
SUBSTITUTE HOUSE BILL 1791

State of Washington

54th Legislature

1995 Regular Session

By House Committee on Agriculture & Ecology (originally sponsored by Representatives Chandler, Mastin, McMorris, Sheldon, Delvin, Kremen, Clements, Chappell, Crouse, Scott, Costa, Horn, Robertson, Quall, Hankins, Skinner, Kessler, Schoesler, Grant, Sheahan, Brumsickle, Padden, Morris, Buck, Hatfield, Patterson, Cooke, Mulliken, Honeyford, Backlund and Basich)

Read first time 03/01/95.

1 AN ACT Relating to water resource management; amending RCW
2 43.27A.020, 43.27A.090, 43.27A.130, 43.27A.190, 43.21A.020, 43.21A.067,
3 90.54.040, 90.03.383, 43.21A.070, 34.05.425, 34.05.419, 34.05.461,
4 34.05.514, 34.05.530, 34.05.534, 34.12.040, 43.21B.110, 43.21B.130,
5 43.21B.240, 43.21B.300, 43.21B.310, 43.21B.320, 90.14.130, 90.14.190,
6 90.14.200, 90.66.080, 90.03.380, 90.44.100, 43.27A.190, 90.03.290, and
7 90.44.445; adding a new section to chapter 90.44 RCW; adding a new
8 section to chapter 43.21B RCW; adding a new section to chapter 34.05
9 RCW; adding a new section to chapter 43.21A RCW; adding a new chapter
10 to Title 43 RCW; creating new sections; recodifying RCW 43.21A.067;
11 decodifying RCW 90.14.043; repealing RCW 43.21A.064 and 90.54.030;
12 providing an effective date; and providing an expiration date.

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

14

PART I

15

WATER RESOURCE COMMISSIONS

16 NEW SECTION. **Sec. 1.** The legislature finds that balanced
17 administration and management of the state water resources is of
18 paramount importance to the citizens of the state. The legislature

1 finds that regional differences in water resource conditions require
2 greater consideration in the development and administration of water
3 resource policy. The legislature finds that to effectively take
4 regional differences into consideration, the decision-making authority
5 needs to be based on water resource plans developed by local elected
6 officials and interested persons from various regions of the state.

7 It is the intent of the legislature to establish two state water
8 resources commissions. Further, it is the direction of the legislature
9 that the commissions implement programs that are balanced with the
10 interests of all sectors of the state's residents taken in account.

11 It is further the intent of the legislature that all existing water
12 rights be protected and not diminished by the actions of the state and
13 that the principles of the prior appropriation doctrine of western
14 water law remain unchanged by this enactment (chapter . . . , Laws of
15 1995).

16 NEW SECTION. **Sec. 2.** The definitions in this section apply
17 throughout this chapter.

18 (1) "Commission" means the western or eastern Washington water
19 resource commissions established pursuant to this chapter.

20 (2) "Water supply special purpose district" means a water, combined
21 water-sewer, irrigation, reclamation, or public utility district that
22 provides water to persons or other water users within the district.

23 (3) "State engineer" means the person hired by the commissions to
24 administer the state engineer's office and the water resource programs
25 and responsibilities assigned to that office.

26 (4) "WRIA" means a water resource inventory area established in WAC
27 173-500-030, as it exists on January 1, 1995.

28 NEW SECTION. **Sec. 3.** (1) There is hereby created and established
29 two state commissions to be known and designated jointly as the
30 Washington water resources commissions, hereinafter referred to as the
31 commissions. One commission, to be known as the eastern Washington
32 water resources commission, shall have jurisdiction throughout the area
33 of the state east of the crest of the Cascade mountains and including
34 all of Skamania county. One commission, to be known as the western
35 Washington water resources commission, shall have jurisdiction
36 throughout the area of the state west of the crest of the Cascade
37 mountains, exclusive of Skamania county.

1 (2) The members of a commission shall serve four-year terms. Each
2 of the commissioners shall hold office until his or her successor is
3 appointed. The commissioners shall biennially choose a chair from
4 among themselves.

5 (3) Each commission shall be composed of eight members nominated by
6 the counties and appointed by the governor as provided in this section.

7 (a) The counties within the jurisdiction of the eastern Washington
8 water resources commission are hereby assigned to the two congressional
9 districts in eastern Washington based on the district in which a
10 majority of the county's population resides. Skamania and Klickitat
11 counties shall be assigned to the fourth congressional district. The
12 counties assigned to a particular district shall collectively nominate
13 six persons for appointment to the eastern Washington water resources
14 commission and submit this list of nominations to the governor. The
15 governor shall appoint four members of the commission from each of the
16 two lists submitted in this manner.

17 (b) The counties within the jurisdiction of the western Washington
18 water resources commission shall be divided into four groups: (i)
19 King, Pierce, and Snohomish counties; (ii) Island, San Juan, Skagit,
20 and Whatcom counties; (iii) Clallam, Jefferson, Kitsap, Mason, and
21 Grays Harbor counties; and (iv) the remaining counties within the
22 jurisdiction of the commission. Nominations for appointment to the
23 western Washington water resources commission from each group shall be
24 submitted to the governor. Each of the counties listed in (b)(i) of
25 this subsection shall nominate three persons for appointment to the
26 commission and the governor shall appoint five members to the western
27 Washington water resources commission from these nominations. The
28 counties in (b)(ii) of this subsection shall collectively nominate
29 three persons for appointment to the commission and the governor shall
30 appoint one member to the western Washington water resources commission
31 from these nominations. The counties in (b)(iii) of this subsection
32 shall collectively nominate three persons for appointment to the
33 commission and the governor shall appoint one member to the western
34 Washington water resources commission from these nominations. The
35 counties in (b)(iv) of this subsection shall collectively nominate
36 three persons for appointment to the commission and the governor shall
37 appoint one member to the western Washington water resources commission
38 from these nominations.

1 (c) The members of the legislative authorities of the counties
2 assigned to a congressional district by (a) of this subsection or
3 assigned to a group by (b) of this subsection shall convene to nominate
4 persons for appointment to the eastern or western Washington water
5 resources commission. They shall provide their lists of nominees to
6 the governor not later than thirty days after the effective date of
7 this section. If the counties assigned to a congressional district or
8 to a group do not provide nominations within the prescribed time, the
9 governor may make the appointments allocated to the district or group
10 without nominations. Each county assigned to a district or group by
11 this subsection (3) for one or more collective nominations shall be
12 entitled to three votes for each nomination and shall divide the votes
13 equally among the members of the legislative authority of the county.
14 Nominations shall be made by a majority vote of all of such members
15 assigned to the district or group based on the votes allocated to them
16 under this section. The governor shall make all appointments to the
17 commissions within sixty days of the effective date of this section.

18 Nominations and appointments to fill vacancies on the commission
19 shall be made as provided by this section for original appointments to
20 the positions. Such nominations shall be made within sixty days of the
21 date the vacancy is created or the appointment shall be made without
22 nominations. The governor shall appoint a person to fill a vacancy
23 within thirty days of the date the vacancy is created.

24 Nominations and appointments to fill expired terms of office of the
25 members of the commission shall be made as prescribed for nominations
26 and appointments for the initial membership of the commissions. The
27 members of the county legislative authorities shall make nominations
28 sixty days before the expiration of terms of office and the governor
29 shall make appointments not later than the date of the expiration of
30 the terms of office, which appointments shall take effect upon the
31 expiration of those terms.

32 (4) Each person nominated for appointment to a commission shall be
33 knowledgeable about state water law and have at least five years'
34 experience in water resource matters.

35 (5) No elective state official, state officer, or state employee
36 shall be a member of a commission nor may a member of the commission
37 have been such an official, officer, or employee within two years of
38 being appointed to the commission. At the time of their appointment
39 and thereafter during their respective terms of office, the members of

1 the eastern commission shall reside within the eastern jurisdiction and
2 the members of the western commission shall reside within the western
3 jurisdiction. No more than two members of each commission shall reside
4 in the same county.

5 (6) The governor may remove any member of a commission for
6 malfeasance or misfeasance in office or for having at least five
7 unexcused absences during the person's term of office which constitute
8 twenty percent or more of the meetings that have been conducted by the
9 commission during the term. A person's absence from a meeting may be
10 excused: By the chair of the commission if a written request to do so
11 is received by the chair before the meeting from which the member is to
12 be absent; or by a majority vote of the members of the commission at
13 the meeting during which the member is absent.

14 (7) Each member of the commissions may receive reimbursement for
15 travel expenses incurred in the discharge of his or her duties in
16 accordance with RCW 43.03.050 and 43.03.060. Commissions shall operate
17 on a part-time basis and each member shall receive compensation
18 pursuant to RCW 43.03.250. The principal office of each commission
19 shall be located within the jurisdictional boundaries of each
20 commission.

21 NEW SECTION. **Sec. 4.** For actions taken by the commissions
22 jointly, a majority of all of the commissioners shall constitute a
23 quorum. A majority of the members of a commission shall constitute a
24 quorum of the commission for the transaction of any business, for the
25 performance of any duty, or for the exercise of any power of the
26 commission. Any investigation, inquiry, or hearing that a commission
27 has power to undertake or to hold may be undertaken or held by or
28 before any commissioner. All investigations, inquiries, and hearings
29 of a commission, and all findings, orders, or decisions, made by a
30 commissioner, when approved and confirmed by the commission and filed
31 in its office, shall be and be deemed to be the orders or decisions of
32 the commission. All actions of a commission, the commissions jointly,
33 or of a commissioner acting individually under the authority of this
34 section shall be conducted in accordance with the administrative
35 procedure act, chapter 34.05 RCW.

1 NEW SECTION. **Sec. 5.** (1) In addition to the powers, duties, and
2 functions in sections 24 and 25 of this act, the commissions have the
3 following powers and duties:

4 (a) Rule adoption for their joint operation;

5 (b) The commissions, acting jointly, shall appoint the state
6 engineer. The state engineer shall serve at the pleasure of the
7 commissions;

8 (c) The commissions, acting jointly, shall prepare and approve a
9 proposed budget for the commissions and the office of the state
10 engineer;

11 (d) Each commission shall appoint and employ staff as may be
12 necessary for the direct support of the activities of the commission;

13 (e) Pursuant to section 12 of this act, the commissions shall
14 review all water resource plans submitted from within their respective
15 jurisdictions and shall provide advice as to whether the plans are in
16 conflict with state or federal laws;

17 (f) Each commission shall approve or deny all interbasin transfers
18 within its jurisdiction with the advice of the state engineer. The
19 commissions, acting jointly, shall by rule adopt procedures for
20 interbasin transfers, consistent with state law.

21 (2) The commissions, jointly or severally, may adopt rules only:
22 To the extent specifically required by federal law or a court order; to
23 the extent explicitly authorized by state law; or to implement a
24 specific objective of a state statute.

25 (3) The state engineer shall administer the state's water quantity
26 programs on behalf of the commissions through an office of the state
27 engineer which is hereby created. The state engineer shall be the
28 administrator of the office and the supervisor of the employees of the
29 office.

