

ESHB 1571 - S COMM AMD

By Committee on Environment, Water & Energy

ADOPTED AS AMENDED 04/14/2009

1 Strike everything after the enacting clause and insert the  
2 following:

3 "Sec. 1. RCW 90.03.110 and 1987 c 109 s 72 are each amended to  
4 read as follows:

5 (1) Upon the filing of a petition with the department by a planning  
6 unit or by one or more persons claiming the right to ((divert)) any  
7 waters within the state or when, after investigation, in the judgment  
8 of the department, the ((interest of the public will be subserved by a  
9 determination of the rights thereto, it shall be the duty of the  
10 department to)) public interest will be served by a determination of  
11 the rights thereto, the department shall prepare a statement of the  
12 facts, together with a plan or map of the locality under investigation,  
13 and file such statement and plan or map in the superior court of the  
14 county in which said water is situated, or, in case such water flows or  
15 is situated in more than one county, in the county which the department  
16 shall determine to be the most convenient to the parties interested  
17 therein. Such a statement shall ~~((contain substantially the following~~  
18 ~~matter, to wit:~~

19 ~~(1) The names of all known persons claiming the right to divert~~  
20 ~~said water, the right to the diversion of which is sought to be~~  
21 ~~determined, and~~

22 ~~(2) A brief statement of the facts in relation to such water, and~~  
23 ~~the necessity for a determination of the rights thereto)):~~

24 (a) Either (i) identify each person or entity owning real property  
25 situated within the area to be adjudicated but outside the boundaries  
26 of a city, town, or special purpose district that provides water to  
27 property within its service area; (ii) identify all known persons  
28 claiming a right to the water sought to be determined; or (iii)  
29 identify both; and

1 (b) Include a brief statement of the facts in relation to such  
2 water, and the necessity for a determination of the rights thereto.

3 (2) Prior to filing an adjudication under this chapter, the  
4 department shall:

5 (a) Consult with the administrative office of the courts to  
6 determine whether sufficient judicial resources are available to  
7 commence and to prosecute the adjudication in a timely manner; and

8 (b) Report to the appropriate committees of the legislature on the  
9 estimated budget needs for the court and the department to conduct the  
10 adjudication.

11 **Sec. 2.** RCW 90.03.120 and 1987 c 109 s 73 are each amended to read  
12 as follows:

13 (1) Upon the filing of the statement and map as provided in RCW  
14 90.03.110 the judge of such superior court shall make an order  
15 directing summons to be issued, and fixing the return day thereof,  
16 which shall be not less than ((sixty)) one hundred nor more than  
17 ((ninety)) one hundred thirty days, after the making of such order:  
18 PROVIDED, That for good cause, the court, at the request of the  
19 department, may modify said time period.

20 (2) A summons issued under this section shall ((thereupon)) be  
21 issued out of said superior court, signed and attested by the clerk  
22 thereof, in the name of the state of Washington, as plaintiff, against  
23 all known persons ((claiming the right to divert the water involved and  
24 also all persons unknown claiming the right to divert the water  
25 involved, which said)) identified by the department under RCW  
26 90.03.110. The summons shall contain a brief statement of the objects  
27 and purpose of the proceedings and shall require the defendants to  
28 appear on the return day thereof, and make and file ((a statement of))  
29 an adjudication claim to, or interest in, the water involved and a  
30 statement that unless they appear at the time and place fixed and  
31 assert such right, judgment will be entered determining their rights  
32 according to the evidence: PROVIDED, HOWEVER, That any persons  
33 claiming the right to ((the use of)) water by virtue of a contract with  
34 a claimant to the right to divert the same, shall not be necessary  
35 parties to the proceeding.

36 (3) To the extent consistent with court rules and subject to the  
37 availability of funds provided either by direct appropriation or funded

1 through the administrative office of the courts for this specific  
2 adjudicative proceeding, the court is encouraged to conduct the water  
3 rights adjudication employing innovative practices and technologies  
4 appropriate to large scale and complex cases, such as: (a) Electronic  
5 filing of documents, including notice and claims; (b) appearance via  
6 teleconferencing; (c) prefiling of testimony; and (d) other practices  
7 and technologies consistent with court rules and emerging technologies.

