
SENATE BILL 5289

State of Washington**56th Legislature****1999 Regular Session**

By Senators Fraser, Morton, Jacobsen, Winsley, Rasmussen, Patterson, Spanel, Haugen, Eide, Shin, Costa, Fairley, Heavey, Prentice, Gardner, Franklin, Kohl-Welles, Thibaudeau and Kline; by request of Governor Locke

Read first time 01/19/1999. Referred to Committee on Environmental Quality & Water Resources.

1 AN ACT Relating to water resource management and facilitating
2 fishery protection and recovery; amending RCW 90.54.020, 90.54.180,
3 90.03.290, 43.20.230, 90.48.495, 90.46.005, 90.46.030, 90.46.040,
4 90.46.120, 90.46.130, 90.03.380, 90.42.080, 90.03.330, 90.03.015,
5 39.34.020, 90.03.386, 90.03.383, 90.44.050, 58.17.110, 19.27.097,
6 90.03.255, 90.44.055, 75.20.106, 77.15.300, 90.03.600, 43.21B.300,
7 90.08.040, 90.08.060, 90.03.070, 90.58.080, 43.99E.015, and 43.99E.030;
8 reenacting and amending RCW 43.83B.300; adding new sections to chapter
9 43.83B RCW; adding new sections to chapter 70.119A RCW; adding a new
10 section to chapter 58.17 RCW; adding a new section to chapter 35.21
11 RCW; adding a new section to chapter 35A.21 RCW; adding a new section
12 to chapter 36.01 RCW; adding a new section to chapter 90.54 RCW; adding
13 new sections to chapter 90.46 RCW; adding new sections to chapter 90.03
14 RCW; adding new sections to chapter 90.44 RCW; adding a new section to
15 chapter 39.34 RCW; adding a new section to chapter 90.58 RCW; adding a
16 new section to chapter 43.27A RCW; adding new sections to chapter
17 36.70A RCW; adding a new section to chapter 43.21C RCW; adding new
18 sections to chapter 90.42 RCW; creating new sections; prescribing
19 penalties; making an appropriation; and providing an expiration date.

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

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

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

17 (ii) The municipality demonstrates that no violation of receiving
18 water quality standards or appreciable environmental degradation will
19 result.

20 (4) The development of multipurpose water storage facilities shall
21 be a high priority for programs of water allocation, planning,
22 management, and efficiency. The department, other state agencies, and
23 local governments, and planning units formed under (~~section 107 or 108~~
24 ~~of this act~~) chapter 90.82 RCW shall evaluate the potential for the
25 development of new storage projects and the benefits and effects of
26 storage in reducing damage to stream banks and property, increasing the
27 use of land, providing water for municipal, industrial, agricultural,
28 power generation, and other beneficial uses, and improving stream flow
29 regimes for fisheries and other instream uses.

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

32 (6) Multiple-purpose impoundment structures are to be preferred
33 over single-purpose structures. Due regard shall be given to means and
34 methods for protection of fishery resources in the planning for and
35 construction of water impoundment structures and other artificial
36 obstructions.

37 (7) Federal, state, and local governments, individuals,
38 corporations, groups, and other entities shall (~~be encouraged to~~)
39 carry out practices of conservation as they relate to the use of the

1 waters of the state. In addition to traditional development
2 approaches, improved water use efficiency and conservation, including
3 reclaiming municipal and industrial effluent, shall be emphasized in
4 the management of the state's water resources and (~~in some cases~~)
5 will be a potential new source of water with which to meet future needs
6 throughout the state. Where reclaimed water is a feasible replacement
7 source of water in accordance with criteria adopted under section 206
8 of this act, it shall be used for nonpotable water uses in lieu of
9 using potable water for those uses.

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

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

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

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

24 **Sec. 102.** RCW 90.54.180 and 1989 c 348 s 5 are each amended to
25 read as follows:

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

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

35 (2) Increased water use efficiency (~~should receive consideration~~
36 ~~as~~) and conservation, including reclaiming municipal and industrial
37 effluent shall be considered a potential source of water in state and
38 local water resource planning processes. In determining the cost-

1 effectiveness of alternative water sources, consideration should be
2 given to the benefits of conservation, waste water recycling, and
3 impoundment of waters.

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

11 (4) Entities receiving state financial assistance for construction
12 of water source expansion or acquisition of new sources shall develop,
13 and implement if cost-effective, a water use efficiency and
14 conservation element of a water supply plan pursuant to RCW
15 43.20.230(1).

16 (5) State programs to improve water use efficiency (~~should~~) shall
17 focus on those areas of the state in which water is overappropriated;
18 areas that experience diminished stream flows or aquifer levels,
19 including areas with declining fish stocks due to lack of stream flow;
20 and areas where projected water needs, including those for instream
21 flows, exceed available supplies.

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

30 **Sec. 103.** RCW 90.03.290 and 1994 c 264 s 84 are each amended to
31 read as follows:

32 (1) When an application complying with the provisions of this
33 chapter and with the rules (~~and regulations~~) of the department has
34 been filed, (~~the same~~) it shall be placed on record with the
35 department(~~, and it shall be its duty to~~). The department shall
36 investigate the application, and determine what water, if any, is
37 available for appropriation, and find and determine to what beneficial
38 use or uses it can be applied.

1 (2) If it is proposed to appropriate water for irrigation purposes,
2 the department shall investigate, determine, and find what lands are
3 capable of irrigation by means of water found available for
4 appropriation. If it is proposed to appropriate water for the purpose
5 of power development, the department shall investigate, determine, and
6 find whether the proposed development is likely to prove detrimental to
7 the public interest, having in mind the highest feasible use of the
8 waters belonging to the public.

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

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

1 it shall be the duty of the department to reject such application and
2 to refuse to issue the permit asked for. The department may also
3 reject the application and refuse to issue the permit if reliance on an
4 alternative source of water, including, but not limited to, water that
5 could be acquired through a change or transfer of an existing water
6 right or use of a feasible source of reclaimed water, would better
7 serve the public interest. If the permit is refused because of
8 conflict with existing rights and such applicant shall acquire the same
9 by purchase or condemnation under RCW 90.03.040, the department may
10 thereupon grant such permit.

11 (5) Any application may be approved for a less amount of water than
12 that applied for, if there exists substantial reason therefor, and in
13 any event shall not be approved for more water than can be applied to
14 beneficial use for the purposes named in the application. In
15 determining whether or not a permit shall issue upon any application,
16 it shall be the duty of the department to investigate all facts
17 relevant and material to the application. After the department
18 approves said application in whole or in part and before any permit
19 shall be issued thereon to the applicant, such applicant shall pay the
20 fee provided in RCW 90.03.470(~~(:—PROVIDED FURTHER, That in the~~
21 ~~event)).~~ If a permit is issued by the department upon any application,
22 it shall be its duty to notify the director of fish and wildlife of
23 such issuance.

24 NEW SECTION. Sec. 104. A new section is added to chapter 43.83B
25 RCW to read as follows:

26 (1) It is the intent of the legislature to provide moneys to the
27 department of ecology for grants and loans to public bodies engaged in
28 irrigation water supply for the purpose of improved drought
29 preparedness. As used in this chapter, "drought preparedness" means
30 the implementation of agricultural water supply conservation projects
31 that:

- 32 (a) Are identified in approved water conservation plans;
33 (b) Mitigate the effects of future droughts on existing water uses
34 in drought-prone areas;
35 (c) Result in conveying trust water rights to the state for
36 instream flows;
37 (d) Produce increases in instream flows; and

1 (e) Are located in predominantly agricultural areas that have
2 threatened or endangered species listed or proposed for listing under
3 the federal endangered species act or that have salmonid stocks listed
4 as critical or depressed under the state salmon and steelhead stock
5 inventory.

6 (2) The department of ecology is authorized to make loans or
7 grants, or combinations of loans and grants from drought preparedness
8 funds when needed to implement agricultural water supply conservation
9 or efficiency projects. For the purposes of this section, "drought
10 preparedness funds" means funds appropriated from the state drought
11 preparedness account created under section 1004 of this act. The
12 department of ecology may make the loans or grants, or combinations of
13 loans and grants as matching funds in any case where federal, local, or
14 other funds have been made available on a matching basis. The
15 department may make a loan of up to ninety percent of the total
16 eligible project cost or combination loan and grant up to one hundred
17 percent of the total single project cost. The grant portion of any
18 single project shall not exceed twenty percent of the total project
19 cost. No single entity shall receive more than ten percent of the
20 total drought preparedness funds available.

21 (3) The following eligibility criteria must be met in order for an
22 entity to apply for drought preparedness funds:

23 (a) The entity must be organized as a public body, capable of
24 accepting and administering loans and grants;

25 (b) The entity must have a completed, approved water conservation
26 plan that recommends the project or projects proposed for funding; and

27 (c) The proposed project must be sited in an area that:

28 (i) Has threatened or endangered fish species listed or proposed
29 for listing under the federal endangered species act or depressed or
30 critical stocks under the state salmon and steelhead stock assessment;

31 (ii) Has agriculture as its economic base; and

32 (iii) Is prone to drought conditions.

33 (4) The proposed project must result in at least a ten percent
34 decrease in diversion from the applicable surface water source, and
35 must increase the stream flow in the same surface water source. If the
36 entity is served mainly by ground water, there must be at least a ten
37 percent decrease in the instantaneous and annual amount withdrawn.
38 There must be an increase in surface water sources in hydraulic
39 continuity with the ground water source.

1 (5) Recipients of loans and grants under this section may retain
2 and use conserved water under the following conditions:

3 (a) The person proposing the change or transfer must agree in
4 writing to convey to the state of Washington at least one-half of the
5 transferable net water savings for the purpose of establishing a trust
6 water right under chapter 90.38 or 90.42 RCW as applicable. The
7 proportion of water that must be conveyed to the state of Washington
8 shall be equivalent to the ratio of the state or federal funding to the
9 overall project cost, but in no case less than one-half of the net
10 water savings. The person proposing to change or transfer and use the
11 remaining water on additional or different lands may do so only under
12 an approved change to the water right issued by the department of
13 ecology under RCW 90.03.380. Reallocation and use of conserved water
14 under this section shall not impair any existing water rights.

15 (b) The department of ecology may waive the requirement to convey
16 a trust water right to the state only where there is no discernable
17 public purpose to be benefited by establishment of a trust water right
18 for those waters. In such case, in lieu of conveying a trust water
19 right, the person proposing the conservation project must remit to the
20 state treasurer a payment equal to the value of the proportion of the
21 water right not conveyed to the state. The amount of this payment
22 shall be determined by a licensed independent real estate appraiser
23 selected by agreement of the department of ecology and the applicant.
24 The basis of the appraisal shall be the value of the proportion of the
25 conserved water not conveyed to the state in consideration of the
26 economic value of water in the immediate area where the water right is
27 used. The cost of the appraisal shall be shared equally by the
28 department of ecology and the applicant. Any funds conveyed to the
29 state under this section shall be deposited in the state stream flow
30 restoration account established in section 1005 of this act for use in
31 purchasing or leasing trust water rights.

32 NEW SECTION. **Sec. 105.** A new section is added to chapter 70.119A
33 RCW to read as follows:

34 (1) Each public water system with fifteen or more service
35 connections shall:

36 (a) Implement a water conservation program promotion targeted at
37 system customers; and

1 (b) Implement other cost-effective water conservation measures
2 identified in approved water conservation plans required under RCW
3 43.20.230.

4 (2) Public water systems with one thousand or more service
5 connections shall:

6 (a) Implement a leak detection and repair program, and shall repair
7 leaks if the system's unaccounted for water is ten percent or more of
8 total system water usage;

9 (b) Conduct water audits to identify internal water distribution
10 and associated opportunities for improved water use efficiency; and

11 (c) Utilize commodity-based water rates and not declining block
12 rate structures. Commodity-based rate structures are based, at least
13 in part, upon the volume of water used. Declining block rate
14 structures separate consumption levels into two or more blocks, with
15 rates per unit of water decreasing as the total volume of consumption
16 by a customer increases.

17 (3) Public water systems that have completed a conservation plan
18 within six years prior to the effective date of this section in
19 accordance with the requirements of the department need not create a
20 new plan, but shall address any of the above elements that have not
21 been previously addressed in the next scheduled update of the water
22 system plan and conservation plan.

23 **Sec. 106.** RCW 43.20.230 and 1993 sp.s. c 4 s 9 are each amended to
24 read as follows:

25 Consistent with the water resource planning process of the
26 department of ecology, the department of health shall:

27 (1) Develop ~~((procedures and guidelines relating to water use~~
28 ~~efficiency, as defined in section 4(3), chapter 348, Laws of 1989, to~~
29 ~~be included in the development and approval of cost efficient water~~
30 ~~system plans required under RCW 43.20.050)) comprehensive water~~

31 conservation planning requirements for public water systems based upon
32 system size, to be included in water system plans and small water
33 system management programs required under RCW 43.20.050. Conservation
34 plans approved under this section shall meet the water conservation
35 planning requirements of the department of ecology for the purposes of
36 water right permit processing. As part of these comprehensive planning
37 requirements water systems shall:

1 (a) Demonstrate compliance with the conservation requirements
2 contained in section 113 of this act;
3 (b) Evaluate service meter installation;
4 (c) Evaluate conservation measures and implement those that are
5 cost-effective;
6 (d) Evaluate development and implementation of a leak detection and
7 repair program; and
8 (e) Utilize water use efficiency performance standards developed
9 under section 113 of this act for conservation planning, water demand
10 forecasting, and other water system planning purposes;
11 (2) Review and approve water conservation plans, and monitor plan
12 implementation to ensure compliance with comprehensive conservation
13 planning requirements under subsection (1) of this section;
14 (3) Develop criteria, with input from technical experts, with the
15 objective of encouraging the cost-effective reuse of greywater and
16 other water recycling practices, consistent with protection of public
17 health and water quality;
18 ~~((+3))~~ (4) Provide advice and technical assistance upon request in
19 the development of water use efficiency plans. This includes
20 development of model landscape ordinances, assistance to public water
21 systems and local governments regarding water conservation, and general
22 public education on water conservation and efficiency; ((and
23 +4)) (5) Provide advice and technical assistance on request for
24 development of model conservation rate structures for public water
25 systems((. Subsections (1), (2), and (3) of this section are subject
26 to the availability of funding)); and
27 (6) Adopt rules as necessary through the state board of health to
28 implement any provisions of this section.

