

2 **2SHB 2054** - S AMD - 490
3 By Senator Morton

4 RULED OUTSIDE SCOPE AND OBJECT - 4/18/97

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

7 **"PART I**
8 **BASIN PLANS**

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

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

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

1 NEW SECTION. **Sec. 103.** When considering applications to
2 appropriate public waters or the perfection, transfer, change, or
3 cancellation of water right permits, the department shall not have
4 discretion to take any action except in a manner consistent with the
5 standards set forth in chapters 90.03, 90.22, 90.44, and 90.54 RCW.

6 NEW SECTION. **Sec. 104.** Unless the context clearly requires
7 otherwise, the definitions in this section apply throughout this
8 chapter.

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

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

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

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

20 NEW SECTION. **Sec. 105.** In order to have the best possible program
21 for appropriating and administering water use in the state, the
22 legislature establishes the following principles and criteria to carry
23 out the purpose and intent of chapter . . ., Laws of 1997 (this act).

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

29 (2) State agencies with major water resource management
30 responsibilities shall be available to share information on state-wide
31 statutorily designated interests.

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

1 **NEW SECTION.** **Sec. 106.** (1) Once a WRIA planning unit has been
2 organized and designated a lead agency, it shall notify the department
3 and may apply to the department for funding assistance for conducting
4 the planning. Funds shall be provided from and to the extent of
5 appropriations made by the legislature to the department expressly for
6 this purpose.

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

17 (3) Preference shall be given to planning units requesting funding
18 for conducting multi-WRIA planning under section 109 of this act.
19 Preference shall also be given to planning projects that are clearly
20 intended to respond to endangered species act listings or to attempt to
21 resolve problems that may lead to such listings or to address water
22 availability to meet projected growth based on office of financial
23 management twenty-year population projections.

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

26 **NEW SECTION.** **Sec. 107.** (1) This chapter shall not be construed as
27 creating a new cause of action against the state or any county, city,
28 town, water supply utility, conservation district, or planning unit.

29 (2) Notwithstanding RCW 4.92.090, 4.96.010, and 64.40.020, no claim
30 for damages may be filed against the state or any county, city, town,
31 water supply utility, Indian tribes, conservation district, or planning
32 unit that or member of a planning unit who participates in a WRIA
33 planning unit for performing responsibilities under this chapter. The
34 exclusion from liability contained in this subsection does not apply to
35 a county, city, town, or water supply utility that votes to adopt
36 provisions in a WRIA plan that have been identified by the superior
37 court as being in conflict with state statute or federal law with

1 regard to those provisions if advice regarding the conflict was
2 provided under section 113(2) of this act.

3 **NEW SECTION.** **Sec. 108.** (1)(a) Except as provided in section 109 of
4 this act for multi-WRIA planning, the county with the largest area
5 within the boundaries of a WRIA or a municipal corporation obtaining
6 its water supply from the WRIA may choose to initiate water resource
7 planning for the WRIA under this chapter. If it does so choose, it
8 shall make application to the department of ecology to declare its
9 intent to conduct watershed planning. Upon making application to the
10 department, the county with the largest area within the WRIA shall
11 convene meetings of the members of the legislative authorities of the
12 counties with territory within a WRIA for the appointment of a WRIA
13 planning unit. The county or municipal corporation shall also notify
14 the cities, water supply utilities, Indian tribes, and conservation
15 districts with territory within the WRIA that these groups are to meet
16 to appoint their members of the WRIA planning unit. For the purposes
17 of this section and sections 109 and 113 of this act, a county is
18 considered to have territory within a WRIA only if the territory of the
19 county located in the WRIA constitutes at least fifteen percent of the
20 area of the WRIA. For conducting planning under this chapter, the
21 county with the largest area within the boundaries of the WRIA is the
22 lead agency for the WRIA planning, except as provided in section 109 of
23 this act for multi-WRIA planning. When the counties of a WRIA have
24 convened jointly to make appointments to the planning unit, they may,
25 by a majority vote, choose as the lead agency for WRIA planning any
26 governmental entity in the WRIA. Such a governmental entity shall act
27 as the lead agency for this purpose if it agrees in writing to accept
28 the designation.

29 (b) For a WRIA located within Pierce, King, or Snohomish county,
30 the lead agency shall be the water supply utility that is using the
31 largest amount of water from the WRIA.

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

1 (3)(a) One WRIA planning unit shall be appointed for the WRIA as
2 provided by this section or for a multi-WRIA area as provided by
3 section 109 of this act for multi-WRIA planning. The planning unit
4 shall be composed of: (i) One member from each county with territory
5 in the WRIA representing the county and appointed by the county; (ii)
6 one member for each county with territory in the WRIA, but not less
7 than two members, representing cities with territory in the WRIA and
8 appointed jointly by those cities and incorporated towns; (iii) two
9 members representing water supply utilities other than those of a city
10 or town with territory within the WRIA and appointed jointly by those
11 districts; (iv) one member representing all conservation districts with
12 territory within the WRIA and appointed jointly by those districts; (v)
13 three members representing various special interest groups appointed
14 jointly by the cities with territory within the WRIA; and six members
15 representing various special interest groups appointed jointly by the
16 counties with territory within the WRIA; (vi) one member representing
17 the general citizenry appointed jointly by the cities with territory
18 within the WRIA; (vii) three members representing the general citizenry
19 appointed jointly by the counties with territory in the WRIA, of which
20 at least one shall be a holder of a water right certificate and at
21 least one shall be a holder of a water right for which a statement of
22 claim was in the state's water rights claims registry before January 1,
23 1997; (viii) if one or more federal Indian reservations are located in
24 whole or in part within the boundaries of the WRIA, the planning unit
25 shall extend an invitation to the tribal government of each reservation
26 to appoint one member representing the tribal government; and (ix)
27 three members representing state agencies including the secretary of
28 the department of transportation or the secretary's designee, the
29 director of the department of fish and wildlife or the director's
30 designee, and the director of the department of ecology or the
31 director's designee. The three members representing state government
32 shall have a single vote representing state agency interests.

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

38 (4) Except for a person appointed under subsection (3)(a)(ix) or
39 (b) of this section, each person appointed to a WRIA planning unit

1 shall have been a resident and a property owner of the WRIA for at
2 least three years. State employees or state officials other than
3 members appointed under subsection (3)(a)(ix) or (b) of this section
4 may be appointed to the planning unit unless they have state water
5 resource-related duties. In appointing persons to the WRIA planning
6 unit representing special interest groups, the counties shall consider
7 industrial water users, general businesses, hydroelectric and thermal
8 power producers, and irrigated agriculture, nonirrigated agriculture,
9 forestry, recreation, environmental, and fisheries interest groups and
10 other groups with interests in the WRIA. Counties shall attempt to
11 provide for a balanced group of interests on the planning unit, with
12 emphasis given to local interests and concerns.

