of
35 the reservoir, and the uses to be made of the impounded waters. If for
36 municipal water supply, it shall give the present population to be
37 served, and, as near as may be, the future requirement of the
38 municipality. If for mining purposes, it shall give the nature of the

1 mines to be served and the method of supplying and utilizing the water;
2 also their location by legal subdivisions. All applications shall be
3 accompanied by such maps and drawings, in duplicate, and such other
4 data, as may be required by the department, and such accompanying data
5 shall be considered as a part of the application.)) The department
6 shall adopt rules in accordance with chapter 34.05 RCW by January 1,
7 1996, that specify the contents of completed water right application
8 forms. The rules shall include specific timelines for the department
9 to follow in making a determination as to whether an application is
10 complete and notifying the applicant of its determination. The rules
11 shall also identify the kinds of inaccuracies that render an
12 application incomplete.

13 **Sec. 45.** RCW 90.44.060 and 1987 c 109 s 109 are each amended to
14 read as follows:

15 Applications for permits for appropriation of underground water
16 shall be made in the same form and manner provided in RCW 90.03.250
17 through 90.03.340, as amended, the provisions of which sections are
18 hereby extended to govern and to apply to ground water, or ground water
19 right certificates and to all permits that shall be issued pursuant to
20 such applications, and the rights to the withdrawal of ground water
21 acquired thereby shall be governed by RCW 90.03.250 through 90.03.340,
22 inclusive((: PROVIDED, That each application to withdraw public ground
23 water by means of a well or wells shall set forth the following
24 additional information: (1) the name and post office address of the
25 applicant; (2) the name and post office address of the owner of the
26 land on which such well or wells or works will be located; (3) the
27 location of the proposed well or wells or other works for the proposed
28 withdrawal; (4) the ground water area, sub area, or zone from which
29 withdrawal is proposed, provided the department has designated such
30 area, sub area, or zone in accord with RCW 90.44.130; (5) the amount of
31 water proposed to be withdrawn, in gallons a minute and in acre feet a
32 year, or millions of gallons a year; (6) the depth and type of
33 construction proposed for the well or wells or other works: AND
34 PROVIDED FURTHER, That)). The department shall adopt rules in
35 accordance with chapter 34.05 RCW by January 1, 1996, that specify the
36 contents of completed water right application forms. The rules shall
37 include specific timelines for the department to follow in making a
38 determination as to whether an application is complete and notifying

1 the applicant of its determination. The rules shall also identify the
2 kinds of inaccuracies that render an application incomplete. Any
3 permit issued pursuant to an application for constructing a well or
4 wells to withdraw public ground water may specify an approved type and
5 manner of construction for the purposes of preventing waste of said
6 public waters and of conserving their head.

7 **Sec. 46.** RCW 90.03.250 and 1987 c 109 s 83 are each amended to
8 read as follows:

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

28 The department shall encourage the filing of a consolidated
29 application for a complex project under a single ownership that
30 proposes to divert or withdraw water from more than one source,
31 including a combination of surface and ground water sources. The
32 filing of a consolidated application for transfer or change of one or
33 more water rights involving multiple sources shall also be encouraged
34 if all of the affected diversions or withdrawals are intended to serve
35 a single project with a single ownership. The department shall adopt
36 and provide forms for consolidated applications.

1 **NEW SECTION.** **Sec. 47.** A new section is added to chapter 90.03 RCW
2 to read as follows:

3 (1) The department shall establish streamlined procedures for its
4 processing of applications for de minimis appropriations of surface
5 water, but only if the department has reserved and set aside the water
6 for future beneficial use under RCW 90.54.050.

7 (2) Applications for appropriating water under this section shall
8 be made on a form provided by the department. Within sixty days of the
9 publication of a notice in accordance with RCW 90.03.280, the
10 department shall issue or deny a permit for the requested
11 appropriation. If the department denies the application, it shall
12 explain its determination in writing.

13 (3) The department shall waive the evaluation and report
14 requirements of RCW 90.03.290 if during the establishment of the
15 reservation it was conclusively determined that water is available and
16 that no impairment of existing water rights or the public interest will
17 occur.

18 (4) This section may not be used in areas that are within urban
19 growth areas as designated under RCW 36.70A.110 or within the service
20 areas of a public water system as defined in chapter 70.119A RCW that
21 has an available water supply.