29 NEW SECTION. Sec. 107. A new section is added to chapter 70.119A
30 RCW to read as follows:

31 Public water systems with fifteen or more service connections shall
32 collect monthly water use data from all water sources used to serve the
33 system. Water use data collected under this section shall be submitted
34 annually to the department in a form and manner prescribed by the
35 department. Data collected under this section shall be coordinated
36 with water use data collection requirements of the department of
37 ecology.

1 NEW SECTION. **Sec. 108.** A new section is added to chapter 58.17
2 RCW to read as follows:

3 In determining whether a proposed short plat, short subdivision, or
4 subdivision meets the requirements for potable water supplies as
5 required under RCW 58.17.060 or 58.17.110, and otherwise serves the
6 public use and interest, the city, town, or county shall require:

7 (1) Conformance to any water conservation ordinances or plans
8 adopted by the city, town, or county;

9 (2) Utilization of water conservation measures consistent with any
10 regional watershed plan adopted under chapter 90.82 RCW; and

11 (3) Utilization of reclaimed water where potable water is not
12 required consistent with any local ordinance adopted on water reuse
13 requirements.

14 NEW SECTION. **Sec. 109.** A new section is added to chapter 35.21
15 RCW to read as follows:

16 (1) Any city or town may adopt a water conservation program by
17 ordinance or other legal authority. This includes ordinances to
18 implement the provisions of any regional watershed plan adopted under
19 chapter 90.82 RCW. Such a program may include the following
20 requirements:

21 (a) Utilization of water conservation measures consistent with
22 specific provisions of regional watershed plans adopted under chapter
23 90.82 RCW;

24 (b) Utilization of water conservation measures that may be in
25 addition to those required by either the department of health or the
26 department of ecology, including landscape irrigation requirements,
27 public fixture retrofit and rebate programs, and commercial and
28 industrial conservation programs; and

29 (c) Utilization of any opportunities for using reclaimed water
30 where potable water is not required.

31 (2) The provisions of any water conservation program shall be
32 implemented by the city or town through development of any
33 comprehensive plan, development regulations, issuance of permits and
34 other approvals, development of any sewerage and/or water general plan
35 under RCW 36.94.030, operation of any sewerage or water systems under
36 chapter 36.94 RCW, or as otherwise allowed by law.

1 NEW SECTION. **Sec. 110.** A new section is added to chapter 35A.21
2 RCW to read as follows:

3 (1) Any city or town may adopt a water conservation program by
4 ordinance or other legal authority. This includes ordinances to
5 implement the provisions of any regional watershed plan adopted under
6 chapter 90.82 RCW. Such a program may include the following
7 requirements:

8 (a) Utilization of water conservation measures consistent with
9 specific provisions of regional watershed plans adopted under chapter
10 90.82 RCW;

11 (b) Utilization of water conservation measures that may be in
12 addition to those required by either the department of health or the
13 department of ecology, including landscape irrigation requirements,
14 public fixture retrofit and rebate programs, and commercial and
15 industrial conservation programs; and

16 (c) Utilization of any opportunities for using reclaimed water
17 where potable water is not required.

18 (2) The provisions of any water conservation program shall be
19 implemented by the city or town through development of any
20 comprehensive plan, development regulations, issuance of permits and
21 other approvals, development of any sewerage and/or water general plan
22 under RCW 36.94.030, operation of any sewerage or water systems under
23 chapter 36.94 RCW, or as otherwise allowed by law.

24 NEW SECTION. **Sec. 111.** A new section is added to chapter 36.01
25 RCW to read as follows:

26 (1) Any county may adopt a water conservation program by ordinance
27 or other legal authority. This includes ordinances to implement the
28 provisions of any regional watershed plan adopted under chapter 90.82
29 RCW. Such a program may include the following requirements:

30 (a) Utilization of water conservation measures consistent with
31 specific provisions of regional watershed plans adopted under chapter
32 90.82 RCW;

33 (b) Utilization of water conservation measures that may be in
34 addition to those required by either the department of health or the
35 department of ecology, including landscape irrigation requirements,
36 public fixture retrofit and rebate programs, and commercial and
37 industrial conservation programs; and

1 (c) Utilization of any opportunities for using reclaimed water
2 where potable water is not required.

3 (2) The provisions of any water conservation program shall be
4 implemented by the county through development of any comprehensive
5 plan, development regulations, issuance of permits and other approvals,
6 development of any sewerage and/or water general plan under RCW
7 36.94.030, operation of any sewerage or water systems under chapter
8 36.94 RCW, or as otherwise allowed by law.

9 **Sec. 112.** RCW 90.48.495 and 1989 c 348 s 10 are each amended to
10 read as follows:

11 The department of ecology shall require sewer plans that propose an
12 expansion of treatment capacity to include a discussion of water
13 conservation measures considered or underway and their anticipated
14 impact on public sewer service. The plans shall evaluate the cost-
15 effectiveness of funding water conservation programs as an alternative
16 to expanding sewage treatment capacity.

17 NEW SECTION. **Sec. 113.** A new section is added to chapter 90.54
18 RCW to read as follows:

19 (1) The definitions in this subsection apply throughout this
20 section unless the context clearly requires otherwise.

21 (a) "Reasonable and beneficial use" means the minimum amount of
22 water necessary to carry out the intended purpose of water use without
23 waste. It may include a reasonable amount of water lost due to normal
24 conveyance and application losses.

25 (b) "Water duty" means that measure of water, which by careful
26 management and use, without waste, is reasonably required for the use
27 or proposed use.

28 (2) The department in consultation with the department of health
29 shall adopt rules establishing water use efficiency performance
30 standards for various water uses by December 31, 2000. The department
31 shall engage in a negotiated rule-making process involving
32 representatives of interested parties. However, if the participants do
33 not reach consensus by July 1, 2000, the department shall proceed with
34 the adoption of rules using the advice and guidance of the participants
35 to the extent possible. The standards shall be based on the quantity
36 of water required for reasonable and beneficial use of water without
37 waste. The rules shall also address standards for reasonable

1 conveyance loss of water for various means of water conveyance. Basin
2 management plans adopted under this chapter or watershed plans adopted
3 under chapter 90.82 RCW may specify water use efficiency performance
4 standards for the basin or watershed that vary from and supersede those
5 adopted by the department under this section if Washington state
6 government is a participant in the planning process and agrees with the
7 locally based standards. The department shall adopt rules implementing
8 locally determined standards.

9 (3) The state-wide or local standards adopted under this section
10 shall be used for water demand forecasting, public water system
11 planning, and assessing whether new water rights are needed. In
12 addition, the standards shall be used to guide the development and
13 evaluation of water conservation plans developed under chapter 43.99E
14 RCW and RCW 43.20.230.

15 (4) Any person claiming a right or a need to the use of water in
16 excess of the standards adopted under this section carries the burden
17 of showing that special circumstances require a variance from the
18 standards.

19 (5) The department shall consult with the Washington State
20 University cooperative extension service and the United States natural
21 resource conservation service regarding normal water duties for
22 irrigation water uses.

23 **PART II**
24 **RECLAIMED WATER**

25 **Sec. 201.** RCW 90.46.005 and 1997 c 355 s 1 are each amended to
26 read as follows:

27 The legislature finds that by encouraging the use of reclaimed
28 water while assuring the health and safety of all Washington citizens
29 and the protection of its environment, the state of Washington will
30 continue to use water in the best interests of present and future
31 generations.

32 To facilitate the use of reclaimed water as soon as is practicable,
33 the legislature encourages the cooperative efforts of the public and
34 private sectors and the use of pilot projects to effectuate the goals
35 of this chapter. The legislature further directs the department of
36 health and the department of ecology to coordinate efforts towards
37 developing an efficient and streamlined process for creating and

1 implementing processes for the use of reclaimed water. The department
2 of ecology is the lead agency for reclaimed water permitting and design
3 approval, and the department of health is to provide public health
4 input and assessment on all department of ecology reclaimed water
5 permit decisions.

6 It is hereby declared that the people of the state of Washington
7 have a primary interest in the development of facilities to provide
8 reclaimed water to replace potable water in nonpotable applications, to
9 supplement existing surface and ground water supplies, and to assist in
10 meeting the future water requirements of the state. The use of
11 reclaimed water will contribute to the restoration and protection of
12 instream flows, which are crucial to preservation of the state's
13 salmonid fishery resources.

14 The legislature further finds and declares that the utilization of
15 reclaimed water by local communities for domestic, agricultural,
16 industrial, recreational, and fish and wildlife habitat creation and
17 enhancement purposes, including wetland enhancement, will contribute to
18 the peace, health, safety, and welfare of the people of the state of
19 Washington. To the extent reclaimed water is appropriate for
20 beneficial uses, it should be so used to preserve potable water for
21 drinking purposes. Use of reclaimed water constitutes the development
22 of new basic water supplies needed for future generations.

23 The legislature further finds and declares that the use of
24 reclaimed water is not inconsistent with the policy of antidegradation
25 of state waters announced in other state statutes, including the water
26 pollution control act, chapter 90.48 RCW and the water resources act,
27 chapter 90.54 RCW.

28 The legislature finds that other states, including California,
29 Florida, and Arizona, have successfully used reclaimed water to
30 supplement existing water supplies without threatening existing
31 resources or public health.

32 It is the intent of the legislature that the department of ecology
33 and the department of health undertake the necessary steps to encourage
34 the development of water reclamation facilities so that reclaimed water
35 may be made available to help meet the growing water requirements of
36 the state.

37 The legislature further finds and declares that reclaimed water
38 facilities are water pollution control facilities as defined in chapter
39 70.146 RCW and are eligible for financial assistance as provided in

1 chapter 70.146 RCW. The legislature finds that funding demonstration
2 projects will ensure the future use of reclaimed water. The
3 demonstration projects in RCW 90.46.110 are varied in nature and will
4 provide the experience necessary to test different facets of the
5 standards and refine a variety of technologies so that water purveyors
6 can begin to use reclaimed water technology in a more cost-effective
7 manner. This is especially critical in smaller cities and communities
8 where the feasibility for such projects is great, but there are scarce
9 resources to develop the necessary facilities.

10 **Sec. 202.** RCW 90.46.030 and 1992 c 204 s 4 are each amended to
11 read as follows:

12 (1) The department of ~~((health))~~ ecology shall, in coordination
13 with the department of ~~((ecology))~~ health, adopt ~~((a single set of~~
14 ~~standards, procedures, and guidelines on or before August 1, 1993))~~
15 rules by December 31, 2000, for the industrial and commercial use of
16 reclaimed water.

17 (2) The department of ~~((health))~~ ecology may issue a reclaimed
18 water permit for industrial and commercial uses of reclaimed water to
19 the generator of reclaimed water who may then distribute the water,
20 subject to provisions in the permit governing the location, rate, water
21 quality, and purposes of use.

22 (3) The department of ~~((health))~~ ecology in consultation with the
23 advisory committee established in RCW 90.46.050, shall develop
24 recommendations for a fee structure for permits issued under subsection
25 (2) of this section. Fees shall be established in amounts to fully
26 recover, and not exceed, expenses incurred by the department of health
27 and the department of ecology in processing permit applications and
28 modifications, monitoring and evaluating compliance with permits, and
29 conducting inspections and supporting the reasonable overhead expenses
30 that are directly related to these activities. ~~((Permit fees may not~~
31 ~~be used for research or enforcement activities. The department of~~
32 ~~health shall not issue permits under this section until a fee structure~~
33 ~~has been established.))~~

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

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

7 **Sec. 203.** RCW 90.46.040 and 1992 c 204 s 5 are each amended to
8 read as follows:

9 (1) The department of ecology shall, in coordination with the
10 department of health, adopt (~~a single set of standards, procedures,~~
11 ~~and guidelines, on or before August 1, 1993~~) rules by December 31,
12 2000, for land applications of reclaimed water.

13 (2) A permit is required for any land application of reclaimed
14 water. The department of ecology may issue a reclaimed water permit
15 under chapter 90.48 RCW to the generator of reclaimed water who may
16 then distribute the water, subject to provisions in the permit
17 governing the location, rate, water quality, and purpose of use. The
18 department of ecology shall not issue more than one permit for any
19 individual land application of reclaimed water to a single generator.

20 (3) In cases where the department of ecology determines, in land
21 applications of reclaimed water, that a (~~significant~~) risk to the
22 public health exists, the department shall refer the application to the
23 department of health for review and consultation and the department of
24 health may require fees appropriate for review and consultation from
25 the applicant pursuant to RCW 43.70.250.

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

30 (5) The authority and duties created in this section are in
31 addition to any authority and duties already provided in law. Nothing
32 in this section limits the powers of the state or any political
33 subdivision to exercise such authority.