13 (5)(a) In voting to appoint the members of a WRIA planning unit, to
14 select a lead agency for water resource planning under section 108 or
15 109 of this act, to approve a WRIA plan under section 113 of this act,
16 or to request or concur with a request for multi-WRIA planning under
17 section 109 of this act, each county with territory within the WRIA
18 shall have three votes, divided equally among the members of the
19 county's legislative authority and these actions shall be made by
20 majority vote based on the votes allocated under this section. In
21 voting to appoint members of a WRIA planning unit: Each city with
22 territory within the WRIA shall have one vote and appointments shall be
23 made by majority vote of such cities; each water supply utility other
24 than those of a city or town with territory within the WRIA shall have
25 one vote and appointments shall be made by majority vote of such
26 districts; and each conservation district with territory within the
27 WRIA shall have one vote and appointments shall be made by majority
28 vote of such districts. All appointments shall be made within sixty
29 days of the date the appointing authorities other than the counties are
30 notified to convene to make appointments or the appointments shall be
31 made by the counties with territory in the WRIA in the same manner the
32 counties make other appointments.

33 (b) The local governments of the WRIA planning unit may, by
34 majority vote, add up to two additional members representing interests
35 that are not included in the planning unit.

36 (c) A vacancy on the planning unit shall be filled by appointment
37 in the same manner prescribed for appointing the position that has
38 become vacant. The planning unit shall convene and begin work as soon
39 as two-thirds of the number of persons eligible to be members of the

1 planning unit have been appointed. All positions must be filled within
2 thirty days of the convening of the planning unit. The unit shall not
3 interrupt its work to await additional original appointments or
4 appointments to fill any vacancies that may occur in its membership.

5 **NEW SECTION.** **Sec. 109.** (1) The counties with territory in a WRIA
6 may elect to conduct multi-WRIA planning with the counties with
7 territory in one or more other WRRIAs. If the counties with territory
8 in these other WRRIAs concur, all of the counties with territory in
9 these WRRIAs shall convene and shall appoint one planning unit to
10 conduct the water resource planning for the multi-WRIA area.

11 (a) The planning unit shall be composed of: (i) Up to one member,
12 as that number is determined by the counties jointly, for each county
13 with territory in the multi-WRIA area representing the counties and
14 appointed by the counties jointly; (ii) up to one member, as that
15 number is determined by the cities jointly, for each county with
16 territory in the multi-WRIA area, representing cities with territory in
17 the multi-WRIA area and appointed jointly by those cities; (iii) up to
18 three members, as that number is determined by the districts,
19 representing water supply utilities other than those of a city or town
20 with territory within the multi-WRIA area and appointed jointly by
21 those districts; (iv) up to two members, as that number is determined
22 by the districts, representing all conservation districts with
23 territory within the multi-WRIA area and appointed jointly by those
24 districts; (v) three members representing various special interest
25 groups appointed jointly by the cities with territory within the multi-
26 WRIA area; and six members representing various special interest groups
27 appointed jointly by the counties with territory within the multi-WRIA
28 area; (vi) one member representing the general citizenry appointed
29 jointly by the cities with territory within the multi-WRIA area; (vii)
30 three members representing the general citizenry appointed jointly by
31 the counties with territory in the multi-WRIA area, of which at least
32 one shall be a holder of a water right certificate and at least one
33 shall be a holder of a water right for which a statement of claim was
34 in the state's water rights claims registry before January 1, 1997;
35 (viii) if one or more federal Indian reservations are located in whole
36 or in part within the boundaries of the multi-WRIA area, the planning
37 unit shall extend an invitation to the tribal government of each
38 reservation to appoint one member representing the tribal government;

1 and (ix) three members representing state agencies including the
2 secretary of the department of transportation or the secretary's
3 designee, the director of the department of fish and wildlife or the
4 director's designee, and the director of the department of ecology or
5 the director's designee. The three members representing state
6 government shall have a single vote representing state agency
7 interests.

8 (b) In addition, for a multi-WRIA planning unit located within
9 Pierce, King, or Snohomish county, one representative of the water
10 purveyor using the largest amount of water from the multi-WRIA area
11 shall be a voting member of the planning unit whether the principal
12 offices of the purveyor are or are not located within the multi-WRIA
13 area.

14 (c) Except for a person appointed under (a)(ix) or (b) of this
15 subsection, each person appointed to a multi-WRIA planning unit shall
16 have been a resident and property owner within the multi-WRIA area for
17 at least three years. State employees or state officials other than
18 members appointed under subsection (a)(ix) or (b) of this subsection
19 may be appointed to the planning unit unless they have state water
20 resource-related duties. In appointing persons to the multi-WRIA
21 planning unit representing special interest groups the counties shall
22 consider industrial water users, general businesses, hydroelectric and
23 thermal power producers, and irrigated agriculture, nonirrigated
24 agriculture, forestry, recreation, environmental, and fisheries
25 interest groups and other groups with interests in the multi-WRIA area.
Counties shall attempt to provide for a balanced group of interests on
the planning unit, with emphasis given to local interests and concerns.

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

33 (3)(a) The counties in the multi-WRIA area shall select, by a
34 majority vote, a governmental entity in the multi-WRIA area to act as
35 lead agency for water resource planning in the multi-WRIA area under
36 this chapter. Such an entity shall serve as the lead agency if it
37 agrees in writing to do so. All appointments shall be made within

1 sixty days of the date the lead agency in the multi-WRIA area notifies
2 the other appointing authorities to convene to make appointments or the
3 appointments shall be made by the counties with territory in the multi-
4 WRIA area in the same manner the counties make other appointments.

5 (b) The local governments of the WRIA planning unit may, by
6 majority vote, add up to two additional members representing interests
7 that are not included in the planning unit.

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

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

20 **NEW SECTION.** **Sec. 110.** The lead agency shall provide staff
21 support from resources provided for planning under chapter . . ., Laws
22 of 1997 (this act) for the work of the WRIA planning unit. Each WRIA
23 planning unit may establish its own methods of operation that are
24 consistent with this chapter and may establish methods for reviewing
25 the operations of its lead agency. No planning unit appointed or
26 selected under this chapter may possess or exercise the power of
27 eminent domain. No planning unit appointed or selected under this
28 chapter may take any action that affects in any manner a general
29 adjudication proceeding for water rights, completed or ongoing. Each
30 WRIA planning unit is encouraged to: Consider information and plans
31 that may have been previously developed by other entities in
32 establishing water resource management plans for the WRIA; consider
33 existing data regarding water resources in the WRIA; and, for a WRIA
34 that borders another state, cooperate with local government
35 counterparts in the adjacent state regarding water resource planning.
36 Water resource plans developed under this chapter for a WRIA may not
37 interfere in any manner with a general adjudication of water rights,
38 completed or ongoing. Such a WRIA plan may not in any manner impair,

1 diminish, or interfere with a water right that exists before the
2 adoption of the plan by the department under section 113 of this act.