8 NEW SECTION. Sec. 3. A new section is added to chapter 90.03 RCW  
9 to read as follows:

10 (1) A judge in a water right adjudication filed under this chapter  
11 may be partially or fully disqualified from hearing the adjudication.  
12 Partial disqualification means disqualification from hearing specified  
13 claims. Full disqualification means disqualification from hearing any  
14 aspect of the adjudication.

15 (a) A judge is partially disqualified when the judge's impartiality  
16 might reasonably be questioned and the apparent or actual partiality is  
17 limited to specified claims.

18 (b) A judge is fully disqualified when the judge's impartiality  
19 might reasonably be questioned and the apparent or actual partiality  
20 extends beyond limited claims such that the judge should not hear any  
21 part of the adjudication.

22 (2) A judge may recuse himself or herself under this section or a  
23 party may file a motion for disqualification. A motion for  
24 disqualification must state whether the remedy being sought is full or  
25 partial disqualification.

26 (3)(a) For parties who are named in the original pleadings, a  
27 motion for disqualification is timely if it is filed before the judge  
28 issues a discretionary order or ruling in the adjudication.

29 (b) For a party who is joined in the adjudication after the  
30 original pleadings have been filed, a motion for disqualification is  
31 timely if it is filed within the earliest of either (i) thirty days of  
32 being joined in the adjudication; or (ii) after the joinder of the  
33 party, before the judge issues a discretionary order or ruling relating  
34 to the joined party.

35 (c) When a motion for disqualification is untimely filed under this  
36 subsection (3), the motion will be granted only when necessary to  
37 correct a substantial injustice.

1 (d) For purposes of this section, "discretionary order or ruling"  
2 has the same meaning as "order or ruling involving discretion" in RCW  
3 4.12.050.

4 (4) A party filing a motion for disqualification under this section  
5 has the burden of proving by a preponderance of the evidence that the  
6 judge should be disqualified under the standards of subsection (1) of  
7 this section.

8 (5) The motion for disqualification may not be heard by the judge  
9 against whom the motion is filed. Subject to this limitation, the  
10 court may assign the disqualification motion to any superior court  
11 judge of the judicial district in which the adjudication was filed or  
12 to a visiting superior court judge under RCW 2.56.040.

13 (6) Except as stated in subsection (3)(d) of this section, RCW  
14 4.12.040 and 4.12.050, which otherwise govern the disqualification of  
15 superior court judges, do not apply to water right adjudications filed  
16 under this chapter. The standards set forth in RCW 2.28.030, which  
17 govern the disqualification of judicial officers generally, may be  
18 grounds for disqualification under this section.

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

21 Upon expiration of the filing period established under RCW  
22 90.03.120(2), the department shall file a motion for default against  
23 defendants who have been served but who have failed to file an  
24 adjudication claim under RCW 90.03.140. A party in default may file a  
25 late claim under the same circumstances the party could respond or  
26 defend under court rules on default judgments.

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

29 If an adjudication claim is for a use for which a statement of  
30 claim was required to be filed under chapter 90.14 RCW and no such  
31 claim was filed, the department may move that the adjudication claim be  
32 denied. The court shall grant the department's motion unless the  
33 claimant shows good cause why the motion should not be granted.

34 **Sec. 6.** RCW 90.03.130 and 1987 c 109 s 74 are each amended to read  
35 as follows:

1 Service of said summons shall be made in the same manner and with  
2 the same force and effect as service of summons in civil actions  
3 commenced in the superior courts of the state: PROVIDED, That (~~for~~  
4 ~~good cause, the court, at the request of the department, as an~~  
5 ~~alternative to personal service, may authorize service of summons to~~  
6 ~~be~~) as an alternative to personal service, service may be made by  
7 certified mail, with return receipt signed and dated by defendant, a  
8 spouse of a defendant, or another person authorized to accept service.  
9 If the defendants, or either of them, cannot be found within the state  
10 of Washington, of which the return of the sheriff of the county in  
11 which the proceeding is pending or the failure to sign a receipt for  
12 certified mail shall be prima facie evidence, upon the filing of an  
13 affidavit by the department, or its attorney, in conformity with the  
14 statute relative to the service of summons by publication in civil  
15 actions, such service may be made by publication in a newspaper of  
16 general circulation in the county in which such proceeding is pending,  
17 and also publication of said summons in a newspaper of general  
18 circulation in each county in which any portion of the water is  
19 situated, once a week for six consecutive weeks (six publications).  
20 (~~In cases where personal service can be had, such summons shall be~~  
21 ~~served at least twenty days before the return day thereof.~~) The  
22 summons by publication shall state that (~~statements of~~) adjudication  
23 claims must be filed within (~~twenty~~) sixty days after the last  
24 publication or before the return date, whichever is later. In cases  
25 where personal service or service by certified mail is had, summons  
26 must be served at least sixty days before the return day thereof. For  
27 summons by certified mail, completion of service occurs upon the date  
28 of receipt by the defendant.

29 Personal service of summons may be made by department of ecology  
30 employees for actions pertaining to water rights.

31 **Sec. 7.** RCW 90.03.140 and 1987 c 109 s 75 are each amended to read  
32 as follows:

33 (1) On or before the (~~return day of such summons, each defendant~~  
34 ~~shall file in the office of the clerk of said court a statement, and~~  
35 ~~therewith a copy thereof for the department, containing substantially~~  
36 ~~the following:~~

37 ~~(1) The name and post office address of defendant.~~

1       ~~(2) The full nature of the right, or use, on which the claim is~~  
2 ~~based.~~

3       ~~(3) The time of initiation of such right and commencement of such~~  
4 ~~use.~~

5       ~~(4) The date of beginning and completion of construction.~~

6       ~~(5) The dimensions and capacity of all ditches existing at the time~~  
7 ~~of making said statement.~~

8       ~~(6) The amount of land under irrigation and the maximum quantity of~~  
9 ~~water used thereon prior to the date of said statement and if for~~  
10 ~~power, or other purposes, the maximum quantity of water used prior to~~  
11 ~~date of said statement.~~

12       ~~(7) The legal description of the land upon which said water has~~  
13 ~~been, or may be, put to beneficial use, and the legal description of~~  
14 ~~the subdivision of land on which the point of diversion is located.~~

15       Such statement)) date specified in the summons, each defendant  
16 shall file with the clerk of the superior court an adjudication claim  
17 on a form and in a manner provided by the department, and mail or  
18 electronically mail a copy to the department. The department shall  
19 provide information that will assist claimants of small uses of water  
20 in completing their adjudication claims. The adjudication claim must  
21 contain substantially the following, except that when the legal basis  
22 for the claimed right is a federally reserved right, the information  
23 must be filed only as applicable:

24       (a) The name, mailing address, and telephone contact number of each  
25 defendant on the claim, and e-mail address, if available;

26       (b) The purpose or purposes of use of the water and the annual and  
27 instantaneous quantities of water put to beneficial use;

28       (c) For each use, the date the first steps were taken under the law  
29 to put the water to beneficial use;

30       (d) The date of beginning and completion of the construction of  
31 wells, ditches, or other works to put the water to use;

32       (e) The maximum amount of land ever under irrigation and the  
33 maximum annual and instantaneous quantities of water ever used thereon  
34 prior to the date of the statement and if for power, or other purposes,  
35 the maximum annual and instantaneous quantities of water ever used  
36 prior to the date of the adjudication claim;

37       (f) The dates between which water is used annually;

1 (g) If located outside the boundaries of a city, town, or special  
2 purpose district that provides water to property within its service  
3 area, the legal description and county tax parcel number of the land  
4 upon which the water as presently claimed has been, or may be, put to  
5 beneficial use;

6 (h) The legal description and county tax parcel number of the  
7 subdivision of land on which the point of diversion or withdrawal is  
8 located as well as land survey and geographic positioning coordinates  
9 of the same if available;