34 NEW SECTION. **Sec. 204.** A new section is added to chapter 90.46
35 RCW to read as follows:

36 The departments of ecology and health may adopt rules as necessary
37 to carry out the intent of this chapter. If rules are adopted, the

1 rules shall identify permit and design approval requirements under
2 chapters 43.20, 70.116, 70.119A, 70.142, 90.03, 90.44, and 90.48 RCW
3 applicable to the generation and distribution of reclaimed water, and
4 identify criteria to determine when the use of reclaimed water is
5 feasible to replace nonpotable water uses.

6 **Sec. 205.** RCW 90.46.120 and 1997 c 444 s 1 are each amended to
7 read as follows:

8 ~~((The owner of a wastewater treatment facility that is reclaiming
9 water with a permit issued under this chapter has the exclusive right
10 to any reclaimed water generated by the wastewater treatment facility.
11 Use and distribution of the reclaimed water by the owner of the
12 wastewater treatment facility is exempt from the permit requirements of
13 RCW 90.03.250 and 90.44.060.))~~ Revenues derived from the reclaimed
14 water facility shall be used only to offset the cost of operation of
15 the wastewater utility fund or other applicable source of system-wide
16 funding.

17 If the proposed use or uses of reclaimed water are intended to
18 augment or replace potable water supplies or will create the potential
19 for the development of additional potable water supplies, such use or
20 uses shall be considered in the development of the regional water
21 supply plan or plans addressing potable water supply service by
22 multiple water purveyors. This may include water system plans and
23 coordinated water system plans adopted under chapters 43.20 and 70.116
24 RCW. The owner of a wastewater treatment facility that proposes to
25 reclaim water shall be included as a participant in the development of
26 such regional water supply ~~((plan or))~~ plans and water system plans.
27 The water supply planning activities shall be developed and coordinated
28 to ensure that opportunities for reclaimed water are evaluated and that
29 proposals for construction in public rights of way delineated within
30 the plan consider infrastructure needed to distribute reclaimed water.
31 Wastewater plans adopted under chapter 90.48 RCW shall include a
32 statement of certification that reclamation and reuse elements in
33 applicable regional water supply plans and water system plans have been
34 fully considered and accounted for with regard to the need for future
35 distribution of reclaimed water.

36 NEW SECTION. **Sec. 206.** A new section is added to chapter 90.46
37 RCW to read as follows:

1 The department of ecology, in consultation with the department of
2 health and water purveyors, shall adopt rules by December 31, 2000,
3 establishing criteria to determine when the use of reclaimed water is
4 feasible to replace potable water supplied for nonpotable water use.
5 Local governments may adopt ordinances requiring the use of reclaimed
6 water for nonpotable uses when determined feasible.

7 **Sec. 207.** RCW 90.46.130 and 1997 c 444 s 4 are each amended to
8 read as follows:

9 (1) Except as provided in subsection (2) of this section, the owner
10 of a wastewater treatment facility that is reclaiming water with a
11 permit issued under this chapter has the exclusive right, subject to
12 the terms of the permit and as otherwise provided in this chapter, to
13 any reclaimed water generated by the wastewater treatment facility.
14 Upon securing a permit under this chapter, the use and distribution of
15 the reclaimed water by the owner of the wastewater treatment facility
16 is exempt from the requirements to obtain a permit under RCW 90.03.250
17 and 90.44.060 and the requirements to obtain approval of a change or
18 amendment of a water right under RCW 90.03.380, 90.03.383, 90.03.390,
19 90.44.100, or 90.44.105.

20 (2) If the state of Washington or the United States provides
21 funding for the construction of reclaimed water facilities, the state
22 shall establish a trust water right under chapter 90.38 or 90.42 RCW
23 for the fraction of the reclaimed water attributable to such funding.
24 The priority of use for the state's share of reclaimed water is
25 instream flow restoration and enhancement. The department may accept
26 an alternate water right from the reclaimed water project owner in lieu
27 of reclaimed project water if the alternate water right is more
28 advantageous for instream flow restoration.

29 (3) Facilities that reclaim water under this chapter shall not
30 impair any existing water right ((downstream from any freshwater
31 discharge points of such facilities unless compensation or mitigation
32 for such impairment is agreed to by the holder of the affected water
33 right)) unless the holder of the water right is equitably compensated.

34 **PART III**

35 **WATER RIGHT CHANGES AND TRANSFERS**

1 **Sec. 301.** RCW 90.03.380 and 1997 c 442 s 801 are each amended to
2 read as follows:

3 (1) The right to the use of water which has been applied to a
4 beneficial use in the state shall be and remain appurtenant to the land
5 or place upon which the (~~same~~) water is used(~~(:—PROVIDED, HOWEVER,~~
6 ~~That))~~). However, the right may be transferred to another or to others
7 and become appurtenant to any other land or place of use without loss
8 of priority of right theretofore established if (~~such~~) the change can
9 be made without detriment or injury to existing rights. The point of
10 diversion of water for beneficial use or the purpose of use may be
11 changed, if (~~such~~) the change can be made without detriment or injury
12 to existing rights. (~~(A change in the place of use, point of~~
13 ~~diversion, and/or purpose of use of a water right to enable irrigation~~
14 ~~of additional acreage or the addition of new uses may be permitted if~~
15 ~~such change results in no increase in the annual consumptive quantity~~
16 ~~of water used under the water right. For purposes of this section,~~
17 ~~"annual consumptive quantity" means the estimated or actual annual~~
18 ~~amount of water diverted pursuant to the water right, reduced by the~~
19 ~~estimated annual amount of return flows, averaged over the most recent~~
20 ~~five year period of continuous beneficial use of the water right.))~~)

21 (2) Before any transfer of (~~such~~) a right to use water or change
22 of the point of diversion of water or change of purpose of use can be
23 made, any person having an interest in the transfer or change, shall
24 file a written application therefor with the department(~~(, and the))~~ on
25 a form prescribed by the department. The application must be
26 accompanied with the applicable fee as provided by RCW 90.03.470. The
27 application shall not be granted until notice of the application is
28 published as provided in RCW 90.03.280. (~~(If it shall appear that~~
29 ~~such))~~)

30 (3) The department shall make a tentative determination as to the
31 validity and extent of the water right proposed to be transferred or
32 changed, including the reasonable and beneficial use of water actually
33 used. In its determination, the department shall consider whether all
34 or any portion of the asserted water right has been lost by nonuse
35 under common law abandonment or forfeiture under chapter 90.14 RCW, and
36 whether any portion of the water diverted or withdrawn constitutes the
37 waste of water. If the department determines that any portion of the
38 current or former use of water under the asserted water right proposed
39 for change or transfer is not a water right, or constitutes waste of

1 water, that portion of the right shall not be approved for change or
2 transfer. If the department determines that (a) the asserted water
3 right is valid, (b) the water right as proposed to be changed will be
4 for beneficial use, (c) the public interest will not be detrimentally
5 affected by the change, and (d) the transfer or (~~such~~) change may be
6 made without injury or detriment to existing rights, the department
7 shall issue to the applicant an authorization to make the change. Upon
8 determining that the change has been completed and water has been put
9 to beneficial use in accordance with the authorization, the department
10 shall issue a certificate in duplicate granting the right for such
11 transfer or for such change of point of diversion or of use. The
12 certificate so issued shall be filed and be made a record with the
13 department and the duplicate certificate issued to the applicant
14 (~~may~~) must be filed with the county auditor in like manner and with
15 the same effect as provided in the original certificate or permit to
16 divert water.

17 (~~(2)~~) (4) If an application for change proposes to transfer water
18 rights from one irrigation district to another, the department shall,
19 before publication of notice, receive concurrence from each of the
20 irrigation districts that such transfer or change will not adversely
21 affect the ability to deliver water to other landowners or impair the
22 financial integrity of either of the districts.

23 (~~(3)~~) (5) A change in place of use by an individual water user or
24 users of water provided by an irrigation district need only receive
25 approval for the change from the board of directors of the district if
26 the use of water continues within the irrigation district, and when
27 water is provided by an irrigation entity that is a member of a board
28 of joint control created under chapter 87.80 RCW, approval need only be
29 received from the board of joint control if the use of water continues
30 within the area of jurisdiction of the joint board and the change can
31 be made without detriment or injury to existing rights. The acreage
32 irrigated within an irrigation district may not be expanded through use
33 of conserved water unless approval has been received from the
34 department in accordance with section 302 of this act.

35 (~~(4)~~) (6) The department may approve an application for change
36 that proposes to transfer or change an inchoate water right permit or
37 certificate held by a public water system in accordance with section
38 408 of this act.

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

4 NEW SECTION. **Sec. 302.** A new section is added to chapter 90.03
5 RCW to read as follows:

6 (1) After the effective date of this section, if a person holding
7 a water right established under the laws of the state of Washington
8 conserves water or proposes to conserve water, the person may, in
9 accordance with RCW 90.03.380, apply to the department for a change in
10 purpose or place of use or point of diversion or any combination
11 thereof for the purpose of using conserved water for a new purpose or
12 in a place not originally authorized for beneficial use. The maximum
13 acreage allowed to be irrigated may be expanded and the place of use
14 and the population served by the water right may be increased beyond
15 the original intended place of use and purpose of use of the water
16 right only as provided by this section.

17 (2) If the proposed change results in no increase in the annual
18 consumptive quantity of water used under the water right, the person
19 proposing to make the change may retain for new use all of the
20 transferable conserved water. For conservation projects in which the
21 annual consumptive quantity of water will be increased, the person
22 proposing the change or transfer must agree in writing to convey to the
23 state of Washington the water right for at least one-half of the
24 transferable net water savings for the purpose of establishing a trust
25 water right under chapter 90.38 or 90.42 RCW as applicable. If state
26 or federal funds will be employed in the conservation project, the
27 proportion of the water savings that must be conveyed to the state of
28 Washington shall be equivalent to the ratio of the state or federal
29 funding to the overall project cost, but in no case less than one-half
30 of the net water savings. The person proposing to change or transfer
31 and use the remaining water on additional or different lands may do so
32 only under an approved change to the water right issued by the
33 department under RCW 90.03.380, 90.03.383, 90.03.390, or 90.44.100.
34 Reallocation and use of conserved water under this section shall not
35 impair any existing water right.

36 (3) The department may waive the requirement to convey a trust
37 water right to the state only where there is no discernible public
38 purpose to be benefited by establishment of a trust water right for

1 those waters. In such case, in lieu of conveying a trust water right,
2 the person proposing the conservation project must remit to the state
3 treasurer a payment equal to the value of the proportion of the water
4 right not conveyed to the state. The amount of this payment shall be
5 determined by a licensed independent real estate appraiser selected by
6 agreement of the department and the applicant. The basis of the
7 appraisal shall be the value of the proportion of the conserved water
8 not conveyed to the state in consideration of the economic value of
9 water in the immediate area where the water right is used. The cost of
10 the appraisal shall be shared equally by the department and the
11 applicant. Any funds conveyed to the state under this section shall be
12 deposited in the state stream flow restoration account established in
13 section 1005 of this act for use in purchasing or leasing trust water
14 rights.

15 NEW SECTION. **Sec. 303.** A new section is added to chapter 90.03
16 RCW to read as follows:

17 The department is authorized to process and render decisions on
18 applications for change or transfer under this chapter and amendments
19 of ground water rights under chapter 90.44 RCW as a matter of higher
20 priority than processing and rendering decisions on applications for
21 new water rights. Any application for a new water right for which a
22 permit decision has not been made by the department at the time a
23 transfer, change, or amendment is approved shall not be considered an
24 existing water right subject to analysis as to whether the application
25 may be injured, impaired, or detrimentally affected by the transfer or
26 change.

27 **Sec. 304.** RCW 90.42.080 and 1993 c 98 s 4 are each amended to read
28 as follows:

29 (1) The state may acquire all or portions of existing water rights,
30 for the purposes of this chapter, by purchase, lease, gift, financing
31 water conservation, reclaiming water, or as a consequence of the
32 artificial storage and discharge of ground water, or by other
33 appropriate means other than by condemnation, from any person or entity
34 or combination of persons or entities. Once acquired, such rights are
35 trust water rights.

36 (2) The department may enter into leases, contracts, or such other
37 arrangements with other persons or entities as appropriate, to ensure

1 that trust water rights acquired in accordance with this chapter may be
2 exercised to the fullest possible extent.

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

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

7 ~~((5) No funds may be expended for the purchase of water rights by
8 the state pursuant to this section unless specifically appropriated for
9 this purpose by the legislature.))~~

10 NEW SECTION. **Sec. 305.** A new section is added to chapter 90.03
11 RCW to read as follows:

12 A person may acquire and hold a water right for a beneficial
13 instream purpose or purposes if the department approves a transfer or
14 change of the water right under RCW 90.03.380 or 90.03.390. An
15 application for change must be filed on a form prescribed by the
16 department. Notice of the application shall be provided in the same
17 manner as any other application filed under this chapter. An instream
18 flow right established in this manner need not involve any diversion of
19 water or other physical works. An instream flow right is appurtenant
20 to a stream or reach of stream specified in the department's change
21 approval. When changed or transferred in this manner, the water right
22 shall retain its original priority date.