22 (5) Unless the context clearly requires otherwise, as used in this
23 chapter, "de minimis appropriation" means diversion and use of surface
24 water in an amount not exceeding four hundred fifty gallons per day and
25 not exceeding an instantaneous diversion rate of two one-hundredths
26 cubic feet per second.

27 (6) The department shall develop, in cooperation with the
28 department of health, informational materials regarding the risks of
29 drinking untreated surface water. This informational material may be
30 provided to prospective applicants. The department shall attach the
31 informational materials to any permit that is approved under this
32 section.

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

35 (1) The department may authorize short-term uses of water without
36 publication of the notice required under RCW 90.03.280 and without the
37 report required under RCW 90.03.290. However, before approving a
38 short-term use, the department shall determine to its satisfaction that

1 the substantive criteria in RCW 90.03.290 are met and that a stream
2 affected by a short-term use will be retained with sufficient flows to
3 maintain instream uses and to protect existing water rights. The
4 department shall adopt and provide application forms for persons
5 applying for a short-term use and shall expedite its consideration of
6 short-term use requests to the extent practicable.

7 (2) For the purposes of this chapter, "short-term use" means a use
8 of water that will not exceed one year in duration. Short-term uses
9 include but are not limited to use in construction, dust control,
10 dewatering, and short-term planned fire suppression activities.

11 **NEW SECTION.** **Sec. 49.** A new section is added to chapter 90.03 RCW
12 to read as follows:

13 The department shall establish a register that identifies, by water
14 resource inventory area, applications for new water rights and
15 applications for water right transfers and changes. The applications
16 appearing in the register shall be limited to those requesting a new
17 appropriation or change or transfer of more than three cubic feet per
18 second of water. The register shall identify: The location of the
19 proposed use, change, or transfer; whether the application is for
20 surface or ground water; and, for surface water applications, the water
21 source. The department shall produce the register once every two weeks
22 and shall make the register available to interested parties for a fee
23 that is based on the cost of producing and mailing the register. One
24 year after the effective date of this section, the department may cease
25 production of the register if the number of requests for the register
26 are not adequate to cover the costs of producing and mailing it.

27 **NEW SECTION.** **Sec. 50.** (1) The department of ecology shall in
28 conjunction with the task force created in section 3, chapter 495, Laws
29 of 1993 develop a budget process for its water rights administration
30 program that accomplishes the following:

- 31 (a) Identifies targets for permitting activities for the biennium;
- 32 (b) Identifies workload standards;
- 33 (c) Prepares a draft budget;
- 34 (d) Provides for timely public review of the draft budget; and
- 35 (e) Circulates a final budget.

1 (2) The water rights programs review task force shall, in
2 conjunction with the department of ecology, establish and periodically
3 review the following:

4 (a) Workload standards and proposed incentives to improve such
5 standards;

6 (b) Program expenditure categories to account for and track costs
7 related to the water rights administration program; and

8 (c) Success measures based upon programmatic results designed to
9 evaluate program effectiveness and standards for defining the measures.

10 In establishing the initial workload standards, the legislature has
11 an expectation that the department of ecology will process a simple,
12 basic application in six months and an application of intermediate
13 difficulty in one year. The department of ecology shall report to the
14 task force, within fifteen days of the end of each calendar quarter,
15 the number of applications that were not processed within this time
16 frame and the reasons for the delay.

17 (3) The task force shall report annually to the legislature on the
18 success measures established, the number of water right permit
19 decisions made, and the associated costs of administering the water
20 rights program.

21 (4) The legislature may provide for another state entity or an
22 independent contractor to conduct periodic performance audits or
23 evaluations of the effectiveness and efficiency of the department of
24 ecology in meeting its workload standards and achieving programmatic
25 success.

26 (5) This section shall expire December 31, 1998.