10 (i) Whether a right to surface or groundwater, or both, is claimed  
11 and the source of the surface water and the location and depth of all  
12 wells;

13 (j) The legal basis for the claimed right;

14 (k) Whether a statement of claim relating to the water right was  
15 filed under chapter 90.14 RCW or whether a declaration relating to the  
16 water right was filed under chapter 90.44 RCW and, if so, the claim or  
17 declaration number, and whether the right is documented by a permit or  
18 certificate and, if so, the permit number or certificate number. When  
19 the source is a well, the well log number must be provided, when  
20 available;

21 (1) The amount of land and the annual and instantaneous quantities  
22 of water used thereon, or used for power or other purposes, that the  
23 defendant claims as a present right.

24 (2) The adjudication claim shall be verified on oath by the  
25 defendant(, and in the discretion of the court may be amended)). The  
26 department shall furnish the form for the adjudication claim. A  
27 claimant may file an adjudication claim electronically if authorized  
28 under state and local court rules. The department may assist claimants  
29 in their effort by making the department's pertinent records and  
30 information accessible electronically or by other means and through  
31 conferring with claimants.

32 NEW SECTION. Sec. 8. A new section is added to chapter 90.03 RCW  
33 to read as follows:

34 Within the date set by the court for filing evidence, each claimant  
35 shall file with the court evidence to support the claimant's  
36 adjudication claims. The court is encouraged to set a date for filing  
37 evidence that is reasonable and fair for the timely processing of the

1 adjudication. The evidence may include, without limitation, permits or  
2 certificates of water right, statements of claim made under chapter  
3 90.14 RCW, deeds, documents related to issuance of a land patent,  
4 aerial photographs, decrees of previous water rights adjudications,  
5 crop records, records of livestock purchases and sales, records of  
6 power use, metering records, declarations containing testimonial  
7 evidence, records of diversion, withdrawal or storage and delivery by  
8 irrigation districts or ditch companies, and any other evidence to  
9 support that a water right was obtained and was not thereafter  
10 abandoned or relinquished. The evidence filed may include matters that  
11 are outside the original adjudication claim filed, and within the date  
12 set by the court for filing evidence, the claimant may amend the  
13 adjudication claim to conform to the evidence filed. Thereafter,  
14 except for good cause shown, a claimant may not file additional  
15 evidence to support the claim.

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

18 (1) Upon the receipt of adjudication claims and the filing of  
19 claimants' evidence, the department shall conduct a preliminary  
20 investigation for the purpose of examining:

21 (a) The uses of the subject waters by and any physical works in  
22 connection with the persons to whom the adjudication applies; and

23 (b) The uses for which a statement of claim has been filed under  
24 chapter 90.14 RCW or for which the department has a permit or  
25 certificate of water right on record.

26 (2)(a) The examination may include, as the department deems  
27 appropriate:

28 (i) An estimation of the amount of water that is reasonably  
29 necessary to accomplish various beneficial uses within the area;

30 (ii) The measurement of stream flows;

31 (iii) The measurement of any diversion or withdrawal rates;

32 (iv) An estimation of storage capacity and the amount of water  
33 stored;

34 (v) The types and numbers of stock watered;

35 (vi) The number of residences served;

36 (vii) The location and size of any irrigated land areas; and



1 (viii) Any other information pertinent to the determination of  
2 water rights in an adjudication under this chapter.

3 (b) The department may also take other necessary steps and gather  
4 other data and information as may be essential to the proper  
5 understanding of the water uses and associated rights of the affected  
6 water users, including review of each claimant's adjudication claim and  
7 evidence the claimant filed to support the claim. The claimants and  
8 the department are encouraged to confer as may be beneficial to clarify  
9 the factual and legal basis for the claim. To the extent consistent  
10 with court rules, the court may deem it appropriate to encourage  
11 claimants and the department to work closely together to reach  
12 agreement on a claimed water right that may result in timely settlement  
13 of water rights, reduced costs for the parties, greater equity and  
14 general public service, and better information that may be used for  
15 overall water management.