23 **PART IV**

24 **PUBLIC WATER SUPPLY**

25 NEW SECTION. **Sec. 401.** A new section is added to chapter 90.03
26 RCW to read as follows:

27 It is in the public interest for public water systems' certificated
28 water rights that document a combination of water that has been put to
29 beneficial use and water that has not been put to beneficial use to be
30 managed and regulated in a manner that:

31 (1) Provides for concurrent development and use of an inchoate
32 water right permit and the restoration of instream flows in geographic
33 areas with salmonid stocks listed or proposed for listing as threatened
34 or endangered under the federal endangered species act, or with stocks
35 listed as critical or depressed under the state salmon and steelhead
36 stock inventory;

1 (2) Provides for the concurrent use of an inchoate water right
2 permit and the retention of instream flows to provide for the
3 preservation of wildlife, fish, scenic, aesthetic, and navigational
4 values and other environmental values in geographic areas without
5 salmonid stocks listed or proposed for listing as threatened or
6 endangered under the endangered species act or with stocks listed as
7 critical or depressed under the state salmon and steelhead stock
8 inventory;

9 (3) Provides clarity and certainty regarding the legal status of
10 those rights for purposes of planning for water supply, land use,
11 watershed management, and growth management;

12 (4) Allows public water systems, through existing planning and
13 regulatory processes, the certainty required for public water systems
14 to operate in a safe, reliable, and effective manner consistent with
15 their duties to:

16 (a) Implement programs that promote the efficient management and
17 use of water resources;

18 (b) Provide water service in a timely and reasonable manner; and

19 (c) Respect and protect the ecological system affected by their
20 water withdrawals;

21 (5) Ensures the effective use of existing water supplies through
22 water conservation; and

23 (6) Promotes the formation of satellite management agencies to
24 facilitate regional management of public water supplies.

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

27 (1) Upon a showing satisfactory to the department that any
28 appropriation has been perfected in accordance with the provisions of
29 this chapter, it shall be the duty of the department to issue to the
30 applicant a certificate stating such facts in a form ((to be))
31 prescribed by ((him)) the department, and such certificate shall
32 ((thereupon)) be recorded with the department. Upon the request of a
33 public water system, the department shall issue incremental
34 certificates of water right, not more than once every six years, that
35 reflect either instantaneous or annual quantities of water, or both,
36 perfected by actual beneficial use. Pumping or diversion records,
37 meter data, or other reasonable information showing the extent of
38 actual beneficial use of water shall accompany the request. Any

1 original water right certificate issued, as provided by this chapter,
2 shall be recorded with the department and thereafter, at the expense of
3 the party receiving the (~~same~~) certificate, be transmitted by the
4 department (~~transmitted~~) to the county auditor of the county or
5 counties where the distributing system or any part thereof is
6 located(~~and~~). The certificate shall be recorded in the office of
7 such county auditor, and thereafter be transmitted to the (owner
8 thereof) certificate holder.

9 (2) Public water system certificates of water right that document
10 a combination of water that has been put to beneficial use and water
11 that has never been put to use, that have department of health approval
12 for the source for which the right is associated, and for which the
13 entity holding the certificate has constructed facilities in place to
14 use the water authorized by the water right, shall be administered in
15 the following manner:

16 (a) Any instantaneous or annual quantity of water that has been
17 perfected by application of water to actual beneficial use prior to the
18 effective date of this section shall remain a certificated right in
19 good standing under this section subject to issuance of a superseding
20 certificate under section 405 of this act. The application of water to
21 beneficial use must be shown by pumping or diversion records, meter
22 data, or other reasonable information showing the extent of actual
23 beneficial use.

24 (b) Any instantaneous or annual quantity of water not perfected by
25 actual beneficial use prior to the effective date of this section is
26 reinstated as a water right permit within the meaning of this chapter
27 and the holder of the permit is authorized to continue development and
28 use of the inchoate water right. The reinstated permit shall be
29 administered by the department as an inchoate right in permit status in
30 good standing, with a priority date as of the original application,
31 subject to the requirements of section 407 of this act.

32 (3)(a) For a public water system holding a permit reinstated by
33 this section and having a department of health approved number of
34 connections, and for which the original water right application filing
35 was for a discrete number of connections, water use by up to the
36 department of health approved number of connections as of the effective
37 date of this section is allowed within the existing water service area
38 of the public water system. If the public water system does not have
39 an existing service area established under chapter 43.20 or 70.116 RCW,

1 the place of use as authorized under the original certificate shall be
2 the place of use for water that is reinstated to permit status under
3 this section.

4 (b) For any public water system holding permits reinstated by this
5 section and having a department of health approved number of equivalent
6 residential units, and for which the original water right application
7 filing was made for a discrete number of connections or a then current
8 population and future requirements of the municipality or community,
9 water services shall be allowed up to the number of equivalent
10 residential units approved by the department of health as of the
11 effective date of this section for the existing service area of the
12 public water system as established under chapter 43.20 or 70.116 RCW.
13 However, any water supply interties must also comply with RCW
14 90.03.383.

15 (c) For any public water system holding permits reinstated by this
16 section with an unspecified number of connections in its department of
17 health approved water system plan, and the original application filing
18 was made for then current population and future requirements of the
19 municipality or community, water services shall be allowed to satisfy
20 the existing retail service area as established under chapter 43.20 or
21 70.116 RCW, retail service area in-filling, and existing wholesale
22 water delivery as of the effective date of this section. However, any
23 interties must also comply with RCW 90.03.383.

24 **Sec. 403.** RCW 90.03.015 and 1987 c 109 s 65 are each amended to
25 read as follows:

26 ((As used in this chapter:)) The definitions in this section apply
27 throughout this chapter unless the context clearly requires otherwise.

28 (1) "Department" means the department of ecology(~~(+)~~).

29 (2) "Director" means the director of ecology(~~(+and)~~).

30 (3) "Person" means any firm, association, water users' association,
31 corporation, irrigation district, or municipal corporation, as well as
32 an individual.

33 (4) "Inchoate water right" means an incomplete appropriative right
34 in good standing so long as the requirements of law are being
35 fulfilled.

36 (5) "Public water system" has the meaning provided in RCW
37 70.119A.020.

1 **Sec. 404.** RCW 39.34.020 and 1985 c 33 s 1 are each amended to read
2 as follows:

3 For the purposes of this chapter, the term "public agency" shall
4 mean any agency, political subdivision, or unit of local government of
5 this state including, but not limited to, municipal corporations, quasi
6 municipal corporations, special purpose districts, ~~((and))~~ local
7 service districts, and public water systems as defined in RCW
8 70.119A.020; any agency of the state government; any agency of the
9 United States; any Indian tribe recognized as such by the federal
10 government; and any political subdivision of another state.

11 The term "state" shall mean a state of the United States.

12 NEW SECTION. **Sec. 405.** A new section is added to chapter 90.03
13 RCW to read as follows:

14 (1) Any public water system asserting that it holds a certificate
15 that documents a combination of water put to beneficial use and water
16 not yet put to beneficial use shall provide evidence to the department
17 demonstrating that the criteria in subsection (2) of this section are
18 met such that a superseding certificate and water rights permit should
19 be issued. If the department, upon reviewing a public water system
20 plan or other applicable information, determines that the system has an
21 inchoate water right as provided in RCW 90.03.330, the department shall
22 issue a superseding certificate for the portion of the right that has
23 been put to beneficial use and shall issue a permit for the inchoate
24 portion of the water right that is reinstated to permit status. The
25 department shall condition permits reinstated by RCW 90.03.330 with the
26 performance standards created by section 407 of this act and a
27 development schedule. The development schedule shall be twenty years
28 from the effective date of this section with the option to extend the
29 schedule if good cause is shown under RCW 90.03.320, except that the
30 department may:

31 (a) Authorize a development schedule longer than twenty years, but
32 not more than fifty years, if a planned need is demonstrated, and (i)
33 a withdrawal facility with a hydraulic capacity beyond that needed for
34 twenty years was constructed, or (ii) debt service requirements extend
35 for such a period;

36 (b) Authorize a development schedule of less than twenty years if
37 the permittee, pursuant to reasonable diligence, can perfect inchoate

1 water right quantities by actual beneficial use in a shorter period of
2 time; or

3 (c) Deny any time for further development if there is no
4 demonstrated need for the water based on the water system plan or other
5 applicable information.

6 (2) Upon any determination of noncompliance with the performance
7 standards created by section 407 of this act, the permittee shall be
8 granted, by written notice, a reasonable period of time to effect
9 compliance. If a public water system receiving such a notification
10 disagrees with the department's determination of a reasonable time for
11 compliance, it may, at its election, initiate nonbinding mediation with
12 the department to resolve the dispute. After mediation, if the dispute
13 is not resolved, the state shall issue the permit to effect the
14 performance standards. The permit is appealable to the pollution
15 control hearings board.

16 (3) At the end of the construction schedule authorized in the
17 permit, the permit holder may request an extension of time only as
18 provided in RCW 90.03.320.

19 **Sec. 406.** RCW 90.03.386 and 1991 c 350 s 2 are each amended to
20 read as follows:

21 (1) Within service areas established pursuant to chapters 43.20 and
22 70.116 RCW, the department of ecology and the department of health
23 shall coordinate approval procedures to ensure compliance and
24 consistency with the approved water system plan.

25 (2) An application for change of water right may be approved to
26 establish a common service area for the use of existing water rights
27 across multiple service areas that have been established under chapters
28 43.20 and 70.116 RCW. The department of ecology and the department of
29 health shall coordinate review and approval procedures to ensure
30 compliance and consistency with an approved coordinated water system
31 plan or regional water plan for any common place of use proposal. All
32 water rights for public water supply within the proposed common service
33 area shall be evaluated as part of the proposal.

34 **NEW SECTION. Sec. 407.** A new section is added to chapter 90.03
35 RCW to read as follows:

36 (1) Any permittee with a water right permit reinstated under
37 section 405 of this act must meet the performance standards of this

1 subsection. Demonstration of compliance with performance standards
2 shall be through existing planning programs and processes of the
3 department of health or ecology to the extent practicable. All
4 permittees shall initially document compliance with the performance
5 standards not less than two years and not more than eight years from
6 the effective date of this section to the department of ecology and
7 then in its water system plan update, provided a water system plan is
8 required. Any permittee not required to complete a water system plan
9 shall demonstrate compliance in a reasonable, written format. If the
10 permittee complies with the performance standards, it will be
11 considered in compliance with RCW 90.03.320. The performance standards
12 are:

13 (a) Evidence demonstrating a need for the water within the
14 development schedule specified by the permit consistent with demand
15 forecasts prepared in accordance with the demand forecasting methods
16 specified by the departments of ecology and health;

17 (b) Evidence that the water system's use of water is fully
18 consistent with approved local land use planning within the constraints
19 of water availability and cost;

20 (c) Evidence that the water use meets state conservation and water
21 use efficiency requirements existing at the time the documentation is
22 submitted;

23 (d) Current information on how the utility's recent and proposed
24 beneficial use of water under such permits is consistent with state and
25 federal laws legally applicable to water use under the permit; and

26 (e) Evidence of participation by the permittee, to the extent
27 practicable, in watershed planning under chapter 90.82 RCW, coordinated
28 water system planning under chapter 70.119 RCW, or other collaborative
29 watershed planning efforts, if initiated.

30 (2) For the performance measures in subsection (1) of this section,
31 the department of health is responsible for ensuring compliance with
32 subsection (1)(a) through (c) of this section and the department of
33 ecology is responsible for ensuring compliance with subsection (1)(d)
34 and (e) of this section when the performance measures are identified in
35 a water system plan. If no water system plan is required, the
36 department of ecology is responsible for ensuring compliance with all
37 performance measures.

38 (3) For public water systems with a source of water that is either
39 a surface water source or a ground water source that is interconnected

1 with a surface water body that provides habitat for one or more
2 salmonid stocks that are listed or proposed for listing as threatened
3 or endangered under the federal endangered species act or with stocks
4 listed as critical or depressed under the state salmon and steelhead
5 stock inventory, the public water system shall enter into and implement
6 an interlocal agreement with the departments of ecology and fish and
7 wildlife as provided by chapter 39.34 RCW.

8 (a) The purpose of the interlocal agreement is to identify and make
9 mutual commitments to:

10 (i) Take immediate actions to arrest the further decline in fish
11 stock health and abundance;

12 (ii) Establish, protect, and restore an instream flow that is
13 sufficient to ensure that the instream flow contributes to the recovery
14 and maintenance of salmonid stocks. Any instream flows that are
15 established in connection with an interlocal agreement for a water
16 resource inventory area, as defined by chapter 173-500 WAC, overlaying
17 the same geographic areas that received a grant from the department
18 under chapter 90.82 RCW shall be interim until such planning for
19 instream flow, if applicable, is complete under chapter 90.82 RCW.
20 Interim instream flows established shall be conservative with regard to
21 preserving instream values;

22 (iii) Define a strategy to restore stream flows to the established
23 instream flow;

24 (iv) Establish benchmarks or milestones that can be used to
25 objectively measure the success in the recovery and maintenance of the
26 listed salmonid stocks; and

27 (v) Establish provisions for an adaptive management approach to
28 modify the interlocal agreement to effect its goal.

29 (b) If an interlocal agreement is not developed and signed by the
30 departments of ecology and fish and wildlife and the permittee within
31 two years of the effective date of this section, the permittee's use of
32 water from the effective date of this section under the permit shall be
33 subject to applicable source instream flows existing as of the
34 effective date of this section created by rule. If instream flows have
35 not been established or are insufficient, an instream flow shall be
36 specified by the department in consultation with the department of fish
37 and wildlife under RCW 75.20.050 by permit proviso, and any future
38 instream flows adopted or amended by the department.