30 NEW SECTION. **Sec. 6.** All proceedings of a commission or of the
31 commissions acting jointly are subject to the open public meetings act,
32 chapter 42.30 RCW. All public records in possession of the commissions
33 and the state engineer shall be subject to chapter 42.17 RCW regarding
34 public records. The commissions shall jointly make and submit to the
35 governor and the legislature a biennial report beginning January 1997
36 containing a statement of the transactions and proceedings of its
37 office, together with the information gathered by the commissions and

1 the state engineer and such other facts, suggestions, and
2 recommendations as the governor may require or the legislature request.

3 NEW SECTION. **Sec. 7.** In exercising the powers, duties, and
4 functions transferred to the state engineer in sections 24 and 25 of
5 this act, the state engineer is encouraged to collect data from
6 available sources, conduct analyses and studies by contract, and
7 conduct field investigations by means of memoranda of understanding
8 with units of local government.

9 Notwithstanding any provision of law transferred to the
10 jurisdiction of the state engineer by chapter . . ., Laws of 1995 (this
11 act), the commissions, a commission, or the state engineer may not:
12 Initiate or conduct WRIA management planning activities except as
13 expressly authorized under section 12 of this act; or establish an
14 instream flow except as required by a WRIA plan adopted under section
15 12 of this act.

16 NEW SECTION. **Sec. 8.** (1) It is the intent of the legislature that
17 water resource planning be done locally, at the watershed level.

18 Of the counties located in whole or in part in a WRIA, the county
19 with the largest population residing within the boundaries of the WRIA
20 is the lead agency for any WRIA planning conducted for that WRIA under
21 this chapter, except as provided in section 9 of this act. Such a
22 county may convene a meeting of the members of the legislative
23 authorities of the counties with territory within a WRIA for the
24 appointment of a WRIA planning unit. The county shall also notify the
25 cities, water supply special purpose districts, and conservation
26 districts with territory within the WRIA that these groups are to meet
27 to appoint their members of the WRIA planning unit. For the purposes
28 of this section and sections 9 and 12 of this act, a county is
29 considered to have territory within a WRIA only if the territory of the
30 county located in the WRIA constitutes at least fifteen percent of the
31 area of the WRIA.

32 (2) One WRIA planning unit shall be appointed for the WRIA as
33 provided by this section or by section 9 of this act for joint WRIA
34 planning. The planning unit shall be composed of: One member from
35 each county with territory in the WRIA representing the county and
36 appointed by the county; one member for each county with territory in
37 the WRIA, but not less than two members, representing cities with

1 territory in the WRIA and appointed jointly by those cities; two
2 members representing all water supply special purpose districts with
3 territory within the WRIA and appointed jointly by those districts; one
4 member representing all conservation districts with territory within
5 the WRIA and appointed jointly by those districts; four members
6 representing the general citizenry, of which at least two shall be
7 holders of water rights, appointed jointly by the counties with
8 territory within the WRIA; and six members representing various special
9 interest groups appointed jointly by the counties with territory within
10 the WRIA.

11 (3) Each person appointed to a WRIA planning unit shall have been
12 a resident of the WRIA for at least five years. No state employee or
13 state official may be appointed to the planning unit. In appointing
14 persons to the WRIA planning unit representing special interest groups,
15 the counties shall consider industrial water users, general businesses,
16 hydroelectric and thermal power producers, and irrigated agriculture,
17 nonirrigated agriculture, forestry, recreation, and fisheries interest
18 groups and other groups with interests in the WRIA, including tribal
19 representatives.

20 (4) In voting to appoint the members of a WRIA planning unit, to
21 approve a WRIA plan under section 12 of this act, or to elect to
22 conduct multi-WRIA planning under section 9 of this act, each county
23 with territory within the WRIA shall have three votes, divided equally
24 among the members of the county's legislative authority and
25 appointments shall be made by majority vote based on the votes
26 allocated under this section. In voting to appoint members of a WRIA
27 planning unit: Each city with territory within the WRIA shall have one
28 vote and appointments shall be made by majority vote of such cities;
29 each water supply special purpose district with territory within the
30 WRIA shall have one vote and appointments shall be made by majority
31 vote of such districts; and each conservation district with territory
32 within the WRIA shall have one vote and appointments shall be made by
33 majority vote of such districts. All appointments shall be made within
34 sixty days of the date the county acting as lead agency in the WRIA
35 notifies the other appointing authorities to convene to make
36 appointments or the appointments shall be made by the counties with
37 territory in the WRIA in the same manner the counties make other
38 appointments. A vacancy on the planning unit shall be filled by

1 appointment in the same manner prescribed for appointing the position
2 that has become vacant.

3 NEW SECTION. **Sec. 9.** (1) Counties convened to make appointments
4 to a WRIA planning unit under section 8 of this act may elect to
5 conduct multi-WRIA planning with the counties with territory in one or
6 more other WRIAs. If the counties with territory in these other WRIAs
7 convene and also elect to conduct such multi-WRIA planning, one
8 planning unit shall be appointed for the multi-WRIA area. The planning
9 unit shall be composed of: Up to one member, as that number is
10 determined by the counties jointly, for each county with territory in
11 the multi-WRIA area representing the counties and appointed by the
12 counties jointly; up to one member, as that number is determined by the
13 cities jointly, for each county with territory in the multi-WRIA area,
14 representing cities with territory in the multi-WRIA area and appointed
15 jointly by those cities; up to three members, as that number is
16 determined by the districts, representing all water supply special
17 purpose districts with territory within the multi-WRIA area and
18 appointed jointly by those districts; up to two members, as that number
19 is determined by the districts, representing all conservation districts
20 with territory within the multi-WRIA area and appointed jointly by
21 those districts; four members representing the general citizenry, of
22 which at least two shall be holders of water rights, appointed jointly
23 by the counties with territory within the multi-WRIA area; and six
24 members representing various special interest groups appointed jointly
25 by the counties with territory within the multi-WRIA area.

26 Each person appointed to a multi-WRIA planning unit shall have been
27 a resident of the multi-WRIA area for at least five years. No state
28 employee or state official may be appointed to the planning unit. In
29 appointing persons to the multi-WRIA planning unit representing special
30 interest groups the counties shall consider industrial water users,
31 general businesses, hydroelectric and thermal power producers, and
32 irrigated agriculture, nonirrigated agriculture, forestry, recreation,
33 and fisheries interest groups and other groups with interests in the
34 multi-WRIA area, including tribal representatives.

35 (2) The counties in the multi-WRIA area shall select a county as a
36 lead agency from among those that would qualify as a lead agency in
37 each WRIA. All appointments shall be made within sixty days of the
38 date the county acting as lead agency in the multi-WRIA area notifies

1 the other appointing authorities to convene to make appointments or the
2 appointments shall be made by the counties with territory in the multi-
3 WRIA area in the same manner the counties make other appointments. A
4 vacancy on the planning unit shall be filled by appointment in the same
5 manner prescribed for appointing the position that has become vacant.

6 (3) A planning unit for a multi-WRIA area shall perform all of the
7 functions assigned by this chapter to a WRIA planning unit and is
8 subject to all of the provisions of this chapter that apply to a WRIA
9 planning unit.

10 NEW SECTION. **Sec. 10.** The lead agency shall provide staff support
11 for the work of the WRIA planning unit. Each WRIA planning unit may
12 establish its own methods of operation that are consistent with this
13 chapter and may establish methods for reviewing the operations of its
14 lead agency. Each WRIA planning unit is encouraged to: Consider
15 information and plans that may have been previously developed by other
16 entities in establishing water resource management plans for the WRIA;
17 consider existing data regarding water resources in the WRIA; and, for
18 a WRIA that borders another state, cooperate with local government
19 counterparts in the adjacent state regarding water resource planning.
20 Water resource plans developed under this chapter for a WRIA may not
21 interfere in any manner with a general adjudication of water rights,
22 completed or ongoing. Such a WRIA plan may not in any manner impair,
23 diminish, or interfere with a water right that exists before the
24 adoption of the plan by the appropriate commission under section 12 of
25 this act.

26 All meetings of a WRIA planning unit shall be conducted as public
27 meetings as required for such meetings by the open public meetings act,
28 chapter 42.30 RCW. Some time shall be set aside at the end of each
29 meeting of a WRIA planning unit for public comments.

30 No person who is a member of a WRIA planning unit may designate
31 another to act on behalf of the person as a member or to attend as a
32 member a meeting of the unit on behalf of the person. If a member of
33 a WRIA planning unit is absent from more than five meetings of the WRIA
34 planning unit that constitute twenty percent or more of the meetings
35 that have been conducted by the planning unit while the person is a
36 member of the unit and these absences have not been excused as provided
37 by this section, the member's position on the WRIA planning unit is to
38 be considered vacant. A person's absence from a meeting may be

1 excused: By the chair of the planning unit if a written request to do
2 so is received by the chair before the meeting from which the member is
3 to be absent; or by a majority vote of the members of the planning unit
4 at the meeting during which the member is absent.

5 NEW SECTION. **Sec. 11.** (1) Each WRIA planning unit shall develop
6 a water resource plan. The plan must contain the elements listed in
7 subsection (2) of this section and may include other elements added by
8 the planning unit. Once organized, the first task of the planning unit
9 is to prioritize these elements regarding their importance in the WRIA
10 and in developing a water resource plan for the WRIA. A plan shall not
11 be developed such that its provisions are in conflict with state or
12 federal law.

13 (2) The plan must include the following:

14 (a) A quantitative estimation of how much surface and ground water
15 is in the planning unit using United States geological survey
16 information and other existing sources;

17 (b) A quantitative estimation using existing sources of
18 information, of how much surface and ground water is available for use,
19 both in-stream and out-of-stream, for agricultural, fisheries,
20 industrial, municipal, and residential purposes;

21 (c) A quantitative estimation using existing sources of
22 information, of how much surface and ground water is being used, both
23 in-stream and out-of-stream, for agricultural, industrial, fisheries,
24 municipal, and residential purposes, and including amounts claimed or
25 permitted for future municipal needs;

26 (d) A quantitative estimation of how much water, approximately, is
27 claimed or permitted, including in-stream flows;

28 (e) A quantitative description of future water-based in-stream and
29 out-of-stream needs in the planning unit, based on projected population
30 and agricultural and other economic growth;

31 (f) Instream flows established prior to January 1, 1995, by rule.
32 Notwithstanding any other provisions of state law, the planning unit
33 will set instream flows as part of the plan for the other rivers,
34 streams, and lakes in the WRIA or combined WRIs for which flows have
35 not been set and may make adjustments to flows that have already been
36 set. Planning units are encouraged to set the flow levels as soon as
37 is practicable;

1 (g) Management strategies for achieving present and future needs,
2 including:

3 (i) Conservation measures;

4 (ii) Storage enhancements, including modifications to existing
5 reservoirs and new reservoirs;

6 (iii) Market transfers;

7 (iv) In-stream flows;

8 (h) An estimation of hydraulic continuity between ground and
9 surface waters that is to be taken into consideration for the
10 allocation and use of water resources. This estimation shall be based
11 on available data and any data the planning unit may secure with funds
12 other than the funds provided to the unit by the state engineer for
13 WRIA planning;

14 (i) A description of the strategies for plan implementation and the
15 entities responsible for implementing the plan, including but not
16 limited to local, tribal, state, and federal governments working
17 singularly or in combination. The implementing entities may also
18 include activities conducted by private organizations and individuals.