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

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

25 **NEW SECTION.** **Sec. 111.** (1) Each WRIA planning unit shall develop
26 a water resource plan. The plan must address the elements listed in
27 subsection (2) of this section and may include other elements added by
28 the planning unit. Once organized, the first task of the planning unit
29 is to prioritize these elements regarding their importance in the WRIA
30 and in developing a water resource plan for the WRIA. A plan shall not
31 be developed such that its provisions are in conflict with state
32 statute or federal law or impair, diminish, or interfere in any manner
33 with a water right existing prior to its adoption or with the
34 construction, operation, or maintenance of a federal reclamation
35 project or an instream flow requirement or condition established for
36 hydroelectric power project licensed under the federal power act. No
37 aspect of the plan may establish standards for water quality or
38 regulate water quality in any manner whatsoever.

1 (2) The plan must include the following:

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

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

6 (ii) A quantitative estimation using existing sources of
7 information, of the amount of precipitation and surface and ground
8 water available, using currently available or likely available
9 technologies, collectively for both current and future water uses,
10 including for instream purposes and for withdrawal or diversion;

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

18 (iv) A quantitative estimation of the amount of water,
19 approximately, that is represented by amounts in claims in the water
20 rights claims registry, in water use permits, in certificated rights,
21 and in rules establishing instream flows;

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

31 (c) Instream flows.

32 (i) Except for the main stem of the Columbia river or the main stem
33 of the Snake river, a planning unit may propose instream flow levels as
34 part of its plan for other rivers and streams in its WRIA or multi-WRIA
35 area.

36 (ii) The planning unit, by unanimous recorded vote of all voting
37 members, may set specific instream flow levels, and such flow levels
38 shall be adopted by rule of the department.

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

6 (iv) Instream flow levels proposed under this subsection may not
7 conflict with flow requirements or conditions in effect under a license
8 issued under the federal power act.

9 (v) The planning unit may propose adjustments to instream flow
10 levels that have been set by the state before the adoption of the
11 planning unit's plan and will propose instream flow levels as part of
12 the plan for the other rivers, streams, and lakes for which it
13 determines the establishment of flows or levels to be appropriate in
14 the WRIA, or in the multi-WRIA area for multi-WRIA planning under
15 section 109 of this act.

16 (vi) The planning unit, by unanimous recorded vote of all voting
17 members, may adjust established instream flow levels, and such flow
18 levels shall be adopted by rule of the department.

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

24 (viii) An instream flow or base flow or level set for a body of
25 water in a WRIA plan adopted by the department under section 113 of
26 this act supersedes any other such flow or level previously established
27 for the body of water;

28 (d) A quantitative description of the ground water and of the
29 surface water available for further appropriation including water that
30 may be obtained through reuse. As used in this subsection (2)(d),
31 "available" means available on the date the plan takes effect as a rule
32 under section 113 of this act;

33 (e) An identification of known areas that provide for the recharge
34 of aquifers from the surface and areas where aquifers recharge surface
35 bodies of water;

36 (f) Strategies for increasing water supplies in the WRIA,
37 including:

38 (i) Water conservation and reuse measures; and

1 (ii) Storage enhancements, including modifications to existing
2 reservoirs, new reservoirs, and underground storage. Any quantity of
3 water made available under these strategies is a quantity that is in
4 addition to the water declared available for appropriation under (d) of
5 this subsection; and

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

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

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

27 NEW SECTION. **Sec. 112.** (1) Water resource management plans
28 developed pursuant to the process in this chapter and subsequently
29 adopted by the department under section 113 of this act are presumed
30 valid. This presumption shall apply in any petition or action filed
31 against a plan.

32 (2) Any action taken by a state agency regarding or affecting water
33 resources within a WRIA for which a plan has been adopted under section
34 113 of this act and any planning conducted by a state agency regarding
35 or affecting water resources within a WRIA for which a plan has been
36 adopted under section 113 of this act shall be taken or conducted in a
37 manner that is consistent with the plan. All actions and decisions of
38 the department regarding water resources in the WRIA shall be

1 consistent with and based upon such an adopted plan for the WRIA. Any
2 other authority of the department exercised within the WRIA regarding
3 or affecting water resources shall be exercised in a manner that is
4 consistent with such an adopted plan.

5 **NEW SECTION.** **Sec. 113.** (1) Upon completing a proposed water
6 resource plan for the WRIA, the WRIA planning unit shall publish notice
7 of and conduct at least one public hearing in the WRIA on the proposed
8 plan. The planning unit shall take care to provide notice of the
9 hearing throughout the WRIA or multi-WRIA area. As a minimum, it shall
10 publish a notice of the hearing in one or more newspapers of general
11 circulation in the WRIA or multi-WRIA area. After considering the
12 public comments presented at the hearing or hearings, the planning unit
13 shall submit a copy of its proposed plan to the department and to the
14 tribal council of each reservation with territory within the WRIA.

15 (2)(a) The department shall provide advice as to any specific
16 subsections or sections of the plan that the department believes to be
17 in conflict with state statute or federal law and may provide other
18 recommendations regarding the plan. The department shall transmit its
19 advice and recommendations regarding the plan to the WRIA planning unit
20 within sixty days of receiving it for review.

21 (b) The tribal council may review and provide comments and
22 recommendations to the planning unit within sixty days of the receipt
23 of the plan.

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

29 The WRIA planning unit shall approve a water resource plan for the
30 WRIA by a two-thirds majority vote of the members of the planning unit.
31 An approved plan shall be submitted to the counties with territory
32 within the WRIA for adoption. If a WRIA planning unit receives funding
33 for WRIA or multi-WRIA planning under section 106 of this act and does
34 not approve a plan for submission to the counties within four years of
35 the date the planning unit receives the first of that funding from the
36 department for the planning, the department shall develop and adopt a
37 water resource plan for the WRIA or multi-WRIA area.

1 (4) The legislative authority of each of the counties with
2 territory within the WRIA shall provide public notice for and conduct
3 at least one public hearing on the WRIA plan submitted to the county
4 under this section. The counties shall take care to provide notice of
5 the hearings throughout the WRIA or multi-WRIA area. As a minimum,
6 they shall publish a notice of the hearings in one or more newspapers
7 of general circulation in the WRIA or multi-WRIA area. After the
8 public hearings, the legislative authorities of these counties shall
9 convene in joint session to consider the plan. The counties may
10 approve or reject the plan, but may not amend the plan. Approval of a
11 plan, or of recommendations for a plan that is not approved, shall be
12 made by a majority vote of the members of the various legislative
13 authorities of the counties with territory in the WRIA based on the
14 votes allocated under section 108 of this act.

15 If the plan is not approved, it shall be returned to the WRIA
16 planning unit with recommendations for revisions. Any revised plan and
17 implementing rules prepared by the planning unit shall be submitted to
18 the department and to the counties as provided by this section for WRIA
19 water resource plans generally.

20 (5) If the plan is approved by the members of the legislative
21 authorities, the plan shall be transmitted to the department for
22 adoption. The department shall adopt such an approved WRIA water
23 resource plan by rule. The department has no discretion to amend or
24 reject the plan except as provided in section 111(2)(c) (iii) or (vii)
25 of this act. A copy of the plan and notice of its adoption as rules
26 shall be published in the state register under chapter 34.05 RCW. The
27 public hearing required by chapter 34.05 RCW shall be deemed to have
28 been satisfied by public hearings held by county legislative
29 authorities.