1 (c) Within four years of the effective date of this section, and
2 every three years thereafter, the department in consultation with the
3 department of fish and wildlife, shall review the interlocal agreement
4 and its implementation to determine its effectiveness in contributing
5 to the recovery and maintenance of the listed salmonid stocks and
6 review the actions of all parties to implement the agreement. If the
7 department of ecology determines by written findings that a permittee
8 who is party to the interlocal agreement has failed to abide by the
9 agreement, it shall condition the use of water under the permit, from
10 the effective date of this section, to applicable instream flows
11 existing as of the effective date of this section created by rule. If
12 instream flows have not been established or are insufficient, an
13 instream flow shall be specified by the department in consultation with
14 the department of fish and wildlife under RCW 75.20.050 by permit
15 proviso, and any future instream flows adopted or amended by the
16 department.

17 (d) If any permittee who is party to the interlocal agreement
18 disagrees with any determinations made by the department under this
19 section, the permittee may, at its election, initiate nonbinding
20 mediation with the department to resolve a dispute. After mediation,
21 if the dispute is not resolved, the permittee may appeal any findings
22 made by the department to the pollution control hearings board.

23 (4) For any public water system permittee in an area without stocks
24 listed as threatened or endangered under the endangered species act and
25 without stocks listed as critical or depressed in the state salmon and
26 steelhead stock inventory, the use of inchoate permits shall be
27 conditioned with instream flows established under chapter 90.22 or
28 90.54 RCW existing as of the effective date of this section, for the
29 applicable source.

30 (5) Nothing in this section waives any other requirement of the law
31 related to the use of water.

32 NEW SECTION. **Sec. 408.** A new section is added to chapter 90.03
33 RCW to read as follows:

34 The department shall approve an application for change that
35 proposes to change or transfer an inchoate water right from one public
36 water system to another or to expand the place of use of an existing
37 public water system if in addition to the requirements of RCW
38 90.03.380:

1 (1) The proposed change will authorize the use of water consistent
2 with a state-approved water system plan under chapter 43.20 RCW, and
3 any approved comprehensive plan under chapter 36.70A or 36.70 RCW, or
4 in the absence of such a plan, an approved plan under chapter 35.63
5 RCW. The department shall review water right issues concurrently with
6 department of health review of the associated water system plan
7 describing any proposed transfer of water. Any transfer of more than
8 two million gallons of water per day across a water resource inventory
9 area boundary must be consistent with an approved watershed plan under
10 chapter 90.82 RCW, coordinated water system plan under chapter 70.116
11 RCW, or a similar plan. In the absence of such a plan, the department
12 shall secure the approval of the counties affected by the transfer
13 prior to approval of the change;

14 (2) The public water system has implemented water conservation
15 measures so that its water use meets or exceeds state performance
16 standards. For transfers of water by intertie, the receiving public
17 water system's conservation performance must be equivalent to or exceed
18 the sending system's performance; and

19 (3)(a) The use of water is subject to instream flows to protect the
20 quality of the natural environment as provided in RCW 90.54.020(3)(a)
21 or 75.20.050 and a contribution to flow restoration is made as provided
22 under (b) of this subsection. The department shall condition the use
23 of water with any instream flow proviso on the water right proposed for
24 change or any applicable instream flows contained in an adopted rule,
25 unless the department, in consultation with the department of fish and
26 wildlife, determines that the applicable instream flow is not
27 sufficient. Interim instream flows shall be established that are
28 conservative with regard to preserving instream values. Any interim
29 instream flow placed as a proviso on an approved change under this
30 section is effective until permanent instream flows are developed under
31 a watershed planning program under chapter 90.82 RCW, or in the absence
32 of such a program, by the department of ecology under chapters 90.22
33 and 90.54 RCW.

34 (b) In addition to the provisions of (a) of this subsection, in
35 areas where adopted minimum instream flows have not been met in eight
36 of the most recent ten years, the department shall require the
37 applicant to provide a contribution to assist in the restoration of
38 aquatic ecosystems in the affected watershed or watersheds equal to ten
39 percent of the volume or value of the unused water to be transferred.

1 The contribution can be a transfer of water to the state trust water
2 rights program, or at the applicant's discretion a one-time monetary
3 contribution. For a monetary contribution, the applicant proposing the
4 transfer shall remit to the state treasurer a payment based on the
5 value of the water as determined by a licensed independent real estate
6 appraiser selected by agreement of the department and the applicant.
7 The cost of the appraisal shall be borne by the applicant. Any funds
8 conveyed to the state under this section shall be deposited in the
9 state stream flow restoration account established in section 1005 of
10 this act for use in purchasing or leasing trust water rights.

11 NEW SECTION. **Sec. 409.** A new section is added to chapter 90.03
12 RCW to read as follows:

13 The department is authorized to enter into agreements with
14 satellite management agencies to effect sound water management and
15 public health objectives consistent with this chapter and chapters
16 43.20 and 70.116 RCW. The department shall seek expressions of the
17 public interest in developing the agreements and any such agreement
18 shall not authorize any impairment of existing rights. Implementation
19 of the agreement must result in a net benefit to the public when public
20 health and environmental values are evaluated together. In developing
21 the agreements, the department shall consider, but is not limited to
22 considering:

- 23 (1) Benefits to regional water supplies;
- 24 (2) The effect of existing and future withdrawals of ground water
25 under RCW 90.44.050;
- 26 (3) Appropriate mitigation or contingency plans for water use
27 during low flow periods;
- 28 (4) Appropriate conservation and metering practices;
- 29 (5) Water management responsibilities proportional to the volume of
30 water being moved, if any; and
- 31 (6) Water management activities targeted at establishment,
32 protection, and restoration of instream flows.

33 **Sec. 410.** RCW 90.03.383 and 1991 c 350 s 1 are each amended to
34 read as follows:

- 35 (1) The legislature recognizes the value of interties for improving
36 the reliability of public water systems, enhancing their management,
37 and more efficiently utilizing the increasingly limited resource.

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

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

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

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

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

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

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

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

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

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

1 definite date by which its determination will be made. No additional
2 extensions shall be granted, and in no event shall the total review
3 period for the department of ecology exceed one hundred eighty days.

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

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

26 NEW SECTION. **Sec. 411.** A new section is added to chapter 90.03
27 RCW to read as follows:

28 Nothing in section 401, 405, or 407 through 409 of this act or RCW
29 90.03.330, 90.03.015, 39.34.020, 90.03.386, or 90.03.383 shall impair
30 any existing water right.

31 **PART V**

32 **GROUND WATER EXEMPTION**

33 **Sec. 501.** RCW 90.44.050 and 1987 c 109 s 108 are each amended to
34 read as follows:

35 (~~After June 6, 1945,~~) No withdrawal of public ground waters of
36 the state shall be begun, nor shall any well or other works for such

1 withdrawal be constructed, unless an application to appropriate such
2 waters has been made to the department and a permit has been granted
3 (~~by it as herein provided: EXCEPT, HOWEVER, That any withdrawal of~~
4 ~~public ground waters for stock watering purposes, or for the watering~~
5 ~~of a lawn or of a noncommercial garden not exceeding one half acre in~~
6 ~~area, or for single or group domestic uses in an amount not exceeding~~
7 ~~five thousand gallons a day, or for an industrial purpose in an amount~~
8 ~~not exceeding five thousand gallons a day, is and shall be exempt from~~
9 ~~the provisions of this section, but, to the extent that it is regularly~~
10 ~~used beneficially, shall be entitled to a right equal to that~~
11 ~~established by a permit issued under the provisions of this chapter:~~
12 ~~PROVIDED, HOWEVER, That the department from time to time may require~~
13 ~~the person or agency making any such small withdrawal to furnish~~
14 ~~information as to the means for and the quantity of that withdrawal:~~
15 ~~PROVIDED, FURTHER, That at the option of the party making withdrawals~~
16 ~~of ground waters of the state not exceeding five thousand gallons per~~
17 ~~day, applications under this section or declarations under RCW~~
18 ~~90.44.090 may be filed and permits and certificates obtained in the~~
19 ~~same manner and under the same requirements as is in this chapter~~
20 ~~provided in the case of withdrawals in excess of five thousand gallons~~
21 ~~a day)) except as provided in sections 502 and 503 of this act.~~

22 NEW SECTION. **Sec. 502.** A new section is added to chapter 90.44
23 RCW to read as follows:

24 Within two years of the effective date of this section, and
25 afterward whenever changing water supply and water use conditions
26 dictate, the department shall enter into agreements with each county of
27 the state to establish the conditions under which various new
28 withdrawals of ground water would be exempt from the permit requirement
29 of RCW 90.44.050 for those watersheds or portions of watersheds that
30 lie within that county's boundaries. In developing such agreements,
31 the department shall consult with the departments of health, fish and
32 wildlife, and community, trade, and economic development, and the
33 department shall, as quickly as is practicable, adopt the conditions
34 established in such agreements as rules. The agreements shall be
35 designed to meet both state and local objectives with respect to land
36 and water resource management, including, but not limited to:

37 (1) Protecting and restoring salmonid stocks that are listed or
38 proposed for listing as threatened or endangered under the federal

1 endangered species act or listed as critical or depressed under the
2 state salmon and steelhead stock inventory;

3 (2) Complying with, and effectively implementing, the provisions of
4 chapter 36.70A RCW;

5 (3) Providing for public health and safety and promoting the use of
6 satellite management agencies to manage new public water systems;

7 (4) Promoting meaningful and effective watershed planning and
8 management;

9 (5) Providing certainty about types of water uses that would be
10 exempt from the permit requirements of RCW 90.44.050;

11 (6) Promoting cluster development to help preserve open space; and

12 (7) Providing the means to address and mitigate for any
13 environmental and natural resources effects caused by either single or
14 multiple withdrawals exempted from the permit requirements of RCW
15 90.44.050.

16 NEW SECTION. **Sec. 503.** A new section is added to chapter 90.44
17 RCW to read as follows:

18 (1) Except as specified in subsections (2) and (3) of this section,
19 and until that time as an agreement or agreements under section 502 of
20 this act have been concluded with a particular county, but not after
21 two years from the effective date of this section, a withdrawal of
22 public ground waters in a total amount not exceeding five thousand
23 gallons per day is allowed for one or more of the following purposes:

24 (a) Stock watering up to the carrying capacity of the land;

25 (b) Irrigation of a lawn or noncommercial garden, the total area
26 irrigated not to exceed one-half acre;

27 (c) Single or group domestic use; or

28 (d) Industrial purposes.

29 The purposes listed in (a) through (d) of this subsection are
30 exempt from the permit requirements of RCW 90.44.050, and, to the
31 extent water is beneficially used and in conformance with all other
32 applicable laws, are entitled to a right equal to that established
33 under the provisions of this chapter. The priority date for a right
34 established under this section shall be the date that continuous usage
35 of water for one or more of the exempted purposes set forth in this
36 subsection is commenced. The department may require persons or
37 entities making withdrawals under this section to furnish information
38 as to the means for and the quantity of their withdrawals.

1 (2) Until an agreement or agreements have been concluded under
2 section 502 of this act, but not after two years from the effective
3 date of this section, for those watersheds or portions of watersheds
4 that lie within a county's boundaries but outside of the areas
5 identified in subsection (3) of this section, the county may adopt
6 criteria by local ordinance further restricting the use of the
7 exemption specified in subsection (1) of this section. Types of
8 restrictions that may be placed upon use of the exemption include, but
9 are not limited to:

10 (a) Limiting use to certain purposes;

11 (b) Limiting the amount of water that can be used for one or more
12 purposes and the acreage that can be irrigated;

13 (c) Limiting the total number of exempt uses or the total
14 quantities of water that may be withdrawn from the source, regardless
15 of purpose; and

16 (d) Limiting the term of use of the exemption to the period until
17 water can be provided by a public water system.

18 (3) Until an agreement or agreements have been concluded under
19 section 502 of this act, but not after two years from the effective
20 date of this section, for any areas of the state containing waters in
21 which one or more salmonid stocks are listed or proposed for listing as
22 threatened or endangered under the federal endangered species act, or
23 are listed as critical or depressed under the state salmon and
24 steelhead stock inventory, the use of the permit exemption specified in
25 RCW 90.44.050 is either prohibited, or the conditions under which the
26 exemption can be used modified, if, within that area, depleted stream
27 flows have been identified as a contributing factor in the decline of
28 the fishery resource by a limiting factor analysis undertaken in
29 conjunction with the listing, and the aquifer or aquifers that would
30 serve as the source for new water supplies would capture water from one
31 or more of the surface water bodies that is experiencing depleted
32 stream flows. In those areas where water service from an existing
33 public water system or approved satellite management agency is
34 reasonably available, use of the exemption is prohibited. In those
35 areas where water service from an existing public water system or
36 approved satellite management agency is not reasonably available, the
37 exemption shall be used solely for reasonable single-family domestic
38 purposes in an amount not to exceed four hundred gallons per day and
39 only until water can be provided by a public water system.

1 (4) This section expires two years from the effective date of this
2 section.

3 **Sec. 504.** RCW 58.17.110 and 1995 c 32 s 3 are each amended to read
4 as follows:

5 (1) The city, town, or county legislative body shall inquire into
6 the public use and interest proposed to be served by the establishment
7 of the subdivision and dedication. ~~((It shall determine:—(a) If
8 appropriate provisions are made for, but not limited to, the public
9 health, safety, and general welfare, for open spaces, drainage ways,
10 streets or roads, alleys, other public ways, transit stops, potable
11 water supplies, sanitary wastes, parks and recreation, playgrounds,
12 schools and schoolgrounds, and shall consider all other relevant facts,
13 including sidewalks and other planning features that assure safe
14 walking conditions for students who only walk to and from school; and
15 (b) whether the public interest will be served by the subdivision and
16 dedication.~~

17 ~~(2))~~ A proposed subdivision and dedication shall not be approved
18 unless the city, town, or county legislative body determines and makes
19 written findings that: (a) Appropriate provisions are made for the
20 public health, safety, and general welfare and for such open spaces,
21 drainage ways, streets or roads, alleys, other public ways, transit
22 stops, potable water supplies, sanitary wastes, parks and recreation,
23 playgrounds, schools and schoolgrounds and all other relevant facts,
24 including sidewalks and other planning features that assure safe
25 walking conditions for students who only walk to and from school; and
26 (b) the public use and interest will be served by the platting of such
27 subdivision and dedication.