19 (3) Water resource management plans developed pursuant to the
20 process in this chapter and subsequently adopted by a commission under
21 chapter 34.05 RCW are presumed valid. This presumption shall apply in
22 any petition or action filed against a plan. Adopted plans shall be
23 used by the state engineer as the basis for all water resource
24 decisions and actions within the WRIA.

25 NEW SECTION. **Sec. 12.** (1) Upon completing a proposed water
26 resource plan for the WRIA, the WRIA planning unit shall conduct at
27 least one public hearing in the WRIA on the proposed plan. After
28 considering the public comments presented at the hearing or hearings,
29 the planning unit shall submit a copy of its proposed plan to the
30 commission with jurisdiction over the WRIA. A proposed plan may be
31 submitted to the commission only if the unit has provided interim
32 approval of the plan for this purpose by a majority vote of the members
33 of the planning unit.

34 (2) The commission shall conduct at least one public hearing,
35 announced in accordance with chapter 34.05 RCW, on each proposed WRIA
36 water resource plan submitted under this section. The commission shall
37 provide advice as to any aspects of the plan that the commission
38 believes to be in conflict with state or federal law and may provide

1 other recommendations regarding the plan. The commission shall
2 transmit its advice and recommendations regarding the plan to the WRIA
3 planning unit within sixty days of receiving it for review.

4 (3) The WRIA planning unit shall vote on each recommendation
5 provided by the commission and on the commission's advice regarding any
6 elements of the proposed WRIA plan the commission believed to be in
7 conflict with state or federal law. The planning unit may adopt such
8 a recommendation or provide changes to respond to the advice of the
9 commission by a majority vote of the members of the planning unit.

10 The WRIA planning unit shall approve a water resource plan for the
11 WRIA by a two-thirds majority vote of the members of the planning unit.
12 An approved plan shall be submitted to the counties with territory
13 within the WRIA for adoption. If a WRIA planning unit does not approve
14 a plan for submission to the counties within three years of the date
15 the planning unit receives its first funding from the state engineer
16 for the planning process under section 13 of this act, the state
17 engineer shall develop a proposed plan for the WRIA, submit the plan to
18 the commission with jurisdiction for the WRIA, and the commission shall
19 adopt or amend and adopt such a water resource plan for the WRIA.

20 (4) The legislative authority of each of the counties with
21 territory within the WRIA shall conduct at least two public hearings on
22 the WRIA plan submitted to the county under this section. After the
23 public hearings, the legislative authorities of these counties shall
24 convene in joint session to consider the plan. The counties may
25 approve or reject the plan, but may not amend the plan. Approval of a
26 plan, or of recommendations for a plan that is not approved, shall be
27 made by a majority vote of the members of the various legislative
28 authorities of the counties with territory in the WRIA based on the
29 votes allocated under section 8 of this act.

30 If the plan is not approved, it shall be returned to the WRIA
31 planning unit with recommendations for revisions. Any revised plan
32 prepared by the planning unit shall be submitted to the commission with
33 jurisdiction and to the counties as provided by this section for WRIA
34 water resource plans generally.

35 (5) If the plan is approved by the members of the legislative
36 authorities, the plan shall be transmitted to the commission with
37 jurisdiction over the WRIA for adoption. The commission shall adopt
38 such an approved WRIA water resource plan by rule. The commission has
39 no discretion to amend or reject the plan. A copy of the plan and

1 notice of its adoption as rules shall be published in the state
2 register under chapter 34.05 RCW.

3 (6) If the commission advises a planning unit that an element of
4 its WRIA plan is in conflict with state or federal law and the unit
5 does not remove the conflict created by the element from its plan, the
6 state is not liable for any judgment that may be awarded regarding the
7 conflict. This subsection shall not be construed as establishing such
8 state liability for any other element of the plan adopted as rules.

9 NEW SECTION. **Sec. 13.** Once a WRIA planning unit is organized and
10 has established priorities under section 11 of this act, it may apply
11 to the state engineer for funding assistance for developing a water
12 resource plan for the WRIA. The state engineer shall provide five
13 hundred thousand dollars per WRIA for each planning unit applying in
14 this manner from appropriations made expressly for this purpose. The
15 funding shall be provided on a first-come, first-served basis to the
16 extent of the appropriations except that preference shall be given to
17 planning units requesting funding for multi-WRIA planning under section
18 9 of this act. Funding provided under this section shall be considered
19 to be a contractual obligation against the moneys appropriated for this
20 purpose. No more than five hundred thousand dollars per WRIA may be
21 provided by the state engineer to a planning unit.

22 NEW SECTION. **Sec. 14.** The WRIA planning units may accept grants,
23 funds, and other financing, as well as enter into cooperative
24 agreements with private and public entities for planning assistance and
25 funding, including but not limited to funding of the implementation
26 strategies.

27 NEW SECTION. **Sec. 15.** (1) Notwithstanding any other provisions in
28 law, the state engineer shall rule in a timely manner upon applications
29 to appropriate public surface and ground water. For applications that
30 seek to appropriate water from within a WRIA for which a WRIA plan has
31 been adopted, the state engineer shall grant or deny the application
32 within one hundred eighty days of the priority date of the application.
33 For applications that seek to appropriate water from within a WRIA for
34 which no WRIA plan has been adopted, the state engineer shall grant or
35 deny the application within one year of the priority date of the
36 application. The times allowed in this section to rule upon an

1 application shall not include the time it takes the applicant to
2 respond to an explicit request for additional information reasonably
3 required to make a determination on the application. The state
4 engineer shall be allowed only one such request for additional
5 information. The cost of obtaining such information shall be
6 reasonable in relation to the quantity and value of the water right
7 applied for. Once the applicant responds to an information request,
8 the stay of the time allowed for the permit decision shall end.

9 (2) This section shall take effect July 1, 1996.

10 NEW SECTION. Sec. 16. A new section is added to chapter 90.44 RCW
11 to read as follows:

12 An application for a permit for the use of surface or ground water
13 shall not be denied based on lack of information on hydraulic
14 continuity. Where hydraulic continuity is not addressed in an adopted
15 WRIA plan and cannot be scientifically demonstrated by the department
16 within one year from the date of application, the permit shall be
17 issued or denied based on current hydraulic continuity information.

18 **PART II**
19 **TRANSFER OF POWER**

20 **Sec. 17.** RCW 43.27A.020 and 1987 c 109 s 31 are each amended to
21 read as follows:

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

24 (1) "~~((Department))~~ Commission" means the ~~((department of~~
25 ~~ecology;))~~ water resources commissions.

26 (2) "Director" means the ~~((director of ecology;))~~ state engineer.

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

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

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

1 **Sec. 18.** RCW 43.27A.090 and 1988 c 127 s 25 are each amended to
2 read as follows:

3 The ((department)) commissions shall be empowered as follows:

4 (1) To represent the state at, and fully participate in, the
5 activities of any basin or regional commission, interagency committee,
6 or any other joint interstate or federal-state agency, committee or
7 commission, or publicly financed entity engaged in the planning,
8 development, administration, management, conservation or preservation
9 of the water resources of the state.

10 (2) To prepare the views and recommendations of the state of
11 Washington on any project, plan, or program relating to the planning,
12 development, administration, management, conservation, and preservation
13 of any waters located in or affecting the state of Washington,
14 including any federal permit or license proposal, and appear on behalf
15 of, and present views and recommendations of the state at any
16 proceeding, negotiation or hearing conducted by the federal government,
17 interstate agency, state or other agency.

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

23 (4) To cooperate with appropriate agencies of the federal
24 government and/or agencies of other states, to enter into contracts,
25 and to make appropriate contributions to federal or interstate projects
26 and programs and governmental bodies to carry out the provisions of
27 this chapter.

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

33 (6) ((To develop and maintain a coordinated and comprehensive state
34 water and water resources related development plan, and adopt, with
35 regard to such plan, such policies as are necessary to insure that the
36 waters of the state are used, conserved and preserved for the best
37 interest of the state. There shall be included in the state plan a
38 description of developmental objectives and a statement of the
39 recommended means of accomplishing these objectives. To the extent the

1 ~~director deems desirable, the plan shall integrate into the state plan,~~
2 ~~the plans, programs, reports, research and studies of other state~~
3 ~~agencies.~~

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

8 ((8)) (7) To assemble and correlate state, local and federal
9 laws, regulations, plans, programs, and policies affecting the
10 beneficial use, ((disposal, pollution,)) control, or conservation of
11 water, river basin development, flood prevention, parks, reservations,
12 forests, wildlife refuges, drainage ((and sanitary)) systems, ((waste
13 disposal,)) water works, watershed protection and development, instream
14 flows, soil conservation, power facilities and area and municipal water
15 supply needs, and recommend suitable legislation or other action to the
16 legislature, the congress of the United States, or any city,
17 municipality, or to responsible state, local or federal executive
18 departments or agencies.

19 ((9)) (8) To cooperate with federal, state, regional, interstate
20 and local public and private agencies in the making of plans for
21 drainage, flood control, use, conservation, allocation and distribution
22 of existing water supplies and the development of new water resource
23 projects.

24 ((10)) (9) To encourage, assist and advise regional, and city and
25 municipal agencies, officials or bodies responsible for planning in
26 relation to water aspects of their programs, and ((coordinate)) to
27 collect information that facilitates the coordination of local water
28 resources activities, programs, and plans.

29 ((11)) (10) To ((promulgate)) adopt such rules ((and
30 regulations)) as are necessary to carry out the purposes of this
31 chapter.

32 ((12)) (11) To hold public hearings, and make such
33 investigations, studies and surveys as are necessary to carry out the
34 purposes of the chapter.

35 ((13)) (12) To subpoena witnesses, compel their attendance,
36 administer oaths, take the testimony of any person under oath and
37 require the production of any books or papers when the ((department))
38 commission deems such measures necessary in the exercise of its rule-

1 making power or in determining whether or not any license, certificate,
2 or permit shall be granted or extended.

3 **Sec. 19.** RCW 43.27A.130 and 1988 c 127 s 26 are each amended to
4 read as follows:

5 The ~~((department of ecology))~~ state engineer may make complete
6 inventories of the state's water resources and enter into such
7 agreements with the director of the United States geological survey as
8 will insure that investigations and surveys are carried on in an
9 economical manner.