30 (6) If the department finds that an element of a WRIA plan is in
31 conflict with state statute or federal law and the unit does not remove
32 the conflict created by the element from its plan, the state is not
33 liable for any judgment that may be awarded regarding the conflict.
34 The department may file a petition for declaratory judgment in the
35 superior court to determine whether the element is or is not in
36 conflict with state statute or federal law. The petition shall be
37 filed in the superior court in the county with the largest area in the
38 WRIA or multi-WRIA area governed by the plan. The counties that
39 approved the plan shall be named as parties to the proceeding. The

1 superior court shall review the potential conflict under the error of
2 law standard. If the superior court finds that an element of the plan
3 is in conflict with state statute or federal law, that element of the
4 plan shall be invalid. Decisions on such petitions are reviewable as
5 in other civil cases. This subsection shall not be construed as
6 establishing such state liability for any other element of the plan
7 adopted as rules.

8 **NEW SECTION.** **Sec. 114.** The WRIA planning units may accept grants,
9 funds, and other financing, as well as enter into cooperative
10 agreements with private and public entities for planning assistance and
11 funding.

12 **NEW SECTION.** **Sec. 115.** A new section is added to chapter 90.03
13 RCW to read as follows:

14 (1) The department shall rule in a timely manner upon complete
15 applications to appropriate public surface and ground water. For
16 complete applications that seek to appropriate water from within a WRIA
17 for which a WRIA plan has been adopted, the department shall grant or
18 deny the application within one hundred eighty days of the date the
19 properly completed application is filed with the department, except as
20 provided in subsection (2) of this section. For applications filed
21 after July 1, 1999, that seek to appropriate water from within a WRIA
22 for which no WRIA plan has been adopted, the department shall grant or
23 deny the application within one year of the date the properly completed
24 application is filed with the department, except as provided in
25 subsection (2) of this section. The times allowed in this section to
26 rule upon an application shall not include the time it takes the
27 applicant to respond to an explicit request for additional information
28 reasonably required to make a determination on the application. The
29 department shall be allowed only one such request for additional
30 information. The cost of obtaining such information shall be
31 reasonable in relation to the quantity and value of the water right
32 applied for. Once the applicant responds to an information request,
33 the stay of the time allowed for the permit decision shall end.

34 (2) If a detailed statement, generally referred to as an
35 environmental impact statement, must be prepared under chapter 43.21C
36 RCW for or in regard to an application to appropriate water, the
37 department shall grant or deny the application within ninety days of

1 the date the final environmental impact statement is available from the
2 official responsible for it under chapter 43.21C RCW.

3 **NEW SECTION.** **Sec. 116.** A new section is added to chapter 34.05
4 RCW to read as follows:

5 (1) Once the department of ecology receives a water resource plan
6 submitted by a WRIA planning unit for advice and recommendations under
7 section 113 of this act, the department shall conduct at least one
8 public hearing on the plan and shall provide notice of the hearing and
9 proposed plan as provided in RCW 34.05.320 for the proposal of a rule.
10 The department shall maintain a file for the plan. Once the plan has
11 been adopted by the counties in the WRIA under section 113 of this act
12 and the plan has been submitted to the department of ecology, the
13 department shall file the plan with the code reviser along with an
14 order adopting the plan as rules. The code reviser shall cause the
15 order and the water resource plan to be published in the Washington
16 state register in the manner provided for the adoption of final rules
17 and shall incorporate the plan into the Washington Administrative Code.
18 No other aspect of this chapter that establishes procedures for the
19 adoption of rules applies to the adoption of the plan by the
20 department.

21 (2) For the purposes of this section, "WRIA" has the meaning
22 established in section 104 of this act.

23 **Sec. 117.** RCW 90.54.040 and 1997 c ... s 2 (Senate Bill 5029) are
24 each amended to read as follows:

25 (1) Consistent with chapter . . ., Laws of 1997 (this act) the
26 department, through the adoption of appropriate rules, is directed, as
27 a matter of high priority to insure that the waters of the state are
28 utilized for the best interests of the people, to develop and implement
29 in accordance with the policies of this chapter a comprehensive state
30 water resources program which will provide a process for making
31 decisions on future water resource allocation and use. The department
32 may develop the program in segments so that immediate attention may be
33 given to waters of a given physioeconomic region of the state or to
34 specific critical problems of water allocation and use.

35 (2) In relation to the management and regulatory programs relating
36 to water resources vested in it, the department is further directed to
37 modify existing regulations and adopt new regulations, when needed and

1 possible, to insure that existing regulatory programs are in accord
2 with the water resource policy of this chapter and the program
3 established in subsection (1) of this section.

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

PART II

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

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

21 (1) Uses of water for domestic, stock watering, industrial,
22 commercial, agricultural, irrigation, hydroelectric power production,
23 mining, fish and wildlife maintenance and enhancement, recreational,
24 and thermal power production purposes, and preservation of
25 environmental and aesthetic values, and all other uses compatible with
26 the enjoyment of the public waters of the state, are declared to be
27 beneficial.

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

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

34 (a) Perennial rivers and streams of the state shall be retained
35 with base flows necessary to provide for preservation of wildlife,
36 fish, scenic, aesthetic and other environmental values, and
37 navigational values. Lakes and ponds shall be retained substantially

1 in their natural condition. Withdrawals of water which would conflict
2 therewith shall be authorized only in those situations where it is
3 clear that overriding considerations of the public interest will be
4 served.

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

19 (i) The municipality demonstrates that the intake water is drawn
20 from the same body of water into which the discharge is made; and
21 (ii) The municipality demonstrates that no violation of receiving
22 water quality standards or appreciable environmental degradation will
23 result.

24 (4) The development of multipurpose water storage facilities shall
25 be a high priority for programs of water allocation, planning,
26 management, and efficiency. The department, other state agencies,
27 local governments, and planning units formed under section 108 or 109
28 of this act shall evaluate the potential for the development of new
29 storage projects and the benefits and effects of storage in reducing
30 damage to stream banks and property, increasing the use of land,
31 providing water for municipal, industrial, agricultural, power
32 generation, and other beneficial uses, and improving stream flow
33 regimes for fisheries and other instream uses.

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

36 ((+5+)) (6) Multiple-purpose impoundment structures are to be
37 preferred over single-purpose structures. Due regard shall be given to
38 means and methods for protection of fishery resources in the planning

1 for and construction of water impoundment structures and other
2 artificial obstructions.

3 ((+6)) (7) Federal, state, and local governments, individuals,
4 corporations, groups and other entities shall be encouraged to carry
5 out practices of conservation as they relate to the use of the waters
6 of the state. In addition to traditional development approaches,
7 improved water use efficiency and conservation shall be emphasized in
8 the management of the state's water resources and in some cases will be
9 a potential new source of water with which to meet future needs
10 throughout the state.