28 (2) In making its determination and written findings that
29 appropriate provisions have been made for potable water supplies, the
30 city, town, or county legislative body shall promote the reliable and
31 efficient delivery of safe and adequate water supply by ensuring that:

32 (a) The number of new public water supply systems established is
33 minimized;

34 (b) The use of new wells for potable water supply shall, until such
35 time as an agreement or agreements have been concluded under section
36 502 of this act, be in conformance with the provisions of section 503
37 of this act; and

1 (c) If a proposed subdivision is within the future service area of
2 an existing public water system, as identified in an approved
3 coordinated water system plan under chapter 70.116 RCW or an approved
4 water system plan under chapter 43.20 RCW, and the system can provide
5 safe and reliable potable water to an applicant in a timely and
6 reasonable manner, under guidelines developed by the department of
7 health, the city, town, or county shall require connection to that
8 system. If no existing public water system can provide service, the
9 city, town, or county shall only approve new public water systems in
10 conformance with RCW 70.119A.060(2).

11 (3) If ~~((it))~~ the city, town, or county legislative body finds
12 that the proposed subdivision and dedication make ~~((such))~~ appropriate
13 provisions as provided in subsections (1) and (2) of this section and
14 that the public use and interest will be served, then the legislative
15 body shall approve the proposed subdivision and dedication. Dedication
16 of land to any public body, provision of public improvements to serve
17 the subdivision, and/or impact fees imposed under RCW 82.02.050 through
18 82.02.090 may be required as a condition of subdivision approval.
19 Dedications shall be clearly shown on the final plat. No dedication,
20 provision of public improvements, or impact fees imposed under RCW
21 82.02.050 through 82.02.090 shall be allowed that constitutes an
22 unconstitutional taking of private property. The legislative body
23 shall not as a condition to the approval of any subdivision require a
24 release from damages to be procured from other property owners.

25 ~~((+3))~~ (4) If the preliminary plat includes a dedication of a
26 public park with an area of less than two acres and the donor has
27 designated that the park be named in honor of a deceased individual of
28 good character, the city, town, or county legislative body must adopt
29 the designated name.

30 **Sec. 505.** RCW 19.27.097 and 1995 c 399 s 9 are each amended to
31 read as follows:

32 (1) Each applicant for a building permit of a building
33 necessitating potable water shall provide evidence of an adequate water
34 supply for the intended use of the building. Evidence may be in the
35 form of a water right permit from the department of ecology, a letter
36 from an approved public water ~~((purveyor))~~ system stating the ability
37 to provide water, or another form sufficient to verify the existence of
38 an adequate water supply. ~~((In addition to other authorities, the~~

1 ~~county or city may impose conditions on building permits requiring~~
2 ~~connection to an existing public water system where the existing system~~
3 ~~is willing and able to provide safe and reliable potable water to the~~
4 ~~applicant with reasonable economy and efficiency.))~~ When an existing
5 public water system can provide safe and reliable water to an
6 applicant, the county or city shall require connection to that system.
7 An application for a water right shall not be sufficient proof of an
8 adequate water supply.

9 (2) Within counties not required or not choosing to plan pursuant
10 to RCW 36.70A.040, the county and the state may mutually determine
11 those areas in the county in which the requirements of subsection (1)
12 of this section shall not apply. The departments of health and ecology
13 shall coordinate on the implementation of this section. Should the
14 county and the state fail to mutually determine those areas to be
15 designated pursuant to this subsection, the county may petition the
16 department of community, trade, and economic development to mediate or,
17 if necessary, make the determination.

18 (3) A county, city, or town shall require an applicant for a
19 building permit to utilize water conservation measures consistent with
20 local ordinances, including ordinances established in accordance with
21 regional watershed plans adopted under chapter 90.82 RCW. The
22 conservation measures may be in addition to those required by either
23 the department of health or the department of ecology.

24 (4) Buildings that do not need potable water facilities are exempt
25 from the provisions of this section. The department of ecology, after
26 consultation with local governments, may adopt rules to implement this
27 section, which may recognize differences between high-growth and low-
28 growth counties.

29 **PART VI**

30 **CAPTURE OF SURFACE WATER BY WELLS**

31 NEW SECTION. **Sec. 601.** The legislature finds that Washington's
32 watersheds are unique and vary considerably in structure and
33 complexity. Watershed-specific information is required to address
34 water use, planning, and management in each watershed. In many basins
35 the connection between ground water and surface water makes further
36 development of the ground water resource problematic because of the
37 risk of impairment to existing water rights, including established

1 instream flows. A technical advisory committee convened by the
2 department of ecology determined that, in most watersheds in the state,
3 withdrawals of ground water will, to some extent, capture stream flow,
4 meaning that the withdrawal or withdrawals will draw water directly
5 from the stream or will intercept and reduce the amount of ground water
6 discharge to the stream, or both. The committee also developed a
7 framework for using the best available science and information to
8 select a technical method appropriate to assess the relationship
9 between surface and ground water for a given area. These methods can
10 then be used to determine the effects proposed ground water withdrawals
11 could have on existing rights, including established instream flows.

12 The legislature also finds that significant opportunities exist to
13 further develop the ground water resources of the state provided that
14 appropriate actions are taken to mitigate for any possible impairment
15 caused by new ground water withdrawals on those existing water rights.
16 Because most new applications for ground water rights involve
17 withdrawals that could capture surface water, the issuance of new
18 ground water permits is often dependent upon an applicant offsetting or
19 mitigating the effects of those proposed withdrawals on surface water
20 sources. Thus there is a strong need to understand the types of
21 mitigation measures that would effectively offset the effects caused by
22 proposed withdrawals if new ground water permits are to be issued.

23 The legislature further finds that the mitigation efforts should be
24 undertaken in a manner consistent with a set of principles that promote
25 general watershed health and the preservation and enhancement of the
26 fishery resource, particularly in those parts of the state that contain
27 waters in which one or more salmonid stocks are listed or proposed for
28 listing as threatened or endangered under the federal endangered
29 species act or listed as critical or depressed under the state salmon
30 and steelhead stock inventory. The purpose of chapter . . . , Laws of
31 1999 (this act) is, in part, to establish that set of principles under
32 which proposals to mitigate for the effects of new ground water
33 withdrawals can be evaluated.

34 NEW SECTION. **Sec. 602.** The department of ecology shall convene a
35 group consisting of representatives from major stakeholder groups
36 concerned with water resources management as well as scientists
37 recognized for their expertise in the fields of hydrology,
38 hydrogeology, fish biology, stream ecology, and stream restoration to

1 review, assess, and recommend methods for mitigating the effects caused
2 by proposed ground water withdrawals. The group shall consider all
3 types of mitigation measures. The department of ecology shall adopt
4 rules to implement the findings of the group and shall report on the
5 group's progress, findings, and any recommendations for possible
6 legislative action to the legislature by December 31, 1999.

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

9 (1) If the department determines that an application for a water
10 right, transfer, or change filed under RCW 90.03.260 or 90.03.380 could
11 impair existing rights, including instream flows, the department shall
12 apply the following principles to evaluate any mitigation proposal
13 included as part of the application:

14 (a) Preference shall be given to proposals that would replace the
15 impaired quantity with a like amount of water, both in quantity and
16 quality;

17 (b) Preference shall be given to proposals that would require a
18 minimum of ongoing maintenance in order to be effective;

19 (c) Preference shall be given to proposals that would provide
20 benefits for the entire watershed;

21 (d) Preference shall be given to coordinated mitigation proposals
22 submitted in conjunction with a group of applications when those
23 proposals would result in more effective mitigation, provide greater
24 benefits to the water resource, and promote better overall watershed
25 health. Submission of joint mitigation proposals shall not alter the
26 priority dates of the respective applications.

27 (2) All proposals to mitigate potential impairments that would be
28 created by a proposed diversion or withdrawal of water shall include a
29 program to monitor the effectiveness of the mitigation measure.

30 NEW SECTION. **Sec. 604.** A new section is added to chapter 90.44
31 RCW to read as follows:

32 The department shall, when evaluating an application for a water
33 right or an amendment filed under RCW 90.44.050 or 90.44.100 that it
34 determines could impair existing rights, including instream flows,
35 apply the principles outlined in section 603 of this act.

36 The department shall condition the use of water with any instream
37 flow proviso on the water right proposed for change or any applicable

1 instream flows contained in an adopted rule, unless the department, in
2 consultation with the department of fish and wildlife, determines that
3 the applicable instream flow is not sufficient using the best
4 information available at the time the decision is made. In the absence
5 of established instream flows, or if existing instream flows are
6 determined by the department to be insufficient, the department shall,
7 in consultation with the department of fish and wildlife, determine
8 interim instream flows for conditioning the unused water to be
9 transferred or changed. Interim instream flows shall be established
10 that are conservative with regard to preserving instream values. Any
11 interim instream flow placed as a proviso on an approved change under
12 this section shall be effective until permanent instream flows are
13 developed pursuant to a watershed planning program under chapter 90.82
14 RCW, or in the absence of such program, by the department of ecology
15 under chapters 90.22 and 90.54 RCW.

16 **Sec. 605.** RCW 90.03.255 and 1997 c 360 s 2 are each amended to
17 read as follows:

18 The department shall, when evaluating an application for a water
19 right, transfer, or change filed pursuant to RCW ((90.03.250))
20 90.03.260 or 90.03.380 that includes provision for any water
21 impoundment or other resource management technique, take into
22 consideration the benefits and costs, including environmental effects,
23 of any water impoundment or other resource management technique that is
24 included as a component of the application. The department's
25 consideration shall extend to any increased water supply, or mitigation
26 for any impairment to existing rights, that results from the
27 impoundment or other resource management technique, including but not
28 limited to any recharge of ground water that may occur, as a means of
29 making water available or otherwise offsetting the impact of the
30 diversion of surface water proposed in the application for the water
31 right, transfer, or change. Provision for an impoundment or other
32 resource management technique in an application shall be made solely at
33 the discretion of the applicant and shall not otherwise be made by the
34 department as a condition for approving an application that does not
35 include such provision.

36 This section does not lessen, enlarge, or modify the rights of any
37 riparian owner, or any existing water right acquired by appropriation
38 or otherwise.

1 either by certified mail or personal service to the person incurring
2 the penalty, from the director or the director's designee describing
3 the violation. Any person incurring any penalty under this chapter may
4 appeal the same under chapter 34.05 RCW to the director. Appeals shall
5 be filed within thirty days of receipt of notice imposing any penalty.
6 The penalty imposed shall become due and payable thirty days after
7 receipt of a notice imposing the penalty unless an appeal is filed.
8 Whenever an appeal of any penalty incurred under this chapter is filed,
9 the penalty shall become due and payable only upon completion of all
10 review proceedings and the issuance of a final order confirming the
11 penalty in whole or in part.

12 If the amount of any penalty is not paid within thirty days after
13 it becomes due and payable the attorney general, upon the request of
14 the director shall bring an action in the name of the state of
15 Washington in the superior court of Thurston county or of any county in
16 which such violator may do business, to recover such penalty. In all
17 such actions the procedure and rules of evidence shall be the same as
18 an ordinary civil action. All penalties recovered under this section
19 shall be paid into the state's general fund.))

20 (1) If any person or government agency fails to follow the
21 requirements of obtaining hydraulic project approval under this chapter
22 or fails to carry out any of the requirements or conditions of a
23 hydraulic project approval issued under this chapter, the department
24 may issue an order to that person or government agency. The order may
25 require the person or government agency to stop work on any or all of
26 the activities subject to the hydraulic project approval, to correct or
27 to restore the nonconforming site, or to both stop work and to correct
28 or to restore the nonconforming site. Within twenty days of service of
29 such an order or as provided by rule of the department extending such
30 time, the person may file a written petition with the department
31 appealing the order, and this petition shall be treated as an
32 application for an adjudicative proceeding under chapter 34.05 RCW. In
33 the event of an appeal, a person or government agency may seek interim
34 relief from an order under this section as provided in chapter 34.05
35 RCW.

36 (2) The department may adopt rules to designate that certain
37 violations of the terms or conditions of hydraulic project approval are
38 an infraction to be punished as provided by RCW 77.15.160. Any

1 punishment under chapter 77.15 RCW shall be supplemental to the remedy
2 provided by subsection (1) of this section.

3 **Sec. 703.** RCW 77.15.300 and 1998 c 190 s 52 are each amended to
4 read as follows:

5 (1) A person is guilty of unlawfully undertaking hydraulic project
6 activities if the person:

7 (a) Constructs any form of hydraulic project or performs other work
8 on a hydraulic project and((÷

9 (a)) fails to have a hydraulic project approval required under
10 chapter 75.20 RCW for such construction or work; ((or))

11 (b) Violates any requirements or conditions of the hydraulic
12 project approval for such construction or work;

13 (c) Violates any stop work or other order issued pursuant to RCW
14 75.20.106 when that order has been either served on the person or
15 posted at the site of the violation, except when the person acts in
16 accordance with any relief under chapter 34.05 RCW pursuant to a timely
17 appeal or timely relief from the department order; or

18 (d) Violates any rule governing small scale mining adopted under
19 RCW 75.20.330, except when such a rule violation has been designated as
20 an infraction by rule of the department.