27 **Sec. 51.** 1993 c 495 s 3 (uncodified) is amended to read as
28 follows:

29 (1) There is created a water rights ((fees)) programs review task
30 force. The task force shall be comprised of ((fourteen)) sixteen
31 members, who are appointed as follows:

32 (a) Two members of the Washington state house of representatives,
33 one from each major caucus, to be appointed by the speaker of the house
34 of representatives;

35 (b) Two members of the Washington state senate, one from each major
36 caucus, to be appointed by the president of the senate;

37 (c) ((Ten)) Twelve members, to be appointed jointly by the speaker
38 of the house of representatives and the president of the senate, to

1 represent the following interests: Agriculture, aquaculture, business,
2 cities, counties, the state department of ecology, environmentalists,
3 water recreation interests, water utilities, federally recognized
4 Indian tribes, rural residential interests, and hydropower interests.
5 ((The task force may establish technical advisory committees as
6 necessary to complete its tasks.))

7 (2) In addition to the functions established in section 50 of this
8 act, the task force shall conduct a ((comprehensive)) review ((of water
9 rights fees. The task force's tasks shall include)), including but not
10 ((be)) limited to the following matters:

11 (a) ((Identification of the costs associated with the various
12 activities and services provided by the water rights program and
13 examination of how these costs compare with the fees charged for these
14 activities and services;

15 (b) Identification of appropriate accountability measures for the
16 department of ecology to employ in administration of the water rights
17 program. Recommendations of accountability requirements and
18 measurements shall take into account the distinctive characteristics of
19 the water rights program, that is, that the department receives a large
20 number of applications on a one-time basis and that the department of
21 ecology must meet its legal obligations under the doctrine of prior
22 appropriation;

23 (c) Identification of which program activities should be eligible
24 for cost recovery from fees, as well as which direct and indirect costs
25 of program administration;

26 (d) Review of the application, examination, and water rights permit
27 requirements for marine water users to determine if these users should
28 receive special fee consideration;

29 (e) Review of the definition and treatment of nonconsumptive water
30 uses to determine if special fee consideration should be given to these
31 users;

32 (f) Review of the fees and accounting methods for the dam safety
33 program;

34 (g) Identification of the appropriate distribution of
35 responsibility between the applicant and the department of ecology for
36 provision of technical information and analysis; and

37 (h) Establishment of a reasonable time framework for completion of
38 new and pending water rights applications, and an analysis of the staff
39 and funding levels required to meet the established time framework))

1 Implementation of the development and maintenance of the water resource
2 data management system, monitored on an annual basis;

3 (b) The use and amount of funds available for the water right
4 permit processing and data management programs;

5 (c) The water rights programs review task force will conduct a
6 study to determine potential savings and efficiencies attainable by
7 integrating all water resource data management functions among natural
8 resource management agencies into a single data management system
9 compared with the savings and efficiencies currently realized by each
10 natural resource management agency maintaining independent water
11 resource information. In reviewing this matter, the task force will
12 work with the natural resource management agencies to determine the
13 nature and extent of each natural resource management agency's:

14 (i) Existing water resource data;

15 (ii) Existing water resource data management system or systems;

16 (iii) Dependence on water resource data to fulfill agency
17 responsibilities;

18 (iv) Types of water resource data unique to that agency;

19 (v) Types of water resource data common to all natural resource
20 agencies;

21 (vi) Method of managing water resources information, including an
22 assessment of the compatibility of information management systems
23 between natural resource management agencies, and the obstacles
24 inhibiting integration and subsequent free exchange of water resource
25 data between natural resource management agencies; and

26 (vii) Biennial cost of acquiring and maintaining each type of water
27 resource data used by the agency.

28 For the purposes of this section, a "natural resource management
29 agency" includes any of the following state agencies: Department of
30 ecology, department of natural resources, department of fish and
31 wildlife, local conservation districts, and department of health.

32 The report shall be presented to the legislature on or before
33 December 1, 1995; and

34 (d) In conjunction with the review required in (a) and (b) of this
35 subsection, the task force shall recommend, by December 1, 1995,
36 appropriate future funding sources for data management development.

37 (3) On June 1, 1998, the task force shall be reactivated in
38 accordance with subsection (1) of this section. Before December 1,

1 ((1993)) 1998, the task force shall provide recommendations to the
2 legislature regarding:

3 (a) ((Provide recommendations to the department of ecology on ways
4 to improve the efficiency and accountability of the water rights
5 program;

6 (b) Provide recommendations to the legislature on statutory changes
7 necessary to make these efficiency and accountability improvements; and

8 (c) Propose a new fee schedule for the water rights program which
9 incorporates the results of the task force's work and which funds
10 through fees fifty percent of the cost of the activities and services
11 provided by the program)) The efficiency and accountability of the
water right permit processing program and the need for change to the
level of funding in fiscal year 2000;

14 (b) The future direction of the water resource data management
15 program and the need for changes to the level of funding in fiscal year
16 2000; and

17 (c) Review, and if determined to be needed, modify the fee schedule
18 to fund the water right permit processing program.