10 **Sec. 20.** RCW 43.27A.190 and 1987 c 109 s 11 are each amended to
11 read as follows:

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

16 (1) Chapter 90.03 RCW; or

17 (2) Chapter 90.44 RCW; or

18 (3) ~~((Chapter 86.16 RCW; or~~

19 ~~(4) Chapter 43.37 RCW; or~~

20 ~~(5))~~ Chapter 43.27A RCW; or

21 ~~((6))~~ (4) Any other law relating to water resources administered
22 by the ~~((department))~~ engineer; or

23 ~~((7))~~ (5) A rule ~~((or regulation))~~ adopted, or a directive or
24 order issued by the ~~((department))~~ commissions or engineer relating to
25 subsections (1) through ~~((6))~~ (4) of this section; the ~~((department))~~
26 engineer may cause a written regulatory order to be served upon said
27 person either personally, or by registered or certified mail delivered
28 to addressee only with return receipt requested and acknowledged by him
29 or her. The order shall specify the provision of the statute, rule,
30 regulation, directive, or order alleged to be or about to be violated,
31 and the facts upon which the conclusion of violating or potential
32 violation is based, and shall order the act constituting the violation
33 or the potential violation to cease and desist or, in appropriate
34 cases, shall order necessary corrective action to be taken with regard
35 to such acts within a specific and reasonable time. The regulation of
36 a headgate or controlling works as provided in RCW 90.03.070, by a
37 watermaster, stream patrolman, or other person so authorized by the

1 ((department)) engineer shall constitute a regulatory order within the
2 meaning of this section. A regulatory order issued hereunder shall
3 become effective immediately upon receipt by the person to whom the
4 order is directed, except for regulations under RCW 90.03.070 which
5 shall become effective when a written notice is attached as provided
6 therein. Any person aggrieved by such order may appeal the order
7 pursuant to RCW 43.21B.310 unless the order is a water quantity
8 decision as defined in RCW 43.21A.070, in which case it may be appealed
9 to an administrative law judge or to a superior court as provided in
10 section 46 of this act.

11 **Sec. 21.** RCW 43.21A.020 and 1970 ex.s. c 62 s 2 are each amended
12 to read as follows:

13 In recognition of the responsibility of state government to carry
14 out the policies set forth in RCW 43.21A.010, it is the purpose of this
15 chapter to establish a single state agency with the authority to manage
16 ((and develop)) our air ((and water)) resources in an orderly,
17 efficient, and effective manner and to carry out a coordinated program
18 of pollution control involving ((these)) air, water, and related land
19 resources. To this end a department of ecology is created by this
20 chapter to undertake, in an integrated manner, the ((various water))
21 regulation, management, and planning ((and development)) of water
22 quality programs now authorized to be performed by ((the department of

23 water resources and)) the water pollution control commission, the air
24 regulation and management program now performed by the state air
25 pollution control board, the solid waste regulation and management
26 program authorized to be performed by state government as provided by
27 chapter 70.95 RCW, and such other environmental, management protection
28 and development programs as may be authorized by the legislature.

29 **Sec. 22.** RCW 43.21A.067 and 1987 c 109 s 27 are each amended to
30 read as follows:

31 The ((director of ecology)) state engineer may create within ((his

32 department)) the engineer's office a fund to be known as the "basic
33 data fund."

34 Into such fund shall be deposited all moneys contributed by persons
35 for stream flow, ground water, and water quality data or other
36 hydrographic information furnished by the ((department)) engineer in
37 cooperation with the United States geological survey, and the fund

1 shall be expended on a matching basis with the United States geological
2 survey for the purpose of obtaining additional basic information needed
3 for an intelligent inventory of water resources in the state.

4 Disbursements from the basic data fund shall be on vouchers
5 approved by the ((department)) engineer and the district engineer of
6 the United States geological survey.

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

9 (1) The ((department)) commissions, through the adoption of
10 appropriate rules, ((is)) are directed(~~(, as a matter of high priority~~
11 ~~to insure that the waters of the state are utilized for the best~~
12 ~~interests of the people,)) to develop and implement in accordance with
13 the policies of this chapter a ((comprehensive state)) water resources
14 program ((which will provide a process for making decisions)) that
15 implements policies on future water resource allocation and use. ((The
16 department may develop the program in segments so that immediate
17 attention may be given to waters of a given physioeconomic region of
18 the state or to specific critical problems of water allocation and use.~~

19 ~~The current guidelines, standards, or criteria governing the~~
20 ~~elements of the water resource program established pursuant to this~~
21 ~~subsection shall not be altered or amended after March 15, 1988, in~~
22 ~~accordance with RCW 90.54.022(5).)) The commissions shall have the sole
23 and exclusive authority to adopt rules concerning the regulation of
24 surface and ground water.~~

25 (2) In relation to the management and regulatory programs relating
26 to water resources vested in ((it)) them, the ((department is))
27 commissions are further directed to modify existing ((regulations))
28 rules and adopt new ((regulations)) rules, when needed and possible, to
29 insure that existing regulatory programs are in accord with the ((water
30 resource policy of this chapter and the program established in
31 subsection (1) of this section. The current guidelines, standards, or
32 criteria governing the department's implementation of this subsection
33 shall not be altered or amended after March 15, 1988, in accordance
34 with subsection (1) of this section)) policies of chapter . . . , Laws
35 of 1995 (this act).

36 (3) The ((department is)) commissions are directed to review all
37 statutes relating to water resources which ((it is)) they are
38 responsible for implementing. When any of the same appear to the

1 ((department)) commissions to be ambiguous, burdensome, unclear,
2 unworkable, unnecessary, or otherwise deficient, ((it)) they shall make
3 recommendations to the legislature including appropriate proposals for
4 statutory modifications or additions. Whenever it appears that the
5 policies of any such statutes are in conflict with the policies of
6 chapter . . . , Laws of 1995 (this ((chapter)) act), and the
7 ((department-is)) commissions are unable to fully perform as provided
8 in subsection (2) of this section, the ((department-is)) commissions
9 are directed to submit statutory modifications to the legislature
10 which, if enacted, would allow the ((department)) commissions to carry
11 out such statutes in harmony with this chapter.

12 NEW SECTION. Sec. 24. (1) On the effective date of this section,
13 all powers, duties, and functions of the department of ecology
14 pertaining to water resource quantity are transferred to the western
15 Washington and eastern Washington water resources commissions or the
16 state engineer. The authority to adopt rules regarding those powers,
17 duties, and functions is transferred to the commissions and the
18 administration of those powers, duties, and functions is transferred to
19 the state engineer. All references to the director or the department
20 of ecology in the Revised Code of Washington shall be construed to mean
21 the western Washington and eastern Washington water resources
22 commissions or the state engineer when referring to the functions
23 transferred in this section.

24 (2)(a) All reports, documents, surveys, books, records, files,
25 papers, or written material including but not limited to the water
26 resources information system established and maintained under RCW
27 90.54.030, in the possession of the department of ecology pertaining to
28 the powers, functions, and duties transferred shall be delivered to the
29 custody of the state engineer. All cabinets, furniture, office
30 equipment, motor vehicles, and other tangible property employed by the
31 department of ecology in carrying out the powers, functions, and duties
32 transferred shall be made available to the western Washington and
33 eastern Washington water resources commissions and the state engineer.
34 All funds, credits, or other assets held in connection with the powers,
35 functions, and duties transferred shall be assigned to the western
36 Washington and eastern Washington water resources commissions and the
37 state engineer.

1 (b) Any appropriations made to the department of ecology for
2 carrying out the powers, functions, and duties transferred shall, on
3 the effective date of this section, be transferred and credited to the
4 western Washington and eastern Washington water resources commissions
5 and the state engineer.

6 (c) Whenever any question arises as to the transfer of any
7 personnel, funds, books, documents, records, papers, files, equipment,
8 or other tangible property used or held in the exercise of the powers
9 and the performance of the duties and functions transferred, the
10 director of financial management shall make a determination as to the
11 proper allocation and certify the same to the state agencies concerned.

12 (3) All employees classified under chapter 41.06 RCW, the state
13 civil service law, of the department of ecology engaged in performing
14 the powers, functions, and duties transferred are transferred to the
15 jurisdiction of the western Washington and eastern Washington water
16 resources commissions and the state engineer. The employees are
17 assigned to the western Washington and eastern Washington water
18 resources commissions and the state engineer to perform their usual
19 duties upon the same terms as formerly, without any loss of rights,
20 subject to any action that may be appropriate thereafter in accordance
21 with the laws and rules governing state civil service.

22 (4) All rules and all pending business before the department of
23 ecology pertaining to the powers, functions, and duties transferred
24 shall be continued and acted upon by the western Washington and eastern
25 Washington water resources commissions and the state engineer. All
26 existing contracts and obligations shall remain in full force and shall
27 be performed by the western Washington and eastern Washington water
28 resources commissions and the state engineer.

29 (5) The transfer of the powers, duties, functions, and personnel of
30 the department of ecology shall not affect the validity of any act
31 performed before the effective date of this section.

32 (6) If apportionments of budgeted funds are required because of the
33 transfers directed by this section, the director of financial
34 management shall certify the apportionments to the agencies affected,
35 the state auditor, and the state treasurer. Each of these shall make
36 the appropriate transfer and adjustments in funds and appropriation
37 accounts and equipment records in accordance with the certification.

38 (7) Nothing contained in this section may be construed to alter any
39 existing collective bargaining unit or the provisions of any existing

1 collective bargaining agreement until the agreement has expired or
2 until the bargaining unit has been modified by action of the personnel
3 board as provided by law.

4 (8) This section shall take effect July 1, 1996.

5 NEW SECTION. **Sec. 25.** Effective July 1, 1996, the powers and
6 duties of the department of ecology concerning water quantity under the
7 following statutes are transferred to the commissions and the state
8 engineer: RCW 43.20.230, 43.21A.061, 43.21A.064 except 43.21A.064(2),
9 43.21A.067, 43.21A.450, 43.21A.460, 43.21A.470, 43.27A.020, 43.27A.090,
10 43.27A.130, 43.27A.190, chapter 43.83B RCW, RCW 43.99E.025, Title 87
11 RCW, and chapters 89.12, 89.16, 89.30, 90.03, 90.08, 90.14, 90.16,
12 90.22, 90.24, 90.38, 90.40, 90.42, 90.44, and 90.54 RCW. More
13 specifically, the following powers, duties, programs, and services
14 presently administered and enforced by the department of ecology are
15 transferred to the commissions and the state engineer:

16 (1) Water regulation, management, and development;

17 (2) Permitting authority regarding appropriation, diversion, and
18 use of water;

19 (3) Data collection and other hydrographic information duties;

20 (4) Technical assistance powers and duties regarding water
21 quantity;

22 (5) Authority regarding the water resource aspects of international
23 issues, such as Lake Osoyoos;

24 (6) Participation with the federal government in development of the
25 Columbia basin project and the Yakima enhancement project;

26 (7) Duties and powers regarding irrigation districts and
27 reclamation districts;

28 (8) Reclamation authority for agricultural lands;

29 (9) Powers and duties, both enforcement and administrative
30 authority over water quantity aspects of water resources, including:

31 (a) The water codes;

32 (b) Stream patrolmen and watermasters;

33 (c) Water rights, including but not limited to registration,
34 relinquishment, waiver, and transfer;

35 (d) Appropriation of water for public and industrial purposes;

36 (e) Minimum flows and levels;

37 (f) Regulation of outflow of lakes;

38 (g) Yakima river basin water rights;

- 1 (h) Water resource management; and
- 2 (i) Regulation of public ground waters.

3 NEW SECTION. **Sec. 26.** Although authorities are not transferred
4 from the department of ecology to the eastern and western Washington
5 water resources commissions and the state engineer until July 1, 1996,
6 the governor, department, commissions, and state engineer shall take
7 all actions necessary before July 1, 1996, that will ensure an orderly
8 and effective transfer of authority on that date.