21 (2) Unlawfully undertaking hydraulic project activities is a gross
22 misdemeanor.

23 NEW SECTION. **Sec. 704.** A new section is added to chapter 90.58
24 RCW to read as follows:

25 Whenever there are terms or conditions of the permit that are
26 required to be completed after occupancy or use commences, or carried
27 out as an ongoing part of occupancy or use, the local government may
28 require the posting of a bond or other demonstration of financial
29 responsibility as a condition of approval with regard to compliance
30 with any one or all terms and conditions of approval. A local
31 government may include compliance reporting requirements in any permit
32 authorizing development under this chapter. Submittal of a report that
33 makes false claims regarding the compliance of the project with permit
34 requirements may be considered grounds for revocation of the permit and
35 may be considered a separate violation of chapter 90.58 RCW.

1 **Sec. 705.** RCW 90.03.600 and 1995 c 403 s 635 are each amended to
2 read as follows:

3 (1) For the purpose of this section, the "unauthorized use of
4 water" means the use, storage, diversion, or withdrawal of any water
5 prior to the issuance of a permit when one is required; the use of
6 water in a manner beyond the legal entitlement of the water right
7 claimant or holder of a water appropriation permit or certificate; or
8 the willful waste of water.

9 (2) Except as provided in RCW 43.05.060 through 43.05.080 and
10 43.05.150, the power is granted to the department (~~of ecology~~) to
11 levy civil penalties (~~of up to one hundred dollars per day~~) for
12 violation of any of the provisions of this chapter and chapters 43.83B,
13 90.22, (~~and~~) 90.44, 90.54, and 90.66 RCW, and rules, permits, and
14 similar documents and regulatory orders of the department of ecology
15 adopted or issued pursuant to such chapters. Each and every violation
16 is a separate and distinct offense, and in case of a continuing
17 violation, every day's continuance shall be deemed to be a separate and
18 distinct violation. Every act of commission or omission that results
19 in, aids, or abets in the violation shall be considered a violation
20 under the provisions of this section and subject to the penalty as
21 provided for in this section.

22 (3) There are three categories of violations:

23 (a) A minor violation is a violation that does not seriously
24 threaten public health, safety, and the environment. Minor violations
25 include, but are not limited to, paperwork violations such as failure
26 to provide metering records or other required water use records upon
27 request.

28 (b) A serious violation is a violation that poses a critical or
29 serious threat to public health, safety, and the environment. Serious
30 violations include, but are not limited to, unauthorized use of water,
31 construction of any controlling works, ditch, canal, or well prior to
32 obtaining a required water right permit, failure to comply with the
33 instream flow or other provision of a permit or certificate, waste of
34 water, failure to install a metering or measuring device as required,
35 failure to comply with a previously issued order, or repeated minor
36 violations.

37 (c) A major violation is the continued unauthorized use of water
38 after prior written notice from the department to cease.

1 (4) The penalty for a minor violation is not less than one hundred
2 dollars and not more than one thousand dollars per day. The penalty
3 for a serious violation is not less than one thousand dollars and not
4 more than ten thousand dollars per day. The penalty for a major
5 violation is not less than ten thousand dollars and not more than
6 twenty-five thousand dollars per day.

7 (5) In determining the appropriate penalty under subsection (3) of
8 this section, the department shall consider whether the person:

9 (a) Has demonstrated a general disregard for public health and
10 safety through the number and magnitude of the violations;

11 (b) Has demonstrated a disregard for the water resource laws,
12 rules, or permits in repeated or continuous violations; or

13 (c) Knew or reasonably should have known of circumstances that
14 resulted in the violation.

15 (6) Penalties provided for in this section shall be imposed under
16 RCW 43.21B.300. The procedures of RCW 90.48.144 shall be applicable to
17 all phases of the levying of a penalty as well as review and appeal of
18 the same.

19 (7) Moneys collected under this section shall be deposited in the
20 stream flow restoration account created in section 1005 of this act.

21 **Sec. 706.** RCW 43.21B.300 and 1993 c 387 s 23 are each amended to
22 read as follows:

23 (1) Any civil penalty provided in RCW 18.104.155, 70.94.431,
24 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.48.144, 90.56.310, and
25 90.56.330 shall be imposed by a notice in writing, either by certified
26 mail with return receipt requested or by personal service, to the
27 person incurring the penalty from the department, the administrator of
28 the ~~((office of marine safety))~~ integrated oil spill prevention and
29 response program, or the local air authority, describing the violation
30 with reasonable particularity. Within fifteen days after the notice is
31 received, the person incurring the penalty may apply in writing to the
32 department, the administrator, or the authority for the remission or
33 mitigation of the penalty. Upon receipt of the application, the
34 department, the administrator, or authority may remit or mitigate the
35 penalty upon whatever terms the department, the administrator, or the
36 authority in its discretion deems proper. The department or the
37 authority may ascertain the facts regarding all such applications in
38 such reasonable manner and under such rules as it may deem proper and

1 shall remit or mitigate the penalty only upon a demonstration of
2 extraordinary circumstances such as the presence of information or
3 factors not considered in setting the original penalty.

4 (2) Any penalty imposed under this section may be appealed to the
5 pollution control hearings board in accordance with this chapter if the
6 appeal is filed with the hearings board and served on the department,
7 the administrator, or authority thirty days after receipt by the person
8 penalized of the notice imposing the penalty or thirty days after
9 receipt of the notice of disposition of the application for relief from
10 penalty.

11 (3) A penalty shall become due and payable on the later of:

12 (a) Thirty days after receipt of the notice imposing the penalty;

13 (b) Thirty days after receipt of the notice of disposition on
14 application for relief from penalty, if such an application is made; or

15 (c) Thirty days after receipt of the notice of decision of the
16 hearings board if the penalty is appealed.

17 (4) If the amount of any penalty is not paid to the department or
18 the administrator within thirty days after it becomes due and payable,
19 the attorney general, upon request of the department or the
20 administrator, shall bring an action in the name of the state of
21 Washington in the superior court of Thurston county, or of any county
22 in which the violator does business, to recover the penalty. If the
23 amount of the penalty is not paid to the authority within thirty days
24 after it becomes due and payable, the authority may bring an action to
25 recover the penalty in the superior court of the county of the
26 authority's main office or of any county in which the violator does
27 business. In these actions, the procedures and rules of evidence shall
28 be the same as in an ordinary civil action.

29 (5) All penalties recovered shall be paid into the state treasury
30 and credited to the general fund except those penalties imposed
31 pursuant to RCW 18.104.155, which shall be credited to the reclamation
32 account as provided in RCW 18.104.155(7), RCW 70.94.431, the
33 disposition of which shall be governed by that provision, RCW
34 70.105.080, which shall be credited to the hazardous waste control and
35 elimination account, created by RCW 70.105.180, ~~((and))~~ RCW 90.56.330,
36 which shall be credited to the coastal protection fund created by RCW
37 90.48.390, and RCW 90.03.600, which shall be credited to the stream
38 flow restoration account, created by section 1005 of this act.

1 **Sec. 707.** RCW 90.08.040 and 1977 c 22 s 1 are each amended to read
2 as follows:

3 Where water rights of a stream or ground water source have been
4 adjudicated a stream patrolman shall be appointed by the director of
5 the department of ecology (1) upon application of water users having
6 adjudicated water rights in each particular water resource making a
7 reasonable showing of the necessity therefor(~~(, which application shall~~
8 ~~have been approved by the district water master if one has been~~
9 ~~appointed,)~~); or (2) upon determination by the department at such time,
10 for such ((stream)) water source, and for such periods of service as
11 local conditions may indicate to be necessary to provide the most
12 practical supervision and to secure to water users and owners the best
13 protection in their rights. Subject to the approval of the legislative
14 body of the affected county or counties, the department may appoint a
15 stream patrolman for any area, regardless of whether it has been
16 adjudicated, if required to assure proper supervision and protection of
17 water rights, enforcement of minimum or base flows or other rules or
18 regulations, or in response to a general decline in ground water
19 levels.

20 The stream patrolman shall have the same powers as a water master
21 appointed under RCW 90.03.060, but ~~((his))~~ the patrolman's district
22 shall be confined to the regulation of waters of a designated ~~((stream~~
23 ~~or streams))~~ source or sources. ~~((Such))~~ The patrolman shall be under
24 the supervision of the director or ~~((his))~~ the director's designated
25 representative(~~(.—He))~~ and shall also enforce such special rules and
26 regulations as the director may prescribe from time to time.

27 **Sec. 708.** RCW 90.08.060 and 1977 c 22 s 3 are each amended to read
28 as follows:

29 The salary of the stream patrolman shall be borne by the water
30 users receiving the benefits and shall be paid to the county or
31 counties in the following manner:

32 The county or counties ~~((may))~~ shall assess each water user for
33 ~~((his))~~ the users' proportionate share of the total stream patrolman
34 expense in the same ratio that the amount of water diverted or
35 withdrawn by ~~((him))~~ the user bears to the total amount diverted or
36 withdrawn from the ~~((stream))~~ water source during each season, on an
37 annual basis, to recover all such county expenses. The stream
38 patrolman shall keep an accurate record of the amount of water diverted

1 by each water user coming under (~~his~~) the patrolman's supervision.
2 On the first of each month the stream patrolman shall present (~~his~~)
3 the record of water diversion and withdrawal to the county or counties
4 for the preceding month. Where the water users are organized into an
5 irrigation district or water users' association, such organization may
6 enter into an agreement with the county or counties for direct payment
7 to the stream patrolman in order to minimize administrative costs.

8 **Sec. 709.** RCW 90.03.070 and 1987 c 109 s 70 are each amended to
9 read as follows:

10 It shall be the duty of the water master, acting under the
11 direction of the department, to divide in whole or in part, the water
12 supply of (~~his~~) the water master's designated district among the
13 several water conduits and reservoirs using (~~said~~) the supply,
14 according to the right and priority of each, respectively. (~~He~~) The
15 water master shall divide, regulate, and control the use of water
16 within (~~his~~) the district by such regulation of headgates, conduits,
17 and reservoirs as shall be necessary to prevent the use of water in
18 excess of the amount to which the owner of the right is lawfully
19 entitled. The regulation shall be carried out in accordance with
20 section 710 of this act. The water master shall also enforce instream
21 flow levels established by rule and instream flow conditions imposed on
22 water right permits and certificates. Whenever, in the pursuance of
23 his or her duties, the water master regulates a headgate of a water
24 conduit or the controlling works of a reservoir, he or she shall attach
25 to such headgate or controlling works a written notice, properly dated
26 and signed, stating that such headgate or controlling works has been
27 properly regulated and is wholly under his or her control and such
28 notice shall be a legal notice to all parties. In addition to dividing
29 the available waters and supervising the stream patrolmen in (~~his~~)
30 the district, (~~he~~) the water master shall enforce such rules and
31 regulations as the department shall from time to time prescribe.

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

1 NEW SECTION. **Sec. 710.** A new section is added to chapter 43.27A
2 RCW to read as follows:

3 The purpose of this section is to set forth the powers of the
4 department to regulate the withdrawal or diversion of public waters and
5 water or water rights related thereto, including regulation based on
6 dates of priority or other pertinent factors. Regulatory actions taken
7 under this section shall be based on examination and determination by
8 the department or the court, as applicable, of the various water rights
9 involved according to the department's records and other records and
10 pertinent facts. The powers set forth in this section may be exercised
11 whether or not a general adjudication relating to the water rights
12 involved has been conducted.

13 (1) In a regulatory situation (a) where a water right or all water
14 rights proposed for regulation by the department, as well as any right
15 or rights of a senior priority that the proposed regulation is designed
16 to protect, is or are embodied in a certificate or certificates issued
17 under RCW 90.03.240, 90.03.330, 90.38.040, 90.42.040, or 90.44.060 or
18 a permit or permits issued under RCW 90.03.290 or 90.44.060; (b) where
19 a flow or level has been established by rule under chapter 90.22 or
20 90.54 RCW; or (c) where it appears to the department that public waters
21 are being withdrawn without any right or other appropriate authority
22 whatsoever, the department in its discretion is authorized to regulate
23 the right or rights under either RCW 43.27A.190 or subsection (2) of
24 this section.

25 (2) In a regulatory situation where one or more of the water rights
26 proposed for regulation by the department, as well as any right or
27 rights of a senior priority that the proposed regulation is designed to
28 protect, is not or are not embodied in a permit or certificate as
29 described in subsection (1) of this section, the department, in its
30 sole and exclusive power to regulate, is authorized to bring an
31 appropriate action at law or in equity, including seeking injunctive
32 relief, as it may deem necessary. Where actions are brought in a state
33 court, the actions shall be initiated in the superior court of the
34 county where the point or points of diversion of the water right or
35 rights proposed for regulation are located. If the points of diversion
36 are located in more than one county, the department may bring the
37 action in a county where a point of diversion is located.
38 Notwithstanding the general adjudication procedures in RCW 90.03.110
39 through 90.03.245 and 90.44.220, the superior court shall make findings

1 and a determination of the validity and priority of the water rights
2 held by the parties to resolve the regulatory situation. The superior
3 court shall issue any necessary orders to implement its findings and
4 determination, including injunctive relief, that it determines is
5 necessary to regulate among the water rights.