11 ((+7)) (8) Development of water supply systems, whether publicly
12 or privately owned, which provide water to the public generally in
13 regional areas within the state shall be encouraged. Development of
14 water supply systems for multiple domestic use which will not serve the
15 public generally shall be discouraged where water supplies are
16 available from water systems serving the public.

17 ((+8)) (9) Full recognition shall be given in the administration
18 of water allocation and use programs to the natural interrelationships
19 of surface and ground waters.

20 ((+9)) (10) Expressions of the public interest will be sought at
21 all stages of water planning and allocation discussions.

22 ((+10)) (11) Water management programs, including but not limited
23 to, water quality, flood control, drainage, erosion control and storm
24 runoff are deemed to be in the public interest.

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

27 Consistent with the fundamentals of water resource policy set forth
28 in this chapter, state and local governments, individuals,
29 corporations, groups and other entities shall be encouraged to carry
30 out water use efficiency and conservation programs and practices
31 consistent with the following:

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

36 (2) Increased water use efficiency should receive consideration as
37 a potential source of water in state and local water resource planning
38 processes. In determining the cost-effectiveness of alternative water

sources, consideration should be given to the benefits of conservation, including waste water recycling, and ((impoundment)) storage of waters.

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

10 (4) Entities receiving state financial assistance for construction
11 of water source expansion or acquisition of new sources shall develop,
12 and implement if cost-effective, a water use efficiency and
13 conservation element of a water supply plan pursuant to RCW
14 43.20.230(1).

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

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

PART III

GENERAL ADJUDICATIONS

30 NEW SECTION. Sec. 301. A new section is added to chapter 90.03
31 RCW to read as follows:

32 The legislature finds that the lack of certainty regarding water
33 rights within a water resource basin may impede management and planning
34 for water resources. The legislature further finds that planning units
35 conducting water resource planning under chapter 90.-- RCW (sections
36 101 through 114 of this act) may find that the certainty provided by a
37 general adjudication of water rights under this chapter is required for

water planning or water management in a water resource inventory area or in a portion of the area. Therefore, such planning units may petition the department to conduct such a general adjudication and the department shall give high priority to such a request in initiating any such general adjudications under this chapter.

PART IV

WATER PURVEYORS

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

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

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

29 (a) "Interties" are interconnections between public water systems
30 permitting exchange, acquisition, or delivery of wholesale and/or
31 retail water between those systems for other than emergency supply
32 purposes, where such exchange, acquisition, or delivery is within
33 established instantaneous and annual withdrawal rates specified in the
34 systems' existing water right permits or certificates, or contained in
35 claims filed pursuant to chapter 90.14 RCW, and which results in better
36 management of public water supply consistent with existing rights and
37 obligations. Interties include interconnections between public water

1 systems permitting exchange, acquisition, or delivery of water to serve
2 as primary or secondary sources of supply((, but do not include
3 development of new sources of supply to meet future demand)) and the
4 development of new sources of supply to meet future demands if the
5 water system or systems receiving water through such an intertie make
6 efficient use of existing sources of water supply and the provision of
7 water through such an intertie is consistent with local land use plans.
8 For this purpose, a system's full compliance with the state department
9 of health's conservation guidelines for such systems is deemed
10 efficient use.

11 (b) "Service area" is the area designated as the wholesale and/or
12 retail area in a water system plan or a coordinated water system plan
13 pursuant to chapter 43.20 or 70.116 RCW respectively. When a public
14 water system does not have a designated service area subject to the
15 approval process of those chapters, the service area shall be the
16 designated place of use contained in the water right permit or
17 certificate, or contained in the claim filed pursuant to chapter 90.14
18 RCW.

19 (3)(a) Public water systems with interties existing and in use as
20 of January 1, 1991, or that have received written approval from the
21 department of health prior to that date, shall file written notice of
22 those interties with the department of health and the department of
23 ecology. The notice may be incorporated into the public water system's
24 five-year update of its water system plan, but shall be filed no later
25 than June 30, 1996. The notice shall identify the location of the
26 intertie; the dates of its first use; the purpose, capacity, and
27 current use; the intertie agreement of the parties and the service
28 areas assigned; and other information reasonably necessary to modify
29 the public water system's water right ((permit)). Notwithstanding the
30 provisions of RCW 90.03.380 and 90.44.100, for public water systems
31 with interties existing and in use or with written approval as of
32 January 1, 1991, the department of ecology, upon receipt of notice
33 meeting the requirements of this subsection, shall, as soon as
34 practicable, modify the place of use descriptions in the water right
35 permits, certificates, or claims to reflect the actual use through such
36 interties, provided that the place of use is within service area
37 designations established in a water system plan approved pursuant to
38 chapter 43.20 RCW, or a coordinated water system plan approved pursuant
39 to chapter 70.116 RCW, and further provided that the water used is

1 within the instantaneous and annual withdrawal rates specified in the
2 water rights ((permit)) and that no outstanding complaints of
3 impairment to existing water rights have been filed with the department
4 of ecology prior to September 1, 1991. Where such complaints of
5 impairment have been received, the department of ecology shall make all
6 reasonable efforts to resolve them in a timely manner through agreement
7 of the parties or through available administrative remedies.

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

14 (4) Notwithstanding the provisions of RCW 90.03.380 and 90.44.100,
15 exchange, acquisition, or delivery of water through interties approved
16 by the department of health commencing use after January 1, 1991, shall
17 be permitted when the intertie improves overall system reliability,
18 enhances the manageability of the systems, provides opportunities for
19 conjunctive use, or delays or avoids the need to develop new water
20 sources, and otherwise meets the requirements of this section, provided
21 that each public water system's water use shall not exceed the
22 instantaneous or annual withdrawal rate specified in its water right
23 authorization, shall not adversely affect existing water rights, and
24 shall not be inconsistent with state-approved plans such as water
25 system plans or other plans which include specific proposals for
26 construction of interties. Interties approved and commencing use after
27 January 1, 1991, shall not be inconsistent with regional water resource
28 plans developed pursuant to chapter 90.54 RCW or chapter 90.-- RCW
29 (sections 101 through 114 of this act).

30 (5) For public water systems subject to the approval process of
31 chapter 43.20 RCW or chapter 70.116 RCW, proposals for interties
32 commencing use after January 1, 1991, shall be incorporated into water
33 system plans pursuant to chapter 43.20 RCW or coordinated water system
34 plans pursuant to chapter 70.116 RCW and submitted to the department of
35 health and the department of ecology for review and approval as
36 provided for in subsections (5) through (9) of this section. The plan
37 shall state how the proposed intertie will improve overall system
38 reliability, enhance the manageability of the systems, provide

1 opportunities for conjunctive use, or delay or avoid the need to
2 develop new water sources.

3 (6) The department of health shall be responsible for review and
4 approval of proposals for new interties. In its review the department
5 of health shall determine whether the intertie satisfies the criteria
6 of subsection (4) of this section, with the exception of water rights
7 considerations, which are the responsibility of the department of
8 ecology, and shall determine whether the intertie is necessary to
9 address emergent public health or safety concerns associated with
10 public water supply.