9 **PART III**
10 **INTERTIES**

11 **Sec. 27.** RCW 90.03.383 and 1991 c 350 s 1 are each amended to read
12 as follows:

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

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

32 (a) "Interties" are interconnections between public water systems
33 permitting exchange, acquisition, or delivery of wholesale and/or
34 retail water between those systems for other than emergency supply
35 purposes, where such exchange, acquisition, or delivery is within
36 established instantaneous and annual withdrawal rates specified in the

1 systems' existing water right permits or certificates, or contained in
2 claims filed pursuant to chapter 90.14 RCW, and which results in better
3 management of public water supply consistent with existing rights and
4 obligations. Interties include interconnections between public water
5 systems permitting exchange, acquisition, or delivery of water to serve
6 as primary or secondary sources of supply(~~(, but do not include~~
7 ~~development of new sources of supply to meet future demand)~~).

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

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

1 filed with the department of ecology or its successor prior to
2 September 1, 1991. Where such complaints of impairment have been
3 received, the department of ecology or its successor shall make all
4 reasonable efforts to resolve them in a timely manner through agreement
5 of the parties or through available administrative remedies.

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

21 (5) For public water systems subject to the approval process of
22 chapter 43.20 RCW or chapter 70.116 RCW, proposals for interties
23 commencing use after January 1, 1991, shall be incorporated into water
24 system plans pursuant to chapter 43.20 RCW or coordinated water system
25 plans pursuant to chapter 70.116 RCW and submitted to the department of
26 health and the department of ecology or its successor for review and
27 approval as provided for in subsections (5) through (9) of this
28 section. The plan shall state how the proposed intertie will improve
29 overall system reliability, enhance the manageability of the systems,
30 provide opportunities for conjunctive use, or delay or avoid the need
31 to develop new water sources.

32 (6) The department of health shall be responsible for review and
33 approval of proposals for new interties. In its review the department
34 of health shall determine whether the intertie satisfies the criteria
35 of subsection (4) of this section, with the exception of water rights
36 considerations, which are the responsibility of the department of
37 ecology or its successor, and shall determine whether the intertie is
38 necessary to address emergent public health or safety concerns
39 associated with public water supply.

1 (7) If the intertie is determined by the department of health to be
2 necessary to address emergent public health or safety concerns
3 associated with public water supply, the public water system shall
4 amend its water system plan as required and shall file an application
5 with the department of ecology or its successor to change its existing
6 water right to reflect the proposed use of the water as described in
7 the approved water system plan. The department of ecology or its
8 successor shall process the application for change pursuant to RCW
9 90.03.380 or 90.44.100 as appropriate, except that, notwithstanding the
10 requirements of those sections regarding notice and protest periods,
11 applicants shall be required to publish notice one time, and the
12 comment period shall be fifteen days from the date of publication of
13 the notice. Within sixty days of receiving the application, the
14 department of ecology or its successor shall issue findings and advise
15 the department of health if existing water rights are determined to be
16 adversely affected. If no determination is provided by the department
17 of ecology or its successor within the sixty-day period, the department
18 of health shall proceed as if existing rights are not adversely
19 affected by the proposed intertie. The department of ecology or its
20 successor may obtain an extension of the sixty-day period by submitting
21 written notice to the department of health and to the applicant
22 indicating a definite date by which its determination will be made. No
23 additional extensions shall be granted, and in no event shall the total
24 review period for the department of ecology or its successor exceed one
25 hundred eighty days.

26 (8) If the department of health determines the proposed intertie
27 appears to meet the requirements of subsection (4) of this section but
28 is not necessary to address emergent public health or safety concerns
29 associated with public water supply, the department of health shall
30 instruct the applicant to submit to the department of ecology or its
31 successor an application for change to the underlying water right or
32 claim as necessary to reflect the new place of use. The department of
33 ecology or its successor shall consider the applications pursuant to
34 the provisions of RCW 90.03.380 and 90.44.100 as appropriate. The
35 department of ecology or its successor shall not deny or limit a change
36 of place of use for an intertie on the grounds that the holder of a
37 permit has not yet put all of the water authorized in the permit to
38 beneficial use. If in its review of proposed interties and associated
39 water rights the department of ecology or its successor determines that

1 additional information is required to act on the application, the
2 department or its successor may request applicants to provide
3 information necessary for its decision, consistent with agency rules
4 and written guidelines. Parties disagreeing with the decision of the
5 department of ecology (~~((en))~~) or its successor to approve or deny the
6 application for change in place of use may appeal the decision to ((the
7 ~~pollution control hearings board))~~ an administrative law judge or a
8 superior court as provided in section 46 of this act.

9 (9) The department of health may approve plans containing intertie
10 proposals prior to the department of ecology's or its successor's
11 decision on the water right application for change in place of use.
12 However, notwithstanding such approval, construction work on the
13 intertie shall not begin until the department of ecology or its
14 successor issues the appropriate water right document to the applicant
15 consistent with the approved plan.

16 PART IV

17 WATER-RELATED ACTIONS AND APPEALS

18 **Sec. 28.** RCW 43.21A.070 and 1970 ex.s. c 62 s 7 are each amended
19 to read as follows:

20 (1) The administrative procedure act, chapter 34.05 RCW, shall
21 apply to the review of (~~decisions~~) a water quantity decision by the
22 director (~~to the same extent as it applied to decisions issued by the~~
23 ~~directors of the various departments whose powers, duties and functions~~
24 ~~are transferred by this 1970 amendatory act to the department of~~
25 ~~ecology)), the state engineer, or the water resource commissions when
26 an administrative hearing is elected under section 46 of this act. The
27 administrative procedure act shall further apply to all other decisions
28 of the director (~~as in chapter 34.05 RCW provided~~) except as limited
29 by RCW 43.21B.240. In any adjudicative proceeding commenced under
30 chapter 34.05 RCW in response to a water quantity decision, an
31 administrative law judge shall serve as the presiding officer for the
32 hearing in accordance with RCW 34.05.425(3).~~

33 (2) For purposes of this section, a "water quantity decision"
34 includes, but is not limited to, the following:

35 (a) A decision to grant or deny a permit or certificate for a right
36 to the beneficial use of water or to amend, change, or transfer such a
37 right;

1 (b) A decision to enforce the conditions of a permit for, or right
2 to, the beneficial use of water or to require any person to discontinue
3 the use of water; and

4 (c) A decision to establish a minimum flow or level for water under
5 chapter 90.03, 90.22, or 90.54 RCW, or to reserve water for such a
6 minimum flow or level.

7 (3) A water quantity decision includes any decision made by the
8 department of ecology under subsection (2) of this section before July
9 1, 1996, and any decision made by the state engineer or the water
10 resource commissions on or after July 1, 1996, as provided in chapter
11 ..., Laws of 1995 (this act).

12 **Sec. 29.** RCW 34.05.425 and 1989 c 175 s 14 are each amended to
13 read as follows:

14 (1) Except as provided in subsections (2) and (3) of this section,
15 in the discretion of the agency head, the presiding officer in an
16 administrative hearing shall be:

17 (a) The agency head or one or more members of the agency head;

18 (b) If the agency has statutory authority to do so, a person other
19 than the agency head or an administrative law judge designated by the
20 agency head to make the final decision and enter the final order; or

21 (c) One or more administrative law judges assigned by the office of
22 administrative hearings in accordance with chapter 34.12 RCW.

23 (2) An agency expressly exempted under RCW 34.12.020(4) or other
24 statute from the provisions of chapter 34.12 RCW or an institution of
25 higher education shall designate a presiding officer as provided by
26 rules adopted by the agency.

27 (3) The presiding officer in an administrative hearing for a water
28 quantity decision, as defined in RCW 43.21A.070, when an administrative
29 hearing is elected under section 46 of this act, shall be an
30 administrative law judge assigned by the office of administrative
31 hearings in accordance with chapter 34.12 RCW. The administrative law
32 judge shall make the final decision and enter the final order for these
33 hearings.

34 (4) Any individual serving or designated to serve alone or with
35 others as presiding officer is subject to disqualification for bias,
36 prejudice, interest, or any other cause provided in this chapter or for
37 which a judge is disqualified.

1 (~~(4)~~) (5) Any party may petition for the disqualification of an
2 individual promptly after receipt of notice indicating that the
3 individual will preside or, if later, promptly upon discovering facts
4 establishing grounds for disqualification.

5 (~~(5)~~) (6) The individual whose disqualification is requested
6 shall determine whether to grant the petition, stating facts and
7 reasons for the determination.

8 (~~(6)~~) (7) When the presiding officer is an administrative law
9 judge, the provisions of this section regarding disqualification for
10 cause are in addition to the motion of prejudice available under RCW
11 34.12.050.

12 (~~(7)~~) (8) If a substitute is required for an individual who
13 becomes unavailable as a result of disqualification or any other
14 reason, the substitute must be appointed by the appropriate appointing
15 authority.

16 (~~(8)~~) (9) Any action taken by a duly appointed substitute for an
17 unavailable individual is as effective as if taken by the unavailable
18 individual.

19 **Sec. 30.** RCW 34.05.419 and 1988 c 288 s 404 are each amended to
20 read as follows:

21 After receipt of an application for an adjudicative proceeding,
22 other than a declaratory order, an agency shall proceed as follows:

23 (1) Except in situations governed by subsection (2) (~~(or)~~) (3), or
24 (4) of this section, within ninety days after receipt of the
25 application or of the response to a timely request made by the agency
26 under subsection (2) of this section, the agency shall do one of the
27 following:

28 (a) Approve or deny the application, in whole or in part, on the
29 basis of brief or emergency adjudicative proceedings, if those
30 proceedings are available under this chapter for disposition of the
31 matter;

32 (b) Commence an adjudicative proceeding in accordance with this
33 chapter; or

34 (c) Dispose of the application in accordance with RCW 34.05.416;

35 (2) Within thirty days after receipt of the application, the agency
36 shall examine the application, notify the applicant of any obvious
37 errors or omissions, request any additional information the agency
38 wishes to obtain and is permitted by law to require, and notify the

1 applicant of the name, mailing address, and telephone number of an
2 office that may be contacted regarding the application;

3 (3) If the application seeks relief that is not available when the
4 application is filed but may be available in the future, the agency may
5 proceed to make a determination of eligibility within the time limits
6 provided in subsection (1) of this section. If the agency determines
7 that the applicant is eligible, the agency shall maintain the
8 application on the agency's list of eligible applicants as provided by
9 law and, upon request, shall notify the applicant of the status of the
10 application;

11 (4) After receipt of an application for an adjudicative proceeding
12 under chapter 34.05 RCW in response to a water quantity decision, as
13 defined in RCW 43.21A.070, the department of ecology, state engineer,
14 or water resource commission shall within thirty days of the receipt of
15 the application commence an adjudicatory proceeding in accordance with
16 this chapter.