19 (4) The department of ecology and the legislature shall jointly
20 provide for the staff support of the task force.

21 (5) The task force shall convene as soon as possible upon the
22 appointment of its members. Task force members shall elect a chair and
23 adopt rules for conducting the business of the task force. The task
24 force shall expire on June 30, ((1994)) 1999.

25 **Sec. 52.** RCW 89.30.001 and 1933 c 149 s 1 are each amended to read
26 as follows:

27 Reclamation districts including an area of not less than one
28 million acres of land may be created and maintained in this state, as
29 herein provided, for the reclamation and improvement of arid and
30 semiarid lands situated in such districts, and for the generation
31 and/or sale of hydroelectric energy((: PROVIDED, That no
32 appropriation, license, filing, recording, examination or other fee or
33 fees, as provided in RCW 90.16.050 through 90.16.090 or in RCW
34 90.03.470 shall be applicable to a district or districts created under
35 this chapter)).

36 **Sec. 53.** RCW 90.40.090 and 1988 c 127 s 83 are each amended to
37 read as follows:

1 An application filed by the department of ecology or its assignee,
2 the United States Bureau of Reclamation, for a permit to appropriate
3 waters of the Columbia River under chapter 90.03 RCW, for the
4 development of the Grand Coulee project shall be perfected in the same
5 manner and to the same extent as though such appropriation had been
6 made by a private person, corporation or association((, but no fees, as
7 provided for in RCW 90.03.470, shall be required)).

Sec. 54. RCW 90.46.020 and 1992 c 204 s 3 are each amended to read as follows:

10 (1) The department of ecology shall, in coordination with the
11 department of health, develop ((interim)) standards for ((pilot
12 projects under subsection (3) of this section on or before July 1,
13 1992, for)) the use of reclaimed water in land applications.

14 (2) The department of health shall, in coordination with the
15 department of ecology, develop ((interim)) standards for ((pilot
16 projects under subsection (3) of this section on or before November 15,
17 1992, for)) the use of reclaimed water in commercial and industrial
18 activities.

19 (3) The department of ecology and the department of health shall
20 assist interested parties in the development of ((pilot)) projects to
21 aid in achieving the purposes of this chapter.

22 NEW SECTION. **Sec. 55.** RCW 90.03.471 and 1987 c 109 s 99 & 1925
23 ex.s. c 161 s 3 are each repealed.

24 NEW SECTION. **Sec. 56.** Section 35 of this act shall take effect
25 January 2, 1996.

PART VII

MISCELLANEOUS

28 NEW SECTION. **Sec. 57.** Captions and part headings used in this act
29 do not constitute any part of the law.

NEW SECTION. **Sec. 58.** Sections 2 through 19 of this act shall constitute a new chapter in Title 43 RCW.

1 NEW SECTION. **Sec. 59.** Sections 20 through 23 of this act apply
2 prospectively only and not retrospectively. Sections 20 through 23 of
3 this act apply only to determinations, orders, or causes of action
4 commenced on or after July 1, 1995.

5 NEW SECTION. **Sec. 60.** (1) Sections 31 and 32 of this act are
6 necessary for the immediate preservation of the public peace, health,
7 or safety, or support of the state government and its existing public
8 institutions, and shall take effect immediately.

9 (2) Sections 20 through 23, 33, 34, 55, 59, and 61 of this act are
10 necessary for the immediate preservation of the public peace, health,
11 or safety, or support of the state government and its existing public
12 institutions, and shall take effect July 1, 1995.

13 NEW SECTION. **Sec. 61.** The sum of five hundred thousand dollars,
14 or as much thereof as may be necessary, is appropriated for the
15 biennium ending June 30, 1997, from the water escrow account to the
16 department of ecology for the purposes of costs of any basin-wide water
17 rights adjudications cases in existence on the effective date of this
18 section.

--- END ---