11 (7) If the intertie is determined by the department of health to be
12 necessary to address emergent public health or safety concerns
13 associated with public water supply, the public water system shall
14 amend its water system plan as required and shall file an application
15 with the department of ecology to change its existing water right to
16 reflect the proposed use of the water as described in the approved
17 water system plan. The department of ecology shall process the
18 application for change pursuant to RCW 90.03.380 or 90.44.100 as
19 appropriate, except that, notwithstanding the requirements of those
20 sections regarding notice and protest periods, applicants shall be
21 required to publish notice one time, and the comment period shall be
22 fifteen days from the date of publication of the notice. Within sixty
23 days of receiving the application, the department of ecology shall
24 issue findings and advise the department of health if existing water
25 rights are determined to be adversely affected. If no determination is
26 provided by the department of ecology within the sixty-day period, the
27 department of health shall proceed as if existing rights are not
28 adversely affected by the proposed intertie. The department of ecology
29 may obtain an extension of the sixty-day period by submitting written
30 notice to the department of health and to the applicant indicating a
31 definite date by which its determination will be made. No additional
32 extensions shall be granted, and in no event shall the total review
33 period for the department of ecology exceed one hundred eighty days.

34 (8) If the department of health determines the proposed intertie
35 appears to meet the requirements of subsection (4) of this section but
36 is not necessary to address emergent public health or safety concerns
37 associated with public water supply, the department of health shall
38 instruct the applicant to submit to the department of ecology an
39 application for change to the underlying water right or claim as

1 necessary to reflect the new place of use. The department of ecology
2 shall consider the applications pursuant to the provisions of RCW
3 90.03.380 and 90.44.100 as appropriate. The department of ecology
4 shall not deny or limit a change of place of use for an intertie on the
5 grounds that the holder of a permit has not yet put all of the water
6 authorized in the permit to beneficial use. If in its review of
7 proposed intimacies and associated water rights the department of
8 ecology determines that additional information is required to act on
9 the application, the department may request applicants to provide
10 information necessary for its decision, consistent with agency rules
11 and written guidelines. Parties disagreeing with the decision of the
12 department of ecology ((or)) to approve or deny the application for
13 change in place of use may appeal the decision to the pollution control
14 hearings board.

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

21 (10) The 1997 amendments to this section in this act are null and
22 void if any one of sections 101 through 116 of this act is vetoed by
23 June 30, 1997.

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

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

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

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

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

(5) The 1997 amendments to this section in this act are null and void if any one of sections 101 through 116 of this act is vetoed by June 30, 1997.

PART V

RELINQUISHMENT

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

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

(a) Drought, or other unavailability of water;

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

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

(d) The operation of legal proceedings;

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

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

(g) The implementation of practices or technologies or the installation or repair of facilities, including but not limited to

water conveyance practices, technologies, or facilities, that are more efficient or more water use efficient than practices, technologies, or facilities previously used under the water right.

4 (2) Notwithstanding any other provisions of RCW 90.14.130 through
5 90.14.180, there shall be no relinquishment of any water right:

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

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

13 (c) If such right is claimed for a determined future development to
14 take place ((either)) at any time within fifteen years of either July
15 1, 1967, or the most recent beneficial use of the water right,
16 whichever date is later, or

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

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

PART VI
GENERAL PERMITS

23 NEW SECTION. **Sec. 601.** The legislature finds that the present
24 delay in the processing of water right applications is not beneficial
25 to the citizens of the state nor is it in keeping with the goal of
26 managing the resource to the highest possible standard and maximum net
27 benefit.

28 The legislature further finds that water conservation efforts would
29 be greatly enhanced by a permit system that encourages water right
30 applicants to use only the amount of water actually necessary to meet
31 their needs.

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

34 (1) The department shall develop a general permit system for
35 appropriating water for nonconsumptive, nonbypass uses. This system
36 must be designed and used to accurately identify and register any water

1 right application that qualifies for the streamlined process of
2 appropriation of water by meeting the requirements in this section and
3 registering the use. The general permit system must be applicable
4 state-wide, and all waters of the state shall be eligible for coverage
5 under the system. The evaluation and report required for an
6 application under RCW 90.03.290 are not required for applications
7 processed under the general permit system. For the purposes of this
8 section:

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

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

17 (2) The department shall, by January 1, 1998, establish the general
18 permit system by adopting rules in accordance with chapter 34.05 RCW.
19 Before the adoption of rules for a system, the department shall consult
20 with representatives of the following interest groups: Agriculture;
21 aquaculture; home construction and development; county government; city
22 government; surface mining; and the environmental community. At least
23 four public hearings must be held at various locations around the
24 state, not less than two of which shall be east of the crest of the
25 Cascade mountains. The rules must identify criteria for proposed uses
26 of water for which applications might be processed under the system and
27 must establish procedures for filing and processing applications and
28 issuing water rights certificates under the general permit system.

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

31 An application for registration as a nonconsumptive, nonbypass
32 water user under the general permit system established under section
33 602 of this act must be made on a form adopted and provided by the
34 department. Within sixty days of receipt of a properly completed
35 application, the department shall determine whether the proposed use is
36 eligible to be processed under the general permit system. If the
37 department determines that the proposed use is eligible to be processed
38 under the system, the application must be processed under the system

1 within the next sixty days. The priority date of the water right
2 established pursuant to this section shall be the date that the
3 properly completed application is submitted. If the department
4 determines that the proposed use is not eligible for the processing,
5 the department shall explain to the applicant in writing the reasons
6 for its determination. For a proposed use determined ineligible for
7 the processing, if the department finds that the information contained
8 on the application form substantially satisfies the information
9 requirements for an application for a use that would normally be filed
10 for processing the application outside of the general permit system,
11 the department shall notify the applicant of its finding and shall
12 process the application as if it were filed for processing outside of
13 the system. If the department finds that the information does not
14 substantially satisfy the requirements, the application must be
15 considered to be incomplete for the processing and the applicant must
16 be notified of this consideration.

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

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

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

PART VII

APPEALS

1 **NEW SECTION.** **Sec. 701.** The legislature recognizes that in many
2 cases the value of real property directly depends upon the amount of
3 water that is available for use on that property. The legislature also
4 recognizes that water rights are a type of property right in which many
5 different parties may assert an interest. Current statutes require
6 many property rights actions in which different parties assert
7 interests, such as actions for partition or eminent domain, to be filed
8 in superior court. The legislature further finds that informal
9 procedures such as mediation and fact finding have been employed
10 successfully in other areas of the law, and may produce positive
11 results in certain types of water disputes. The legislature therefore
12 finds that property owners should have a choice to select informal or
13 formal hearings before the pollution control hearings board, and that
14 relinquishment proceedings should be appealed to the local superior
15 courts.

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

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

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

29 (3) For proceedings involving the relinquishment of a water right
30 and appeals of informal hearings of the pollution control hearings
31 board, the petition shall be filed in the superior court for the county
32 in which is located the land upon which the water was used.