17 **Sec. 31.** RCW 34.05.461 and 1989 c 175 s 19 are each amended to
18 read as follows:

19 (1) Except as provided in subsection (2) of this section:

20 (a) If the presiding officer is the agency head or one or more
21 members of the agency head, the presiding officer may enter an initial
22 order if further review is available within the agency, or a final
23 order if further review is not available;

24 (b) If the presiding officer is a person designated by the agency
25 to make the final decision and enter the final order, the presiding
26 officer shall enter a final order, or is an administrative law judge
27 acting pursuant to RCW 34.05.425(3); and

28 (c) If the presiding officer is one or more administrative law
29 judges, the presiding officer shall enter an initial order.

30 (2) With respect to agencies exempt from chapter 34.12 RCW or an
31 institution of higher education, the presiding officer shall transmit
32 a full and complete record of the proceedings, including such comments
33 upon demeanor of witnesses as the presiding officer deems relevant, to
34 each agency official who is to enter a final or initial order after
35 considering the record and evidence so transmitted.

36 (3) Initial and final orders shall include a statement of findings
37 and conclusions, and the reasons and basis therefor, on all the
38 material issues of fact, law, or discretion presented on the record,

1 including the remedy or sanction and, if applicable, the action taken
2 on a petition for a stay of effectiveness. Any findings based
3 substantially on credibility of evidence or demeanor of witnesses shall
4 be so identified. Findings set forth in language that is essentially
5 a repetition or paraphrase of the relevant provision of law shall be
6 accompanied by a concise and explicit statement of the underlying
7 evidence of record to support the findings. The order shall also
8 include a statement of the available procedures and time limits for
9 seeking reconsideration or other administrative relief. An initial
10 order shall include a statement of any circumstances under which the
11 initial order, without further notice, may become a final order.

12 (4) Findings of fact shall be based exclusively on the evidence of
13 record in the adjudicative proceeding and on matters officially noticed
14 in that proceeding. Findings shall be based on the kind of evidence on
15 which reasonably prudent persons are accustomed to rely in the conduct
16 of their affairs. Findings may be based on such evidence even if it
17 would be inadmissible in a civil trial. However, the presiding officer
18 shall not base a finding exclusively on such inadmissible evidence
19 unless the presiding officer determines that doing so would not unduly
20 abridge the parties' opportunities to confront witnesses and rebut
21 evidence. The basis for this determination shall appear in the order.

22 (5) Where it bears on the issues presented, the agency's
23 experience, technical competency, and specialized knowledge may be used
24 in the evaluation of evidence.

25 (6) If a person serving or designated to serve as presiding officer
26 becomes unavailable for any reason before entry of the order, a
27 substitute presiding officer shall be appointed as provided in RCW
28 34.05.425. The substitute presiding officer shall use any existing
29 record and may conduct any further proceedings appropriate in the
30 interests of justice.

31 (7) The presiding officer may allow the parties a designated time
32 after conclusion of the hearing for the submission of memos, briefs, or
33 proposed findings.

34 (8) Initial or final orders shall be served in writing within
35 ninety days after conclusion of the hearing or after submission of
36 memos, briefs, or proposed findings in accordance with subsection (7)
37 of this section unless this period is waived or extended for good cause
38 shown.

1 (9) The presiding officer shall cause copies of the order to be
2 served on each party and the agency.

3 **Sec. 32.** RCW 34.05.514 and 1994 c 257 s 23 are each amended to
4 read as follows:

5 (1) Except as provided in subsections (2) and (3) of this section
6 (~~and RCW 36.70A.300(3)~~), proceedings for review under this chapter
7 shall be instituted by filing a petition in the superior court, at the
8 petitioner's option, for (a) Thurston county, (b) the county of the
9 petitioner's residence or principal place of business, or (c) in any
10 county where the property owned by the petitioner and affected by the
11 contested decision is located.

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

16 (3) For proceedings involving water quantity decisions, as defined
17 in RCW 43.21A.070, the petition shall be filed in the superior court in
18 the county that will be directly and immediately affected by the
19 decision.

20 **Sec. 33.** RCW 34.05.530 and 1988 c 288 s 506 are each amended to
21 read as follows:

22 A person has standing to obtain judicial review of agency action if
23 that person is aggrieved or adversely affected by the agency action.
24 An agency has standing to obtain judicial review of a final order if
25 the final order is adverse to the agency and is issued by an
26 administrative law judge acting pursuant to RCW 34.05.425(3). A person
27 is aggrieved or adversely affected within the meaning of this section
28 only when all three of the following conditions are present:

29 (1) The agency action has prejudiced or is likely to prejudice that
30 person;

31 (2) That person's asserted interests are among those that the
32 agency was required to consider when it engaged in the agency action
33 challenged; and

34 (3) A judgment in favor of that person would substantially
35 eliminate or redress the prejudice to that person caused or likely to
36 be caused by the agency action.

1 **Sec. 34.** RCW 34.05.534 and 1988 c 288 s 507 are each amended to
2 read as follows:

3 A person may file a petition for judicial review under this chapter
4 only after exhausting all administrative remedies available within the
5 agency whose action is being challenged, or available within any other
6 agency authorized to exercise administrative review, except:

7 (1) A petitioner for judicial review of a rule need not have
8 participated in the rule-making proceeding upon which that rule is
9 based, or have petitioned for its amendment or repeal;

10 (2) A petitioner for judicial review need not exhaust
11 administrative remedies to the extent that this chapter or any other
12 statute states that exhaustion is not required; ((or))

13 (3) The court may relieve a petitioner of the requirement to
14 exhaust any or all administrative remedies upon a showing that:

15 (a) The remedies would be patently inadequate;

16 (b) The exhaustion of remedies would be futile; or

17 (c) The grave irreparable harm that would result from having to
18 exhaust administrative remedies would clearly outweigh the public
19 policy requiring exhaustion of administrative remedies; or

20 (4) A petitioner for judicial review of a final order issued by an
21 administrative law judge acting pursuant to RCW 34.05.425(3) need not
22 exhaust any other administrative remedy.

23 **Sec. 35.** RCW 34.12.040 and 1981 c 67 s 4 are each amended to read
24 as follows:

25 Whenever a state agency conducts a hearing which is not presided
26 over by officials of the agency who are to render the final decision,
27 the hearing shall be conducted by an administrative law judge assigned
28 under this chapter. In any adjudicative proceeding commenced under
29 chapter 34.05 RCW in response to a water quantity decision, as defined
30 in RCW 43.21A.070, the hearing shall be conducted by an administrative
31 law judge assigned under this chapter according to procedural rules
32 developed by the chief administrative law judge. The chief
33 administrative law judge shall ensure that hearings pertaining to water
34 quantity decisions by the department of ecology will be conducted in
35 the general area where the petitioner resides, or provide for the
36 hearings to be conducted by telephone. In assigning administrative law
37 judges, the chief administrative law judge shall wherever practical (1)
38 use personnel having expertise in the field or subject matter of the

1 hearing, and (2) assign administrative law judges primarily to the
2 hearings of particular agencies on a long-term basis.

3 **Sec. 36.** RCW 43.21B.110 and 1993 c 387 s 22 are each amended to
4 read as follows:

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

10 (a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431,
11 70.105.080, 70.107.050, 88.46.090, (~~(90.03.600)~~) 90.48.144, 90.56.310,
12 and 90.56.330.

13 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
14 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,
15 (~~(90.14.130)~~) and 90.48.120.

16 (c) The issuance, modification, or termination of any permit,
17 certificate, or license by the department or any air authority in the
18 exercise of its jurisdiction, including the issuance or termination of
19 a waste disposal permit, the denial of an application for a waste
20 disposal permit, or the modification of the conditions or the terms of
21 a waste disposal permit.

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

24 (e) Decisions of local health departments regarding the issuance
25 and enforcement of permits to use or dispose of biosolids under RCW
26 70.95J.080.

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

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

32 (a) The hearings board shall have no jurisdiction whatsoever to
33 review water quantity decisions as defined in RCW 43.21A.070, to review
34 orders pertaining to the relinquishment of a water right under RCW
35 90.14.130, or to review proceedings regarding general adjudications of
36 water rights conducted under chapter 90.03 or 90.44 RCW.

37 (b) The following hearings shall not be conducted by the hearings
38 board:

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

3 ~~((b))~~ (ii) Hearings conducted by the department pursuant to RCW
4 70.94.332, 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and
5 90.44.180.

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

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

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

13 **Sec. 37.** RCW 43.21B.130 and 1990 c 65 s 3 are each amended to read
14 as follows:

15 The administrative procedure act, chapter 34.05 RCW, shall apply to
16 the appeal of rules and regulations adopted by the board to the same
17 extent as it applied to the review of rules and regulations adopted by
18 the directors and/or boards or commissions of the various departments
19 whose powers, duties and functions were transferred by section 6,
20 chapter 62, Laws of 1970 ex. sess. to the department. Except with
21 regard to water quantity decisions by the department, as defined in RCW
22 43.21A.070, which are appealable to a superior court or to an
23 administrative law judge under section 46 of this act, and orders
24 pertaining to the relinquishment of a water right under RCW 90.14.130,
25 all other decisions and orders of the director and all decisions of air
26 pollution control boards or authorities established pursuant to chapter
27 70.94 RCW shall be subject to review by the hearings board as provided
28 in this chapter.

29 **Sec. 38.** RCW 43.21B.240 and 1989 c 175 s 105 are each amended to
30 read as follows:

31 The department and air authorities shall not have authority to hold
32 adjudicative proceedings pursuant to the Administrative Procedure Act,
33 chapter 34.05 RCW, except with regard to water quantity decisions as
34 defined in RCW 43.21A.070 that may be appealed to an administrative law
35 judge as provided in RCW 34.05.425(3). ~~((Such))~~ All other hearings,
36 except for water quantity decisions that are appealed to a superior
37 court under section 46 of this act and appeals of orders pertaining to

1 the relinquishment of a water right under RCW 90.14.130, shall be held
2 by the pollution control hearings board.

3 **Sec. 39.** RCW 43.21B.300 and 1993 c 387 s 23 are each amended to
4 read as follows:

5 (1) Any civil penalty provided in RCW 18.104.155, 70.94.431,
6 70.105.080, 70.107.050, 88.46.090, (~~(90.03.600,)~~) 90.48.144, 90.56.310,
7 and 90.56.330 shall be imposed by a notice in writing, either by
8 certified mail with return receipt requested or by personal service, to
9 the person incurring the penalty from the department, the administrator
10 of the office of marine safety, or the local air authority, describing
11 the violation with reasonable particularity. Within fifteen days after
12 the notice is received, the person incurring the penalty may apply in
13 writing to the department, the administrator, or the authority for the
14 remission or mitigation of the penalty. Upon receipt of the
15 application, the department, the administrator, or authority may remit
16 or mitigate the penalty upon whatever terms the department, the
17 administrator, or the authority in its discretion deems proper. The
18 department or the authority may ascertain the facts regarding all such
19 applications in such reasonable manner and under such rules as it may
20 deem proper and shall remit or mitigate the penalty only upon a
21 demonstration of extraordinary circumstances such as the presence of
22 information or factors not considered in setting the original penalty.