6 (3) Nothing in this section authorizes the department or the
7 superior court to accomplish a general adjudication of water rights
8 proceeding or the substantial equivalent of a general adjudication of
9 water rights. The exclusive procedure for accomplishing a general
10 adjudication of water rights is under RCW 90.03.110 through 90.03.245
11 or 90.44.220.

12 (4) Nothing in this section shall amend, revise, or repeal RCW
13 90.14.130 or 90.14.200.

14 (5) This section does not in any way modify regulatory powers
15 previously placed with the department except as provided in subsections
16 (1) and (2) of this section.

17 **PART VIII**

18 **LAND USE**

19 NEW SECTION. **Sec. 801.** A new section is added to chapter 36.70A
20 RCW to read as follows:

21 In addition to the elements required by RCW 36.70A.070, a county or
22 city may include in its comprehensive plan an economic development
23 element that:

24 (1) Promotes economic opportunity for all citizens of the county or
25 city, especially for unemployed and disadvantaged persons and, within
26 the capacities of the natural resources and consistent with other
27 requirements of this chapter, encourages appropriate types of growth in
28 areas of the city or county experiencing insufficient economic growth;

29 (2) Is within the capacities of the county's or city's natural
30 resources, as determined in the land use element, including recognition
31 of the special treatment of shorelines of the state and water-dependent
32 uses, and its public facilities and public services, as determined in
33 its capital facilities and utilities elements;

34 (3) Promotes the processing of permits in a timely and fair manner;

35 (4) To the extent possible, is coordinated with economic
36 development plans and strategies of economic development councils,

1 economic development districts, port districts, and other public and
2 private organizations engaged in economic development planning;

3 (5) Encourages the reuse of underutilized or abandoned property;
4 and

5 (6) Provides for monitoring and adaptation of the economic
6 development element based on successes and failures.

7 NEW SECTION. **Sec. 802.** A new section is added to chapter 36.70A
8 RCW to read as follows:

9 (1) In addition to the elements required by RCW 36.70A.070, a
10 county or city may include in its comprehensive plan an environmental
11 element that identifies and evaluates the environmental impacts and
12 tradeoffs that can reasonably be foreseen by adoption and
13 implementation of the plan.

14 (2) The environmental element shall address system and area-wide
15 improvements and environmental elements and cumulative impacts,
16 including critical areas and shorelines of the state, endangered or
17 threatened species habitats, watersheds, water quality, ground water
18 movement, air quality, historic and cultural resources, utilities,
19 transportation, and public services.

20 (3) Environmental analysis of plan alternatives shall be conducted
21 in the draft plan. The draft plan should present reasonable
22 alternatives to allow comparison of the outcomes and tradeoffs in terms
23 of impacts on the environment, levels of service, costs of
24 implementation, and rates of growth. The final plan should summarize
25 the outcomes and tradeoffs that were made and found acceptable in
26 selecting the final plan.

27 (4) The environmental element, at a minimum, shall address the
28 following issues for each other element of the plan:

29 (a) Land use element. The analysis of the land use element should
30 clearly analyze the designations of urban growth areas and boundaries,
31 both as to location and size, and the tradeoffs inherent in each
32 alternative and the impacts of the preferred designation of urban
33 growth areas and boundaries, as compared to alternates considered and
34 the impacts of the planned growth with respect to infrastructure and
35 capital facilities, public services, critical areas, shorelines of the
36 state, air quality, water quality, and monitoring of development and
37 density (land supply/use) to track the remaining land supply and
38 capacity in urban growth areas.

1 (b) Housing. The analysis of this element should provide a
2 description of the expected impacts of projected growth on the
3 residential densities that may be required in existing residential
4 areas, an analysis of the community's ability to provide for affordable
5 housing needs, a program of ongoing review to monitor performance of
6 plan implementation, and disclosure of the impacts on affordable
7 housing that can reasonably be expected to result from the
8 implementation of the other elements of the plan.

9 (c) Capital facilities. The analysis of this element should
10 address the environmental costs of providing the established levels of
11 services to serve projected development and growth, the consequences of
12 projected growth and development on the established levels of service,
13 capital facilities and improvements to existing capital facilities
14 necessary to provide adequate public services to serve existing and
15 projected growth and development, coordination and relationship of the
16 capital facilities element with functional plans, such as storm water,
17 flood plain management, service plans, comprehensive water plans,
18 shoreline master programs, watershed management plans, options for
19 conservation, reuse, recycling to reduce environmental and capital
20 costs, and methods for ongoing monitoring of allocated and available
21 capacity of capital facilities.

22 (d) Transportation. The analysis of this element should determine
23 whether the plan encourages efficient multimodal transportation systems
24 that are based on regional priorities, coordinated with county and city
25 plans, and whether the jurisdiction can accommodate projected growth
26 and development at established levels of service. The analysis should
27 provide: (i) An analysis of the impacts of land use designations,
28 population densities, and development of existing and projected growth
29 and development on the existing transportation system; (ii) ten-year
30 traffic forecasts based on land use decisions and projected rates of
31 growth and development; (iii) an analysis of existing intergovernmental
32 coordination and methods to maintain or enhance regionally coordinated
33 levels of service; (iv) transportation demand management strategies and
34 alternative transportation modes; and (v) a program to monitor actual
35 use against projected use and capacity.

36 (e) Utilities. The analysis of this element should address the
37 availability of service to existing and projected growth and
38 development at established levels of service, the economic and
39 environmental costs of providing services to existing and projected

1 growth and development at established levels of service, conservation
2 and other measures to reduce demand, and monitoring allocated and
3 available capacity of utility systems.

4 (f) Shorelines of the state. The analysis of this element should
5 determine whether the comprehensive plan recognizes and protects the
6 state-wide long-term interest in shoreline management consistent with
7 the policy and procedures of chapter 90.58 RCW.

8 (g) Rural. The analysis of the rural element should address land
9 use designations, including population densities and intensity of
10 development in the rural area and the tradeoffs made in terms of
11 consequences to the size, location, and density of development in urban
12 growth areas, impacts on affordable housing, impacts on local
13 government's ability to provide services, including transportation and
14 utilities, impacts of development on viability of long-term
15 agricultural and forest resource lands, impacts of development on air
16 quality, water quality, and critical areas, and impacts of residential
17 development on ability to fight forest fires on lands adjacent to
18 residences.

19 (5) The environmental element may be prepared as a separate
20 document, as a separate element in the plan, or integrated and
21 presented as a part of each other element of the plan.

22 NEW SECTION. **Sec. 803.** A new section is added to chapter 43.21C
23 RCW to read as follows:

24 A county or city that prepares an environmental element as provided
25 by section 802 of this act shall not be required to prepare the
26 detailed statement required by RCW 43.21C.031 on the comprehensive
27 plan.

28 **PART IX**
29 **SHORELINE MANAGEMENT**

30 **Sec. 901.** RCW 90.58.080 and 1995 c 347 s 305 are each amended to
31 read as follows:

32 (1) Local governments shall develop or amend((, within twenty four
33 months after the adoption of guidelines as provided in RCW 90.58.060,))
34 a master program for regulation of uses of the shorelines of the state
35 consistent with the required elements of the guidelines adopted by the
36 department. For jurisdictions that are required to or choose to plan

1 pursuant to RCW 36.70A.040, the master program shall be reviewed for
2 compliance with the guidelines and adopted or amended as necessary by
3 September 1, 2002, and at least once every five years thereafter. For
4 all other jurisdictions, except as provided in subsection (2) of this
5 section, the master program shall be adopted or amended within twenty-
6 four months after the adoption of guidelines as provided in RCW
7 90.58.060.

8 (2) The department may adopt a schedule for development or amending
9 of master programs by jurisdictions not planning pursuant to RCW
10 36.70A.040 that allows for a development or amendment period of more
11 than twenty-four months, but not more than sixty months. The schedule
12 shall be adopted as a part of the guidelines. The schedule may
13 identify groups or classes of local government and establish different
14 schedules for such groups or classes. Prior to adoption of a schedule,
15 each local government shall be notified in writing of the time
16 requirements applicable to it. The department shall give full
17 consideration to comments made by local government on the proposed
18 schedule based on the criteria.

19 **PART X**
20 **FUNDING**

21 **Sec. 1001.** RCW 43.99E.015 and 1990 1st ex.s. c 15 s 8 are each
22 amended to read as follows:

23 For the purpose of providing funds for the planning, acquisition,
24 construction, and improvement of water supply facilities within the
25 state and water conservation within those facilities, the state finance
26 committee is authorized to issue general obligation bonds of the state
27 of Washington in the sum of sixty-five million dollars, or so much
28 thereof as may be required, to finance the improvements defined in this
29 chapter and all costs incidental thereto. These bonds shall be paid
30 and discharged within thirty years of the date of issuance in
31 accordance with Article VIII, section 1 of the state Constitution. No
32 bonds authorized by this chapter may be offered for sale without prior
33 legislative appropriation of the proceeds of the bonds to be sold.

34 **Sec. 1002.** RCW 43.99E.030 and 1996 c 320 s 21 are each amended to
35 read as follows:

1 As used in this chapter, the term "water supply facilities" means
2 domestic, municipal, industrial, and agricultural (and any associated
3 fishery, recreational, or other beneficial use) water supply or
4 distribution systems including but not limited to all equipment,
5 utilities, structures, real property, and interests in and improvements
6 on real property necessary for or incidental to the acquisition,
7 construction, installation, or use of any such water supply or
8 distribution system.

9 As used in this chapter, the term "public body" means the state of
10 Washington or any agency, political subdivision, taxing district, local
11 improvement district, or municipal or public corporation thereof; a
12 board of joint control; an agency of the federal government; and those
13 Indian tribes which may constitutionally receive grants or loans from
14 the state of Washington.

15 **Sec. 1003.** RCW 43.83B.300 and 1988 c 47 s 1, 1988 c 46 s 2, and
16 1988 c 45 s 1 are each reenacted and amended to read as follows:

17 The legislature finds that the fundamentals of water resource
18 policy in this state must be reviewed by the legislature to ensure that
19 the water resources of the state are protected and fully utilized for
20 the greatest benefit to the people of the state of Washington. The
21 legislature further finds that it is necessary to provide the
22 department of ecology with emergency powers to authorize withdrawals of
23 public surface and ground waters, including dead storage within
24 reservoirs, on a temporary basis, and construction of facilities in
25 relation thereto, in order to alleviate emergency water supply
26 conditions arising from the drought forecast for the state of
27 Washington during 1977 and during 1987 through 1989.

28 The legislature further finds that there is a continuing water
29 supply shortage in many areas of the state and that there is an urgent
30 need to assure the survival of irrigated crops and of the state's
31 fisheries.

32 The legislature further finds that in addition to water storage
33 facilities or other augmentation programs, improved efficiency of water
34 use could provide an important new supply of water in many parts of the
35 state with which to meet future water needs and that improved
36 efficiency of water use should receive greater emphasis in the
37 management of the state's water resources.

1 The legislature further finds that it is in the interest of
2 Washington state citizens to be better prepared for future droughts.
3 Investments in water conservation and efficiency projects can result in
4 conserved water that can be used to alleviate drought conditions and to
5 conserve instream flows to benefit threatened and endangered fish
6 species. Other benefits include improvements in water quality, public
7 health, recreation, and habitat.

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

24 NEW SECTION. Sec. 1004. A new section is added to chapter 43.83B
25 RCW to read as follows:

26 The state drought preparedness account is created in the state
27 treasury. Six million eight hundred thousand dollars is transferred
28 from the state emergency water projects revolving account to establish
29 the drought preparedness account. Five hundred thousand dollars will
30 remain in the state emergency water projects revolving account for its
31 original purpose or purposes. Moneys in the state drought preparedness
32 account may be spent only after appropriation. Expenditures from the
33 state drought preparedness account may be used only for the purposes
34 specified in section 104 of this act.

35 NEW SECTION. Sec. 1005. A new section is added to chapter 90.42
36 RCW to read as follows:

1 The state stream flow restoration account is created in the state
2 treasury. All receipts from payments made under sections 104, 302, and
3 408 of this act, and penalties under RCW 43.21B.300 and 90.03.600 must
4 be deposited into the account. Expenditures from the account may be
5 used only for the department of ecology to purchase or lease water
6 rights for placement in the trust water rights program created in this
7 chapter and chapter 90.38 RCW. Moneys in the stream flow restoration
8 account may be spent only after appropriation.

9 NEW SECTION. Sec. 1006. There is hereby appropriated to the state
10 and local improvements revolving account--water supply facilities,
11 established in RCW 43.99E.020, for the biennium ending June 30, 2001,
12 the sum of forty-three million dollars from funds appropriated by the
13 United States to the state of Washington to be divided into two shares
14 as follows:

15 (1) Twenty-one million five hundred thousand dollars, or as much
16 thereof as may be necessary, shall be expended by the department of
17 ecology for agricultural water supply conservation and efficiency
18 improvement projects. These funds shall be provided to qualifying
19 public bodies as grants and loans.

20 (2) Twenty-one million five hundred thousand dollars, or as much
21 thereof as may be necessary, shall be expended by the department of
22 health for domestic and municipal water supply conservation and
23 efficiency improvement projects. These funds shall be provided to
24 qualifying public bodies as grants and loans.

25 NEW SECTION. Sec. 1007. A new section is added to chapter 90.42
26 RCW to read as follows:

27 Conserved water resulting from projects funded under section 1006
28 of this act shall be allocated in accordance with section 302 of this
29 act.

30 NEW SECTION. Sec. 1008. Part headings used in this act are not
31 any part of the law.

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