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

35 (1) The pollution control hearings board shall only have
36 jurisdiction to hear and decide appeals from the following decisions of
37 the department, the director, the administrator of the office of marine

1 safety, and the air pollution control boards or authorities as
2 established pursuant to chapter 70.94 RCW, or local health departments:
3 (a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431,
4 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.48.144, 90.56.310, and
5 90.56.330.

6 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
7 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,
8 ((90.14.130,)) and 90.48.120.

9 (c) The issuance, modification, or termination of any permit,
10 certificate, or license by the department or any air authority in the
11 exercise of its jurisdiction, including the issuance or termination of
12 a waste disposal permit, the denial of an application for a waste
13 disposal permit, or the modification of the conditions or the terms of
14 a waste disposal permit.

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

17 (e) Decisions of local health departments regarding the issuance
18 and enforcement of permits to use or dispose of biosolids under RCW
19 70.95J.080.

20 (f) Any other decision by the department, the administrator of the
21 office of marine safety, or an air authority which pursuant to law must
22 be decided as an adjudicative proceeding under chapter 34.05 RCW.

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

25 (a) The hearings board has no jurisdiction to review orders
26 pertaining to the relinquishment of a water right under RCW 90.14.130,
27 or to review proceedings regarding general adjudications of water
28 rights conducted pursuant to chapter 90.03 or 90.44 RCW.

29 (b) The following hearings shall not be conducted by the hearings
30 board:

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

33 (((b))) (ii) Hearings conducted by the department pursuant to RCW
34 70.94.332, 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and
35 90.44.180.

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

38 (((d))) (iii) Hearings conducted by the department to adopt, modify,
39 or repeal rules.

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

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

6 The administrative procedure act, chapter 34.05 RCW, shall apply to
7 the appeal of rules and regulations adopted by the board to the same
8 extent as it applied to the review of rules and regulations adopted by
9 the directors and/or boards or commissions of the various departments
10 whose powers, duties and functions were transferred by section 6,
11 chapter 62, Laws of 1970 ex. sess. to the department. ((All other
12 decisions and orders of the director and all decisions of air pollution
13 control boards or authorities established pursuant to chapter 70.94 RCW
14 shall be subject to review by the hearings board as provided in this
15 chapter.))

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

18 The department and air authorities shall not have authority to hold
19 adjudicative proceedings pursuant to the Administrative Procedure Act,
20 chapter 34.05 RCW. Such hearings, except those involving water
quantity decisions, as defined in section 713 of this act, that are
appealed directly to a superior court, and appeals of orders pertaining
to the relinquishment of a water right issued pursuant to RCW
90.14.130, shall be held by the pollution control hearings board.

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

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

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

3 (1) Except as provided in subsection (2) of this section, any order
4 issued by the department((, the administrator of the office of marine
5 safety,)) or authority pursuant to RCW 70.94.211, 70.94.332,
6 70.105.095, 43.27A.190, 86.16.020, 88.46.070, or 90.48.120(2) or any
7 provision enacted after July 26, 1987, or any permit, certificate, or
8 license issued by the department may be appealed to the pollution
9 control hearings board if the appeal is filed with the board and served
10 on the department or authority within thirty days after receipt of the
11 order. Except as provided under chapter 70.105D RCW, ((this is)) these
12 are the exclusive means of appeal of such an order.

13 ((+2))) (a) The department, the administrator, or the authority in
14 its discretion may stay the effectiveness of an order during the
15 pendency of such an appeal.

16 ((+3))) (b) At any time during the pendency of an appeal of such an
17 order to the board, the appellant may apply pursuant to RCW 43.21B.320
18 to the hearings board for a stay of the order or for the removal
19 thereof.

20 ((+4))) (c) Any appeal before the hearings board must contain the
21 following in accordance with the rules of the hearings board:

22 ((+a))) (i) The appellant's name and address;

23 ((+b))) (ii) The date and docket number of the order, permit, or
24 license appealed;

25 ((+c))) (iii) A description of the substance of the order, permit,
26 or license that is the subject of the appeal;

27 ((+d))) (iv) A clear, separate, and concise statement of every
28 error alleged to have been committed;

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

31 ((+f))) (vi) A statement setting forth the relief sought.

32 ((+5))) (d) Upon failure to comply with any final order of the
33 department or the administrator, the attorney general, on request of
34 the department or the administrator, may bring an action in the
35 superior court of the county where the violation occurred or the
36 potential violation is about to occur to obtain such relief as
37 necessary, including injunctive relief, to insure compliance with the
38 order. The air authorities may bring similar actions to enforce their
39 orders.

1 ((+6+)) (e) An appealable decision or order shall be identified as
2 such and shall contain a conspicuous notice to the recipient that it
3 may be appealed only by filing an appeal with the hearings board and
4 serving it on the department within thirty days of receipt.

5 (2) Water quantity decisions of the department, as defined in
6 section 713 of this act, may be appealed either to the pollution
7 control hearings board or directly to a superior court as provided in
8 section 713 of this act. Appeals of orders pertaining to the
9 relinquishment of a water right are filed in superior court as provided
10 by RCW 90.14.130.

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

13 Notwithstanding and in addition to any other powers granted to the
14 department of ecology, whenever it appears to the department that a
15 person is violating or is about to violate any of the provisions of the
16 following:

- 17 (1) Chapter 90.03 RCW; or
18 (2) Chapter 90.44 RCW; or
19 (3) Chapter 86.16 RCW; or
20 (4) Chapter 43.37 RCW; or
21 (5) Chapter 43.27A RCW; or

22 (6) Any other law relating to water resources administered by the
23 department; or

24 (7) A rule or regulation adopted, or a directive or order issued by
25 the department relating to subsections (1) through (6) of this section;
26 the department may cause a written regulatory order to be served upon
27 ((said)) the person either personally, or by registered or certified
28 mail delivered to addressee only with return receipt requested and
29 acknowledged by him or her. The order shall specify the provision of
30 the statute, rule, regulation, directive or order alleged to be or
31 about to be violated, and the facts upon which the conclusion of
32 violating or potential violation is based, and shall order the act
33 constituting the violation or the potential violation to cease and
34 desist or, in appropriate cases, shall order necessary corrective
35 action to be taken with regard to such acts within a specific and
36 reasonable time. The regulation of a headgate or controlling works as
37 provided in RCW 90.03.070, by a watermaster, stream patrolman, or other
38 person so authorized by the department shall constitute a regulatory

1 order within the meaning of this section. A regulatory order issued
2 hereunder shall become effective immediately upon receipt by the person
3 to whom the order is directed, except for regulations under RCW
4 90.03.070 which shall become effective when a written notice is
5 attached as provided therein. Any person aggrieved by such order may
6 appeal the order pursuant to RCW 43.21B.310, except that appeals of
7 orders pertaining to the relinquishment of a water right shall be filed
8 in superior court pursuant to RCW 90.14.130.