16 (3) The department shall file with the court the department's  
17 report of findings as to each adjudication claim filed timely under RCW  
18 90.03.140. The department may divide its report of findings into two  
19 or more segments, covering particular drainages, uses, or other  
20 appropriate bases for dividing the report on adjudication claims.  
21 Based on the evidence filed by claimants and the department's report of  
22 findings, the department shall file with the superior court either or  
23 both of the following motions:

24 (a) A motion for a partial decree in favor of all stated claims  
25 under RCW 90.03.140 that the department finds to be substantiated with  
26 factual evidence; or

27 (b) A motion seeking determination of contested claims before the  
28 court.

29 **Sec. 10.** RCW 90.03.160 and 1989 c 80 s 1 are each amended to read  
30 as follows:

31 ~~(1) Upon ((the completion of the service of summons as hereinbefore~~  
32 ~~provided, the superior court in which said proceeding is pending shall~~  
33 ~~make an order referring said proceeding to the department to take~~  
34 ~~testimony by its duly authorized designee, as referee, and the designee~~  
35 ~~shall report to and file with the superior court of the county in which~~  
36 ~~such cause is pending a transcript of such testimony for adjudication~~  
37 ~~thereon by such court. The superior court may, in any complex case~~

1 ~~with more than one thousand named defendants, including the United~~  
2 ~~States, retain for hearing and further processing such portions of the~~  
3 ~~proceeding as pertain to a discrete class or classes of defendants or~~  
4 ~~claims of water rights if the court determines that: (1) Resolution of~~  
5 ~~claims of such classes appear to involve significant issues of law,~~  
6 ~~either procedural or substantive; and (2) such a retention will both~~  
7 ~~expedite the conclusion of the case and reduce the overall expenditures~~  
8 ~~of the plaintiff, defendants, and the court)) filing of the~~  
9 department's motion or motions under section 9(3) of this act, any  
10 party with a claim filed under RCW 90.03.140 for the appropriation of  
11 water or waters of the subject adjudication may file and serve a  
12 response to the department's motion or motions within the time set by  
13 the court for such a response. Objections must include specific  
14 information in regard to the particular disposition against which the  
15 objection is being made. Objections must also state the underlying  
16 basis of the objection being made, including general information about  
17 the forms of evidence that support the objection. Any party may file  
18 testimony with the court and serve it on other parties. If a party  
19 intends to cross-examine a claimant or witness based on another party's  
20 prefiled testimony, the party intending to cross-examine shall file a  
21 notice of intent to cross-examine no later than fifteen days in advance  
22 of the hearing. If no notice of intent to cross-examine based on the  
23 prefiled testimony is given, then the claimant or witness is not  
24 required to appear at the hearing. Any party may present evidence in  
25 support of or in response to an objection.

26 (2) The superior court may appoint a referee or other judicial  
27 officer to assist the court.

28 (3) The superior court may adopt special rules of procedure for an  
29 adjudication of water rights under this chapter, including simplified  
30 procedures for claimants of small uses of water. The rules of  
31 procedure for a superior court apply to an adjudication of water rights  
32 under this chapter unless superseded by special rules of the court  
33 under this subsection. The superior court is encouraged to consider  
34 entering, after notice and hearing and as the court determines  
35 appropriate, pretrial orders from an adjudication commenced on October  
36 12, 1977.

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

3            (1) The legislature finds that early settlement of contested claims  
4 is needed for a fair and efficient adjudication of water rights.  
5 Therefore, the department and other parties should identify  
6 opportunities for settlement following the date set by the court for  
7 filing evidence for all parties. To the extent consistent with court  
8 rules, the court as it deems beneficial is encouraged to urge as many  
9 parties to the adjudication as possible to reach timely agreement on  
10 claimed water rights in a manner that limits costs to the public,  
11 claimants, counties, courts, and the department. Further, at  
12 appropriate times throughout the process the court as it deems  
13 beneficial is encouraged to direct parties to utilize alternative  
14 methods of dispute resolution, including informal meetings,  
15 negotiation, mediation, or other methods to reach agreement on disputed  
16 claims.