23 (2) Any penalty imposed under this section may be appealed to the
24 pollution control hearings board in accordance with this chapter if the
25 appeal is filed with the hearings board and served on the department,
26 the administrator, or authority thirty days after receipt by the person
27 penalized of the notice imposing the penalty or thirty days after
28 receipt of the notice of disposition of the application for relief from
29 penalty.

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

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

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

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

36 (4) If the amount of any penalty is not paid to the department or
37 the administrator within thirty days after it becomes due and payable,
38 the attorney general, upon request of the department or the

1 administrator, shall bring an action in the name of the state of
2 Washington in the superior court of Thurston county, or of any county
3 in which the violator does business, to recover the penalty. If the
4 amount of the penalty is not paid to the authority within thirty days
5 after it becomes due and payable, the authority may bring an action to
6 recover the penalty in the superior court of the county of the
7 authority's main office or of any county in which the violator does
8 business. In these actions, the procedures and rules of evidence shall
9 be the same as in an ordinary civil action.

10 (5) All penalties recovered shall be paid into the state treasury
11 and credited to the general fund except those penalties imposed
12 pursuant to RCW 18.104.155, which shall be credited to the reclamation
13 account as provided in RCW 18.104.155(7), RCW 70.94.431, the
14 disposition of which shall be governed by that provision, RCW
15 70.105.080, which shall be credited to the hazardous waste control and
16 elimination account, created by RCW 70.105.180, and RCW 90.56.330,
17 which shall be credited to the coastal protection fund created by RCW
18 90.48.390.

19 **Sec. 40.** RCW 43.21B.310 and 1992 c 73 s 3 are each amended to read
20 as follows:

21 (1) Except as provided in subsection (2) of this section, any order
22 issued by the department, the administrator of the office of marine
23 safety, or authority pursuant to RCW 70.94.211, 70.94.332, 70.105.095,
24 43.27A.190, 86.16.020, 88.46.070, or 90.48.120(2) or any provision
25 enacted after July 26, 1987, or any permit, certificate, or license
26 issued by the department may be appealed to the pollution control
27 hearings board if the appeal is filed with the board and served on the
28 department or authority within thirty days after receipt of the order.
29 Except as provided under chapter 70.105D RCW, (~~this is~~) these are the
30 exclusive means of appeal of such an order.

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

34 (~~(3)~~) (b) At any time during the pendency of an appeal of such an
35 order to the board or to an administrative law judge acting pursuant to
36 RCW 34.05.425(3), the appellant may apply pursuant to RCW 43.21B.320 to
37 the hearings board or administrative law judge for a stay of the order
38 or for the removal thereof.

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

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

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

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

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

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

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

13 ~~((5))~~ (d) Upon failure to comply with any final order of the
14 department or the administrator or the administrative law judge acting
15 pursuant to RCW 34.05.425(3), the attorney general, on request of the
16 department or the administrator, may bring an action in the superior
17 court of the county where the violation occurred or the potential
18 violation is about to occur to obtain such relief as necessary,
19 including injunctive relief, to insure compliance with the order. The
20 air authorities may bring similar actions to enforce their orders.

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

25 (2) Water quantity decisions, as defined in RCW 43.21A.070, may not
26 be appealed to the hearings board; they may be appealed either to an
27 administrative law judge or to a superior court as provided in section
28 46 of this act. Appeals of orders pertaining to the relinquishment of
29 a water right shall be filed in a superior court as provided by RCW
30 90.14.130.

31 **Sec. 41.** RCW 43.21B.320 and 1987 c 109 s 7 are each amended to
32 read as follows:

33 (1) A person appealing to the hearings board, or to an
34 administrative law judge acting pursuant to RCW 34.05.425(3), an order
35 of the department or an authority, not stayed by the issuing agency,
36 may obtain a stay of the effectiveness of that order only as set forth
37 in this section.

1 (2) An appealing party may request a stay by including such a
2 request in the appeal document, in a subsequent motion, or by such
3 other means as the rules of the hearings board or the procedural rules
4 developed by the chief administrative law judge for appeals made
5 pursuant to RCW 34.05.425(3) shall prescribe. The request must be
6 accompanied by a statement of grounds for the stay and evidence setting
7 forth the factual basis upon which request is based. The hearings
8 board or the administrative law judge shall hear the request for a stay
9 as soon as possible. The hearing on the request for stay may be
10 consolidated with the hearing on the merits.

11 (3) The applicant may make a prima facie case for stay if the
12 applicant demonstrates either a likelihood of success on the merits of
13 the appeal or irreparable harm. Upon such a showing, the hearings
14 board or administrative law judge shall grant the stay unless the
15 department or authority demonstrates either (a) a substantial
16 probability of success on the merits or (b) likelihood of success on
17 the merits and an overriding public interest which justifies denial of
18 the stay.

19 (4) Unless otherwise stipulated by the parties, the hearings board
20 or administrative law judge, after granting or denying an application
21 for a stay, shall expedite the hearing and decision on the merits.

22 (5) Any party or other person aggrieved by the grant or denial of
23 a stay by the hearings board may petition the superior court for
24 Thurston county for review of that decision pursuant to chapter 34.05
25 RCW pending the appeal on the merits before the board. Any party or
26 other person aggrieved by the grant or denial of a stay by an
27 administrative law judge acting pursuant to RCW 34.05.425(3) may
28 petition the superior court for the county that will be directly and
29 immediately affected by the stay. The superior court shall expedite
30 its review of the decision of the hearings board or administrative law
31 judge.

32 **Sec. 42.** RCW 90.14.130 and 1987 c 109 s 13 are each amended to
33 read as follows:

34 When it appears to the department of ecology that a person entitled
35 to the use of water has not beneficially used his or her water right or
36 some portion thereof, and it appears that (~~said~~) the right has or may
37 have reverted to the state because of such nonuse, as provided by RCW
38 90.14.160, 90.14.170, or 90.14.180, the department of ecology shall

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

23 **Sec. 43.** RCW 90.14.190 and 1987 c 109 s 14 are each amended to
24 read as follows:

25 Any person feeling aggrieved by any water quantity decision (~~(of~~
26 ~~the department of ecology)~~) as defined in RCW 43.21A.070 may have the
27 same reviewed (~~(pursuant to RCW 43.21B.310)~~) by an administrative law
28 judge or a superior court under section 46 of this act. In any such
29 review, the findings of fact as set forth in the report of the
30 department of ecology shall be prima facie evidence of the fact of any
31 waiver or relinquishment of a water right or portion thereof. If the
32 (~~(hearings board)~~) administrative law judge affirms the decision of the
33 department, a party seeks review in superior court of (~~(that hearings~~
34 ~~board)~~) the administrative law judge's decision pursuant to chapter
35 34.05 RCW, and the court determines that the party was injured by an
36 arbitrary, capricious, or erroneous order of the department, the court
37 may award reasonable attorneys' fees. An order regarding the
38 relinquishment of a water right shall be appealed under RCW 90.14.130.

1 **Sec. 44.** RCW 90.14.200 and 1989 c 175 s 180 are each amended to
2 read as follows:

3 (1) All matters relating to the implementation and enforcement of
4 this chapter by the department of ecology shall be carried out in
5 accordance with chapter 34.05 RCW, the Administrative Procedure Act,
6 except where the provisions of this chapter expressly conflict with
7 chapter 34.05 RCW. Proceedings held (~~((pursuant to))~~) under RCW
8 90.14.130 are (~~((adjudicative proceedings within the meaning of chapter~~
9 ~~34.05 RCW. Final decisions of the department of ecology in these~~
10 ~~proceedings))~~) appealable to a superior court as provided in that
11 section. Other final decisions of the department of ecology under this
12 chapter are subject to review by an administrative law judge or a
13 superior court in accordance with (~~(chapter 43.21B RCW))~~) section 46 of
14 this act.

15 (2) RCW 90.14.130 provides nonexclusive procedures for determining
16 a relinquishment of water rights under RCW 90.14.160, 90.14.170, and
17 90.14.180. RCW 90.14.160, 90.14.170, and 90.14.180 may be applied in,
18 among other proceedings, general adjudication proceedings initiated
19 under RCW 90.03.110 or 90.44.220: PROVIDED, That nothing herein shall
20 apply to litigation involving determinations of the department of
21 ecology under RCW 90.03.290 relating to the impairment of existing
22 rights.

23 **Sec. 45.** RCW 90.66.080 and 1979 c 3 s 8 are each amended to read
24 as follows:

25 The department is hereby empowered to promulgate such rules as may
26 be necessary to carry out the provisions of this chapter. Decisions of
27 the department, other than rule making, shall be subject to review by
28 an administrative law judge or a superior court in accordance with
29 (~~(chapter 43.21B RCW))~~) section 46 of this act.

30 NEW SECTION. **Sec. 46.** A new section is added to chapter 43.21B
31 RCW to read as follows:

32 A person who is aggrieved or adversely affected by a water quantity
33 decision, as defined in RCW 43.21A.070, may appeal the decision either
34 to an administrative law judge under RCW 34.05.425(3) or directly to a
35 superior court. Any direct appeal to a superior court as authorized by
36 this section shall be de novo and must be filed in the superior court

1 in the county that will be directly and immediately affected by the
2 decision.

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PART V
TRANSFERS AND SPREADING

5 **Sec. 47.** RCW 90.03.380 and 1991 c 347 s 15 are each amended to
6 read as follows:

7 (1) The right to the use of water which has been applied to a
8 beneficial use in the state shall be and remain appurtenant to the land
9 or place upon which the same is used: PROVIDED, HOWEVER, That ~~((said))~~
10 the right may be transferred to another or to others and become
11 appurtenant to any other land or place of use without loss of priority
12 of right theretofore established if such change can be made without
13 detriment or injury to existing rights. The point of diversion of
14 water for beneficial use or the purpose of use may be changed, if such
15 change can be made without detriment or injury to existing rights.
16 Before any transfer of such right to use water or change of the point
17 of diversion of water or change of purpose of use can be made, any
18 person having an interest in the transfer or change, shall file a
19 written application therefor with the department, and ~~((said))~~ the
20 application shall not be granted until notice of ~~((said))~~ the
21 application ~~((shall be))~~ is published as provided in RCW 90.03.280. If
22 it shall appear that such transfer or such change may be made without
23 injury or detriment to existing rights, the department shall issue to
24 the applicant a certificate in duplicate granting the right for such
25 transfer or for such change of point of diversion or of use. The
26 certificate so issued shall be filed and be made a record with the
27 department and the duplicate certificate issued to the applicant may be
28 filed with the county auditor in like manner and with the same effect
29 as provided in the original certificate or permit to divert water.

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

36 (3) A change in place of use by an individual water user or users
37 of water provided by an irrigation district need only receive approval

1 for the change from the board of directors of the district if the use
2 of water continues within the irrigation district, and the board of
3 directors determines that such use: Will not adversely affect the
4 district's ability to deliver water to other landowners, will not
5 require the construction by the district of diversion or drainage
6 facilities or impair the financial or operational integrity of the
7 district, and is consistent with the contractual obligations of the
8 district.

9 The board may approve under this subsection a change concerning
10 surplus waters under RCW 90.44.100(2) or subsection (4) of this section
11 that results in the total irrigated acreage within the district
12 exceeding the irrigated acreage recorded with the department for the
13 district's water right if the board notifies the department of the
14 change in the irrigated acreage within the district. Upon
15 notification, the department shall revise its records for the
16 district's right to reflect the change.