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

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

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

3 Any person feeling aggrieved by any decision of the department of
4 ecology may have the same reviewed pursuant to RCW 43.21B.310.
5 However, any order pertaining to the relinquishment of a water right
6 shall be filed in superior court pursuant to RCW 90.14.130. In any such
7 review, the findings of fact as set forth in the report of the
8 department of ecology shall be prima facie evidence of the fact of any
9 waiver or relinquishment of a water right or portion thereof. If the
10 hearings board affirms the decision of the department, a party seeks
11 review in superior court of that hearings board decision pursuant to
12 chapter 34.05 RCW, and the court determines that the party was injured
13 by an arbitrary, capricious, or erroneous order of the department, the
14 court may award reasonable attorneys' fees.

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

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

28 (2) RCW 90.14.130 provides nonexclusive procedures for determining
29 a relinquishment of water rights under RCW 90.14.160, 90.14.170, and
30 90.14.180. RCW 90.14.160, 90.14.170, and 90.14.180 may be applied in,
31 among other proceedings, general adjudication proceedings initiated
32 under RCW 90.03.110 or 90.44.220: PROVIDED, That nothing herein shall
33 apply to litigation involving determinations of the department of
34 ecology under RCW 90.03.290 relating to the impairment of existing
35 rights.

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

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

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

8 (1) A water right claimant, or permit or certificate holder or
9 applicant who is aggrieved or adversely affected by a water quantity
10 decision may appeal the decision either to the pollution control
11 hearings board pursuant to RCW 43.21B.310 or to the superior court for
12 a county in which is located land on which the water is or was put to
13 a beneficial use.

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

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

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

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

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

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

34 (2) The parties involved in the informal hearing must provide the
35 mediator and the other parties in advance with a clear, concise
36 statement of the disputed issues and the parties' position in relation
37 to the issues and supporting documentation. The mediator shall meet

1 with the parties either jointly or separately, in the general area of
2 the project under review or by telephone, at the discretion of the
3 mediator, and shall take such steps as the mediator deems appropriate
4 to resolve their differences and reach a settlement agreement. If a
5 settlement agreement is reached, the mediator shall prepare and submit
6 to the hearings board a written order of dismissal to which the
7 settlement agreement is attached. The hearings board shall enter the
8 order and dismiss the case unless the hearings board finds that the
9 settlement agreement is contrary to law.

10 If the hearings board finds that the settlement agreement is
11 contrary to law, it shall notify the parties and refer the dispute back
12 to mediation.

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

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

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

1 (6) The fact finder shall, within thirty days following the
2 conclusion of the hearing, make written findings of fact and written
3 recommendations to the parties as to how the dispute should be
4 resolved. The fact finder may not apply any presumption as part of the
5 findings of fact or recommendations. A copy of the findings and
6 recommendations shall be filed with the hearings board. The findings
7 of fact and recommendations of the fact finder are advisory only, and
8 are not subject to review by the hearings board.

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

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

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

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

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

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

PART VIII

PILOT PROJECTS

33 NEW SECTION. **Sec. 801.** A new section is added to chapter 90.03
34 RCW to read as follows:

1 (1) The legislature finds that increased demand for water supplies
2 in the state requires the state to manage its water resources wisely
3 and that such wise management includes examining innovative policies
4 for maximizing use while minimizing the impact of that use. The
5 legislature declares that one such innovative policy is allowing the
6 withdrawal of freshwater from streams or lakes just before the water
7 would otherwise mix with marine water. To permit the state to evaluate
8 adequately such a policy, the legislature authorizes as an exemption
9 from the normal permitting process such uses for two pilot projects as
10 provided by this section.

11 (2)(a) A diversion of water for municipal purposes made as
12 authorized by this section from a river with an instantaneous minimum
13 flow of at least fifty cubic feet per second, measured at the point of
14 diversion is exempt from the application and permit requirements of RCW
15 90.03.250 through 90.03.320 if the diversion is made within one mile
16 upstream from the point at which the freshwater of the river begins to
17 mix with saltwater. Such a diversion is subject to all other
18 applicable state law.

19 (b) A diversion of water for municipal purposes made as authorized
20 by this section from the navigation locks at the outlet control
21 facility for the outflow of water to saltwater from Lake Washington and
22 Lake Union is exempt from the application and permit requirements of
23 RCW 90.03.250 through 90.03.320 but is subject to all other applicable
24 state law.

25 (c) A diversion is authorized under this subsection if prior
26 notification is provided to the department and confirmation is provided
27 by the department as required under subsection (5) of this section and
28 the water diverted is not in excess of the applicable limitations
29 established in subsections (3) and (4) of this section. The right for
30 the diversion established under this section is equal to that
31 established by a permit issued under the provisions of this chapter,
32 and is subject to minimum water flows or levels established by rule.

33 (3) For diversions made under subsection (2)(a) of this section, no
34 single diverter may divert more than ten percent of the instantaneous
35 flow of the river in the specific area of the diversion, as such a flow
36 would exist in the absence of diversions made under this section.

37 (4) The total amount of water diverted under subsection (2)(b) of
38 this section shall be not more than ninety percent of the amount
39 released by the operation of the navigation locks.

1 (5) Before a diversion of water is made under this section, the
2 person shall notify the department in writing of the intent to divert
3 water, the location of the point of diversion, and the annual and
4 instantaneous amount of water to be diverted. The first two project
5 notifications received shall be provided the exemption from water right
6 permit processing under subsection (2) of this section. Upon receipt
7 of the two notifications, the department shall provide a letter to the
8 person proposing the diversion confirming that the project is one of
9 the two pilot projects. No proposed diversion may begin until the
10 project applicant has received such a confirmation letter from the
11 department.

12 (6) No diversion under this section may impair any existing water
13 right downstream from the point of diversion unless compensation or
14 mitigation for such impairment is agreed to by the holder of the
15 affected water right. It is the duty of the potential diverter to
16 ensure that the conditions of this subsection are met.

17 (7) The department shall compile the information provided under
18 this section for diversions and shall make information available upon
19 request. The department shall evaluate the effects and effectiveness
20 of diversions made under this section and shall report its findings to
21 the appropriate committees of the legislature by January 1, 2002.

PART IX

MISCELLANEOUS

24 NEW SECTION. **Sec. 901.** As used in this act, part headings
25 constitute no part of the law.

26 NEW SECTION. **Sec. 902.** Sections 101 through 114 of this act
27 constitute a new chapter in Title 90 RCW.

28 NEW SECTION. **Sec. 903.** If any provision of this act or its
29 application to any person or circumstance is held invalid, the
30 remainder of the act or the application of the provision to other
31 persons or circumstances is not affected."

3

4 On page 1, line 1 of the title, after "management;" strike the
5 remainder of the title and insert "amending RCW 90.54.040, 90.54.020,
6 90.54.180, 90.03.383, 90.03.330, 90.14.140, 43.21B.110, 43.21B.130,
7 43.21B.240, 43.21B.305, 43.21B.310, 43.27A.190, 90.14.130, 90.14.190,
8 90.14.200, and 90.66.080; reenacting and amending RCW 34.05.514; adding
9 new sections to chapter 90.03 RCW; adding a new section to chapter
10 34.05 RCW; adding new sections to chapter 43.21B RCW; adding a new
11 chapter to Title 90 RCW; and creating new sections."

--- END ---