17            (2) Any time after the filing of all claims under RCW 90.03.140,  
18 the department or another party may move the superior court to allow  
19 parties to meet for settlement discussions for a set length of time,  
20 either before an appointed mediator or without a mediator. For good  
21 cause shown, the court may extend the length of time for settlement  
22 discussions. The costs of mediation must be equitably borne by the  
23 parties to the mediation.

24            (3) If the department and a claimant reach agreement on settlement,  
25 the department shall file a motion to approve the settlement pursuant  
26 to section 9(3)(a) of this act and shall disclose the terms of the  
27 settlement to other parties to the adjudication. The court shall  
28 conduct a hearing prior to approving a settlement and any party to the  
29 adjudication may object or offer modifications to the settlement.

30            **Sec. 12.**    RCW 90.03.180 and 1995 c 292 s 21 are each amended to  
31 read as follows:

32            At the time of filing the (~~statement~~) adjudication claim as  
33 provided in RCW 90.03.140, each defendant, except the United States or  
34 an Indian tribe under 43 U.S.C. Sec. 666, shall pay to the clerk of the  
35 superior court a fee as set under RCW (~~36.18.020~~) 36.18.016.

1           **Sec. 13.** RCW 90.03.200 and 1988 c 202 s 91 are each amended to  
2 read as follows:

3           Upon the ( ~~filing of the evidence and the report of the department,~~  
4  ~~any interested party may, on or before five days prior to the date of~~  
5  ~~said hearing, file exceptions to such report in writing and such~~  
6  ~~exception shall set forth the grounds therefor and a copy thereof shall~~  
7  ~~be served personally or by registered mail upon all parties who have~~  
8  ~~appeared in the proceeding. If no exceptions be filed, the court shall~~  
9  ~~enter a decree determining the rights of the parties according to the~~  
10  ~~evidence and the report of the department, whether such parties have~~  
11  ~~appeared therein or not. If exceptions are filed the action shall~~  
12  ~~proceed as in case of reference of a suit in equity and the court may~~  
13  ~~in its discretion take further evidence or, if necessary, remand the~~  
14  ~~case for such further evidence to be taken by the department's~~  
15  ~~designee, and may require further report by him. Costs, not including~~  
16  ~~taxable attorneys fees, may be allowed or not; if allowed, may be~~  
17  ~~apportioned among the parties in the discretion of the court)) court's  
18 determination of all issues, the court shall issue a final decree and  
19 provide notice of the decree to all parties. The final decree must  
20 order each party whose rights have been confirmed, except the United  
21 States or an Indian tribe under 43 U.S.C. Sec. 666, to pay the  
22 department the fees required by RCW 90.03.470(10) and any other  
23 applicable fee schedule within ninety days after the department sends  
24 notice to the party under RCW 90.03.240. Appellate review of the  
25 decree shall be in the same manner as in other cases in equity, except  
26 that review must be sought within sixty days from the entry thereof.~~

27           **Sec. 14.** RCW 90.03.210 and 2001 c 220 s 5 are each amended to read  
28 as follows:

29           (1) During the pendency of such adjudication proceedings prior to  
30 judgment or upon review by an appellate court, the stream or other  
31 water involved shall be regulated or partially regulated according to  
32 the schedule of rights specified in the department's report upon an  
33 order of the court authorizing such regulation: PROVIDED, Any  
34 interested party may file a bond and obtain an order staying the  
35 regulation of said stream as to him, in which case the court shall make  
36 such order regarding the regulation of the stream or other water as he  
37 may deem just. The bond shall be filed within five days following the

1 service of notice of appeal in an amount to be fixed by the court and  
2 with sureties satisfactory to the court, conditioned to perform the  
3 judgment of the court.