17 (4) If a portion of the water governed by a water right is made
18 surplus to the beneficial uses exercised under the right through the
19 implementation of practices or technologies, including but not limited
20 to conveyance practices or technologies, which are more water use
21 efficient than those under which the right was perfected or through a
22 change in the crops grown under the water right, the right to use the
23 surplus water may be changed to use on other lands owned by the holder
24 of the water right that are contiguous to the lands upon which the use
25 of the water was authorized by the right before such a change. Such a
26 change shall be made without loss of priority of the right. If the
27 change involves the use of water provided by an irrigation district, it
28 may not be made without the approval of the board of directors of the
29 district under subsection (3) of this section. If the change does not
30 involve the use of such district provided water, the holder of the
31 water right shall notify the department of the change. Upon
32 notification, the department shall revise its records for the right to
33 reflect the change.

34 (5) This section shall not apply to trust water rights acquired by
35 the state through the funding of water conservation projects under
36 chapter 90.38 RCW or RCW 90.42.010 through 90.42.070.

37 **Sec. 48.** RCW 90.44.100 and 1987 c 109 s 113 are each amended to
38 read as follows:

1 (1) After an application to, and upon the issuance by the
2 department of an amendment to the appropriate permit or certificate of
3 ground water right, the holder of a valid right to withdraw public
4 ground waters may, without losing his priority of right, construct
5 wells or other means of withdrawal at a new location in substitution
6 for or in addition to those at the original location, or he may change
7 the manner or the place of use of the water(~~(: PROVIDED, HOWEVER, That~~
8 ~~such))~~). An amendment shall be issued only after publication of notice
9 of the application and findings as prescribed in the case of an
10 original application. Such amendment shall be issued by the department
11 only on the conditions that: ~~((1))~~ (a) The additional or substitute
12 well or wells shall tap the same body of public ground water as the
13 original well or wells; ~~((2))~~ (b) use of the original well or wells
14 shall be discontinued upon construction of the substitute well or
15 wells; ~~((3))~~ (c) the construction of an additional well or wells
16 shall not enlarge the right conveyed by the original permit or
17 certificate; and ~~((4))~~ (d) other existing rights shall not be
18 impaired. The department may specify an approved manner of
19 construction and shall require a showing of compliance with the terms
20 of the amendment, as provided in RCW 90.44.080 in the case of an
21 original permit.

22 (2) If a portion of the ground water governed by a water right is
23 made surplus to the beneficial uses exercised under the right through
24 the implementation of practices or technologies, including but not
25 limited to conveyance practices and technologies, which are more water
26 use efficient than those under which the right was perfected or through
27 a change in the crops grown under the water right, the right to use the
28 surplus water may be changed to use on other lands owned by the holder
29 of the water right that are contiguous to the lands upon which the use
30 of the water was authorized by the right before such a change. Such a
31 change shall be made without loss of priority of the right. If the
32 change involves the use of water provided by an irrigation district, it
33 may not be made without the approval of the board of directors of the
34 district under RCW 90.03.380(3). If the change does not involve the
35 use of such district provided water, the holder of the water right
36 shall notify the department of the change. Upon notification, the
37 department shall revise its records for the right to reflect the
38 change.

1 **Sec. 49.** RCW 43.27A.190 and 1987 c 109 s 11 are each amended to
2 read as follows:

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

7 (1) Chapter 90.03 RCW; or

8 (2) Chapter 90.44 RCW; or

9 (3) Chapter 86.16 RCW; or

10 (4) Chapter 43.37 RCW; or

11 (5) Chapter 43.27A RCW; or

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

14 (7) A rule or regulation adopted, or a directive or order issued by
15 the department relating to subsections (1) through (6) of this section;
16 the department may cause a written regulatory order to be served upon
17 said person either personally, or by registered or certified mail
18 delivered to addressee only with return receipt requested and
19 acknowledged by him. The order shall specify the provision of the
20 statute, rule, regulation, directive or order alleged to be or about to
21 be violated, and the facts upon which the conclusion of violating or
22 potential violation is based, and shall order the act constituting the
23 violation or the potential violation to cease and desist or, in
24 appropriate cases, shall order necessary corrective action to be taken
25 with regard to such acts within a specific and reasonable time. The
26 regulation of a headgate or controlling works as provided in RCW
27 90.03.070, by a watermaster, stream patrolman, or other person so
28 authorized by the department shall constitute a regulatory order within
29 the meaning of this section. A regulatory order issued hereunder shall
30 become effective immediately upon receipt by the person to whom the
31 order is directed, except for regulations under RCW 90.03.070 which
32 shall become effective when a written notice is attached as provided
33 therein. Any person aggrieved by such order may appeal the order
34 pursuant to RCW 43.21B.310 unless the order is a water quantity
35 decision as defined in RCW 43.21A.070, in which case it may be appealed
36 to an administrative law judge or to a superior court as provided in
37 section 46 of this act.

1 **Sec. 50.** RCW 90.03.290 and 1994 c 264 s 84 are each amended to
2 read as follows:

3 When an application complying with the provisions of this chapter
4 and with the rules and regulations of the department has been filed,
5 the same shall be placed on record with the department, and it shall be
6 its duty to investigate the application, and determine what water, if
7 any, is available for appropriation, and find and determine to what
8 beneficial use or uses it can be applied. If it is proposed to
9 appropriate water for irrigation purposes, the department shall
10 investigate, determine and find what lands are capable of irrigation by
11 means of water found available for appropriation. If it is proposed to
12 appropriate water for the purpose of power development, the department
13 shall investigate, determine and find whether the proposed development
14 is likely to prove detrimental to the public interest, having in mind
15 the highest feasible use of the waters belonging to the public. If the
16 application does not contain, and the applicant does not promptly
17 furnish sufficient information on which to base such findings, the
18 department may issue a preliminary permit, for a period of not to
19 exceed three years, requiring the applicant to make such surveys,
20 investigations, studies, and progress reports, as in the opinion of the
21 department may be necessary. If the applicant fails to comply with the
22 conditions of the preliminary permit, it and the application or
23 applications on which it is based shall be automatically canceled and
24 the applicant so notified. If the holder of a preliminary permit
25 shall, before its expiration, file with the department a verified
26 report of expenditures made and work done under the preliminary permit,
27 which, in the opinion of the department, establishes the good faith,
28 intent and ability of the applicant to carry on the proposed
29 development, the preliminary permit may, with the approval of the
30 governor, be extended, but not to exceed a maximum period of five years
31 from the date of the issuance of the preliminary permit. The
32 department shall make and file as part of the record in the matter,
33 written findings of fact concerning all things investigated, and if it
34 shall find that there is water available for appropriation for a
35 beneficial use, and the appropriation thereof as proposed in the
36 application will not impair existing rights or be detrimental to the
37 public welfare, it shall issue a permit stating the amount of water to
38 which the applicant shall be entitled and the beneficial use or uses to
39 which it may be applied: PROVIDED, That where the water applied for is

1 to be used for irrigation purposes, it shall become appurtenant only to
2 such land as may be reclaimed thereby to the full extent of the soil
3 for agricultural purposes. But where there is no unappropriated water
4 in the proposed source of supply, or where the proposed use conflicts
5 with existing rights, or threatens to prove detrimental to the public
6 interest, having due regard to the highest feasible development of the
7 use of the waters belonging to the public, it shall be duty of the
8 department to reject such application and to refuse to issue the permit
9 asked for. If the permit is refused because of conflict with existing
10 rights and such applicant shall acquire same by purchase or
11 condemnation under RCW 90.03.040, the department may thereupon grant
12 such permit. Any application may be approved for a less amount of
13 water than that applied for, if there exists substantial reason
14 therefor, and in any event shall not be approved for more water than
15 can be applied to beneficial use for the purposes named in the
16 application. In determining whether or not a permit shall issue upon
17 any application, it shall be the duty of the department to investigate
18 all facts relevant and material to the application. After the
19 department approves said application in whole or in part and before any
20 permit shall be issued thereon to the applicant, such applicant shall
21 pay the fee provided in RCW 90.03.470: PROVIDED FURTHER, That in the
22 event a permit is issued by the department upon any application, it
23 shall be its duty to notify the director of fish and wildlife of such
24 issuance.

25 This section does not apply to applications for transfers or
26 changes made under RCW 90.03.380 or 90.44.100.

27 **Sec. 51.** RCW 90.44.445 and 1993 c 99 s 1 are each amended to read
28 as follows:

29 In any acreage expansion program adopted by the department as an
30 element of a ground water management program, the authorization for a
31 water right certificate holder to participate in the program shall be
32 on an annual basis for the first two years. After the two-year period,
33 the department may authorize participation for ten-year periods. The
34 department may authorize participation for ten-year periods for
35 certificate holders who have already participated in an acreage
36 expansion program for two years. The department may require annual
37 certification that the certificate holder has complied with all
38 requirements of the program. The department may terminate the

1 authority of a certificate holder to participate in the program for one
2 calendar year if the certificate holder fails to comply with the
3 requirements of the program.

4 This section applies only in an area with a ground water area or
5 subarea management program in effect on the effective date of this
6 section. The provisions of RCW 90.44.100 apply to amendments to
7 permits or rights for the beneficial use of ground water in any other
8 area.

9 NEW SECTION. Sec. 52. A new section is added to chapter 34.05 RCW
10 to read as follows:

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

27 (2) For the purposes of this section, "WRIA" has the meaning
28 established in section 2 of this act.

29 NEW SECTION. Sec. 53. A new section is added to chapter 43.21A
30 RCW to read as follows:

31 A rule, order, or directive of the department adopted or issued
32 under chapter 86.16 or 43.37 RCW shall be adopted or issued in
33 accordance with the administrative procedure act, chapter 34.05 RCW,
34 and may be appealed as provided by chapter 43.21B RCW.

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PART VI
MISCELLANEOUS

1 NEW SECTION. **Sec. 54.** Part headings as used in this act do not
2 constitute any part of the law.

3 NEW SECTION. **Sec. 55.** Sections 1 through 15, 24, and 25 of this
4 act shall constitute a new chapter in Title 43 RCW.

5 NEW SECTION. **Sec. 56.** RCW 90.14.043 is decodified.

6 NEW SECTION. **Sec. 57.** RCW 43.21A.067 as amended by this act shall
7 be recodified as a section in the new chapter created in section 55 of
8 this act.

9 NEW SECTION. **Sec. 58.** The following acts or parts of acts are
10 each repealed:

- 11 (1) RCW 43.21A.064 and 1977 c 75 s 46 & 1965 c 8 s 43.21.130; and
12 (2) RCW 90.54.030 and 1990 c 295 s 2, 1988 c 47 s 4, & 1971 ex.s.
13 c 225 s 3.

14 NEW SECTION. **Sec. 59.** Sections 17, 18, 20 through 23, 53, and 56
15 through 58 of this act shall take effect July 1, 1996.

16 NEW SECTION. **Sec. 60.** Section 49 of this act shall expire July 1,
17 1996.

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