

1350

Sponsor(s): Representatives G. Chandler and Linville

Brief Description: Changing water right appeals procedures for rights subject to a general stream adjudication.

HB 1350.E - DIGEST

(DIGEST AS ENACTED)

Declares an intent to assure that appeals of department of ecology decisions regarding changes or transfers of water rights that are the subject of an ongoing general adjudication of water rights are governed by an appeals process that is efficient and eliminates unnecessary duplication, while fully preserving the rights of all affected parties.

Declares an intent to address only the judicial review process for certain decisions of the pollution control hearings board when a general adjudication is being actively litigated. The legislature intends to fully preserve the role of the pollution control hearings board, except as specifically provided in this act.

Provides that, for proceedings conducted by the pollution control hearings board pursuant to chapter 43.21B RCW or as otherwise provided in RCW 90.03.210(2).

Provides that any appeal of a decision of the department on an application to change or transfer a water right subject to a general adjudication that is being litigated actively and was commenced before October 13, 1977, shall be conducted as follows:

(1) The appeal shall be filed with the court conducting the adjudication and served under RCW 34.05.542(3). The content of the notice of appeal shall conform to RCW 34.05.546. Standing to appeal shall be based on the requirements of RCW 34.05.530 and is not limited to parties to the adjudication.

(2) If the appeal includes a challenge to the portion of the department's decision that pertains to tentative determinations of the validity and extent of the water right, review of those tentative determinations shall be conducted by the court consistent with the provisions of RCW 34.05.510 through 34.05.598, except that the review shall be de novo.

(3) If the appeal includes a challenge to any portion of the department's decision other than the tentative determinations of the validity and extent of the rights, the court must certify to the pollution control hearings board for review and decision those portions of the department's decision. Review by the pollution control hearings board shall be conducted consistent with chapter 43.21B RCW and the board's implementing regulations, except that the requirements for filing, service, and content of the notice of appeal shall be governed by this act.

(4) Appeals shall be scheduled to afford all parties full opportunity to participate before the superior court and the pollution control hearings board.

(5) Any person wishing to appeal the decision of the board made under (c) of this subsection shall seek review of the decision

in accordance with chapter 34.05 RCW, except that the petition for review must be filed with the superior court conducting the adjudication.

Declares that nothing in this act shall be construed to affect or modify any treaty or other federal rights of an Indian tribe, or the rights of any federal agency or other person or entity arising under federal law. Nothing in this section is intended or shall be construed as affecting or modifying any existing right of a federally recognized Indian tribe to protect from impairment its federally reserved water rights in federal court.