4 (2) Any appeal of a decision of the department on an application to  
5 change or transfer a water right subject to (~~(a general)~~) an  
6 adjudication that is being litigated actively (~~(and was commenced~~  
7 ~~before October 13, 1977,)~~) shall be conducted as follows:

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

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

19 (c) If the appeal includes a challenge to any portion of the  
20 department's decision other than the tentative determinations of the  
21 validity and extent of the right, the court must certify to the  
22 pollution control hearings board for review and decision those portions  
23 of the department's decision. Review by the pollution control hearings  
24 board shall be conducted consistent with chapter 43.21B RCW and the  
25 board's implementing regulations, except that the requirements for  
26 filing, service, and content of the notice of appeal shall be governed  
27 by (a) of this subsection. Any party to an appeal may move the court  
28 to certify portions of the appeal to the pollution control hearings  
29 board, but the appellant must file a motion for certification no later  
30 than ninety days after the appeal is filed under this section.

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

34 (e) Any person wishing to appeal the decision of the board made  
35 under (c) of this subsection shall seek review of the decision in  
36 accordance with chapter 34.05 RCW, except that the petition for review  
37 must be filed with the superior court conducting the adjudication.

1 (3) Nothing in this section shall be construed to affect or modify  
2 any treaty or other federal rights of an Indian tribe, or the rights of  
3 any federal agency or other person or entity arising under federal law.  
4 Nothing in this section is intended or shall be construed as affecting  
5 or modifying any existing right of a federally recognized Indian tribe  
6 to protect from impairment its federally reserved water rights in  
7 federal court.

8 **Sec. 15.** RCW 90.03.240 and 1987 c 109 s 82 are each amended to  
9 read as follows:

10 Upon the court's final determination of the rights to ~~((the~~  
11 ~~diversion of))~~ water ~~((it shall be the duty of))~~, the department ~~((to))~~  
12 shall issue to each person entitled to ~~((the diversion of))~~ a water  
13 right by such a determination, a certificate ~~((under his official~~  
14 ~~seal))~~ of adjudicated water right, setting forth the name and ~~((post~~  
15 ~~office))~~ mailing address of record with the court of such person; the  
16 priority and purpose of the right; the period during which said right  
17 may be exercised, the point of diversion or withdrawal, and the place  
18 of use; the land to which said water right is appurtenant ~~((and when~~  
19 ~~applicable))~~; the maximum ~~((quantity))~~ annual and instantaneous  
20 quantities of water allowed; and specific provisions or limitations or  
21 both under which the water right has been confirmed.

22 The department shall provide notice to the water right holder that  
23 the certificate has been prepared for issuance and that fees for the  
24 issuance of the certificate are due in accordance with RCW 90.03.470  
25 and any other applicable fee schedule. If the water right holder fails  
26 to submit the required fees within one year from the date the notice  
27 was issued by the department, the department may move the court for  
28 sanctions for violation of the court's order in the final decree  
29 requiring payment.

30 **Sec. 16.** RCW 90.03.243 and 1982 c 15 s 1 are each amended to read  
31 as follows:

32 The expenses incurred by the state in a proceeding to determine  
33 rights to water initiated under RCW 90.03.110 or 90.44.220 or upon  
34 appeal of such a determination shall be borne by the state. Subject to  
35 the availability of state funding provided either by direct  
36 appropriation or funded through the administrative office of the courts

1 for this specific purpose, the county in which an adjudication or a  
2 suit to administer an adjudication is being held must be provided the  
3 extraordinary costs imposed on the superior court of that county due to  
4 the adjudication.

5 **Sec. 17.** RCW 90.44.220 and 1987 c 109 s 119 are each amended to  
6 read as follows:

7 ~~((In its discretion or upon the application of any party claiming~~  
8 ~~right to the withdrawal and use of public groundwater, the department~~  
9 ~~may file a petition)) Upon the filing of a petition with the department  
10 by a planning unit or by one or more persons claiming a right to any  
11 waters within the state or when, after investigation, in the judgment  
12 of the department, the public interest will be served by a  
13 determination of the rights thereto, the department shall file a  
14 petition to conduct an adjudication with the superior court of the  
15 county for the determination of the rights of appropriators of any  
16 particular groundwater body and all the provisions of RCW 90.03.110  
17 through 90.03.240 ~~((as heretofore amended))~~ and sections 3 through 5,  
18 8, 9, and 11 of this act, shall govern and apply to the adjudication  
19 and determination of such groundwater body and to the ownership  
20 thereof. Hereafter, in any proceedings for the adjudication and  
21 determination of water rights--either rights to the use of surface  
22 water or to the use of groundwater, or both--pursuant to chapter 90.03  
23 RCW ~~((as heretofore amended))~~, all appropriators of groundwater or of  
24 surface water in the particular basin or area may be included as  
25 parties to such adjudication, as ~~((pertinent))~~ set forth in chapter  
26 90.03 RCW.~~

27 **Sec. 18.** RCW 43.21B.110 and 2003 c 393 s 19 are each amended to  
28 read as follows:

29 (1) The hearings board shall only have jurisdiction to hear and  
30 decide appeals from the following decisions of the department, the  
31 director, local conservation districts, and the air pollution control  
32 boards or authorities as established pursuant to chapter 70.94 RCW, or  
33 local health departments:

34 (a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431,  
35 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.48.144, 90.56.310, and  
36 90.56.330.

1 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,  
2 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,  
3 90.14.130, 90.48.120, and 90.56.330.

4 (c) Except as provided in RCW 90.03.210(2), the issuance,  
5 modification, or termination of any permit, certificate, or license by  
6 the department or any air authority in the exercise of its  
7 jurisdiction, including the issuance or termination of a waste disposal  
8 permit, the denial of an application for a waste disposal permit, the  
9 modification of the conditions or the terms of a waste disposal permit,  
10 or a decision to approve or deny an application for a solid waste  
11 permit exemption under RCW 70.95.300.

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

14 (e) Decisions of local health departments regarding the issuance  
15 and enforcement of permits to use or dispose of biosolids under RCW  
16 70.95J.080.

17 (f) Decisions of the department regarding waste-derived fertilizer  
18 or micronutrient fertilizer under RCW 15.54.820, and decisions of the  
19 department regarding waste-derived soil amendments under RCW 70.95.205.

20 (g) Decisions of local conservation districts related to the denial  
21 of approval or denial of certification of a dairy nutrient management  
22 plan; conditions contained in a plan; application of any dairy nutrient  
23 management practices, standards, methods, and technologies to a  
24 particular dairy farm; and failure to adhere to the plan review and  
25 approval timelines in RCW 90.64.026.

26 (h) Any other decision by the department or an air authority which  
27 pursuant to law must be decided as an adjudicative proceeding under  
28 chapter 34.05 RCW.

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

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

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

35 ~~((Proceedings conducted by the department, or the department's~~  
36 ~~designee, under RCW 90.03.160 through 90.03.210 or 90.44.220.)) Appeals~~  
37 of decisions by the department under RCW 90.03.110 and 90.44.220.



1 (d) Hearings conducted by the department to adopt, modify, or  
2 repeal rules.

3 (e) Appeals of decisions by the department as provided in chapter  
4 43.21L RCW.

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

8 NEW SECTION. **Sec. 19.** Except for section 14 of this act, this act  
9 applies only to adjudications initiated after the effective date of  
10 this section.

11 NEW SECTION. **Sec. 20.** The following acts or parts of acts are  
12 each repealed:

13 (1) RCW 90.03.170 (Determination of water rights--Hearing--Notice--  
14 Prior rights preserved) and 1987 c 109 s 77 & 1917 c 117 s 20; and

15 (2) RCW 90.03.190 (Determination of water rights--Transcript of  
16 testimony--Filing--Notice of hearing) and 1987 c 109 s 78 & 1917 c 117  
17 s 22."

**ESHB 1571** - S COMM AMD

By Committee on Environment, Water & Energy

**ADOPTED AS AMENDED 04/14/2009**

18 On page 1, line 1 of the title, after "rights;" strike the  
19 remainder of the title and insert "amending RCW 90.03.110, 90.03.120,  
20 90.03.130, 90.03.140, 90.03.160, 90.03.180, 90.03.200, 90.03.210,  
21 90.03.240, 90.03.243, 90.44.220, and 43.21B.110; adding new sections to  
22 chapter 90.03 RCW; creating a new section; and repealing RCW 90.03.170  
23 and 90.03.190."

--- END ---