
SUBSTITUTE HOUSE BILL 1571

State of Washington

61st Legislature

2009 Regular Session

By House Agriculture & Natural Resources (originally sponsored by Representatives Blake and Chandler; by request of Department of Ecology)

READ FIRST TIME 02/23/09.

1 AN ACT Relating to the adjudication of water rights; amending RCW
2 90.03.110, 90.03.120, 90.03.130, 90.03.140, 90.03.160, 90.03.180,
3 90.03.200, 90.03.210, 90.03.240, 90.03.243, 90.44.220, and 43.21B.110;
4 adding new sections to chapter 90.03 RCW; creating a new section; and
5 repealing RCW 90.03.170 and 90.03.190.

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

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

9 (1) Upon the filing of a petition with the department by any water
10 right claimant, the department may commence a limited adjudication of
11 water rights to determine the rights of one or a limited number of the
12 total potential claimants to water from a source in circumstances where
13 the issues requiring determination of water do not affect every water
14 right holder in a given basin. The department may not join as a party
15 an Indian tribe or the United States or any of its agencies or
16 departments in a limited adjudication.

17 (2) Any water right claimant may, pursuant to superior court rules,
18 move:

1 (a) To intervene in a limited adjudication of claims to such a
2 water source; or

3 (b) When joined as a party in a limited adjudication, to join
4 another party, or to dismiss the adjudication for failure to join an
5 indispensable party.

6 (3) The judgment in a limited adjudication is binding upon the
7 parties, but is not binding on any person or entity who was not a party
8 to a limited adjudication. As between the parties to the limited
9 adjudication, the judgment in a limited adjudication is admissible as
10 prima facie evidence of the existence and conditions of the right. A
11 decree in a limited adjudication may be superseded in a subsequent
12 general adjudication, but the parties to the limited adjudication may
13 not raise issues or claims that were decided in the prior proceeding.
14 As between parties to a limited adjudication, a water master may rely
15 on such a determination in dividing, regulating, and controlling the
16 use of water under RCW 90.03.070.

17 (4) Unless otherwise provided in this chapter or by court rules,
18 the procedures applicable to a general adjudication described in this
19 chapter are applicable to a limited adjudication.

20 (5) For purposes of this section, the term "water right claimant"
21 means any person who:

22 (a) Claims a right to divert or withdraw water from a water source;
23 or

24 (b) Makes a permanent transfer of a water right to the state trust
25 water program and who retains a beneficial interest in such a water
26 right.

27 (6) For purposes of this section, a water right claimant does not
28 include the department.

29 (7) Prior to filing a limited adjudication under this section the
30 department shall:

31 (a) Notify and consult with affected state agencies, local
32 governments, and Indian tribes;

33 (b) Publish notice of its intent to file a limited adjudication on
34 the same day of each week for two consecutive weeks in a legal
35 newspaper of general circulation in the area where the property that is
36 the subject of the action is located; and

37 (c) Post notice of its intent to file a limited adjudication on the

1 department's web site prior to the date of the last newspaper
2 publication that is required in (b) of this subsection.

3 **Sec. 2.** RCW 90.03.110 and 1987 c 109 s 72 are each amended to read
4 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, an adjudication is needed for effective water
12 management, the department will determine whether the public interest
13 would be served by a determination of the rights to the waters. The
14 department, in consultation with the administrative office of the
15 courts, will determine whether sufficient resources are available to
16 the department, and to the superior court in which an adjudication may
17 be filed, to conduct an adjudication in addition to discharging other
18 duties. If both the administrative office of the courts' and the
19 department's determinations are affirmative, the department shall
20 prepare a statement of the facts, together with a plan or map of the
21 locality under investigation, and file such statement and plan or map
22 in the superior court of the county in which said water is situated,
23 or, in case such water flows or is situated in more than one county, in
24 the county which the department shall determine to be the most
25 convenient to the parties interested therein. Such a statement shall
26 ((contain substantially the following matter, to wit:

27 (1) The names of all known persons claiming the right to divert
28 said water, the right to the diversion of which is sought to be
29 determined, and

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

32 (a) For a limited adjudication, identify each person or entity
33 whose right to water the department seeks to determine;

34 (b) For a general adjudication, either (i) identify each person or
35 entity owning real property situated within the area to be adjudicated
36 but outside the boundaries of a city, town, or special purpose district

1 that provides water to property within its service area; (ii) identify
2 all known persons claiming a right to the water sought to be
3 determined; or (iii) identify both; and

4 (c) Include a brief statement of the facts in relation to such
5 water, and the necessity for a determination of the rights thereto.

6 (2) Prior to filing a general adjudication under this chapter, the
7 department shall:

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

11 (b) Report to the appropriate committees of the legislature on the
12 estimated budget needs for the court and the department to conduct the
13 adjudication.

14 **Sec. 3.** RCW 90.03.120 and 1987 c 109 s 73 are each amended to read
15 as follows:

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

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

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

11 NEW SECTION. Sec. 4. A new section is added to chapter 90.03 RCW
12 to read as follows:

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

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

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

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

29 (3)(a) For parties who are named in the original pleadings, a
30 motion for disqualification is timely if it is filed before the judge
31 issues a discretionary order or ruling in the limited or general
32 adjudication.

33 (b) For a party who is joined in the adjudication after the
34 original pleadings have been filed, a motion for disqualification is
35 timely if it is filed (i) within thirty days of being joined in the
36 adjudication; or (ii) after the joinder of the party and before the

1 judge issues a discretionary order or ruling relating to the joined
2 party, whichever occurs first.

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

6 (d) For purposes of this section, "discretionary order or ruling"
7 has the same meaning as "order or ruling involving discretion" in RCW
8 4.12.050.

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

13 (5) The motion for disqualification may not be heard by the judge
14 against whom the motion is filed. Subject to this limitation, the
15 court may assign the disqualification motion to any superior court
16 judge of the judicial district in which the limited or general
17 adjudication was filed or to a visiting superior court judge under RCW
18 2.56.040.

19 (6) Except as stated in subsection (3)(d) of this section, RCW
20 4.12.040 and 4.12.050, which otherwise govern the disqualification of
21 superior court judges, do not apply to limited or general water right
22 adjudications filed under this chapter. The standards set forth in RCW
23 2.28.030, which govern the disqualification of judicial officers
24 generally, may be grounds for disqualification under this section.

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

27 Upon expiration of the filing period established under RCW
28 90.03.120(2), the department shall file a motion for default against
29 defendants who have been served but who have failed to file an
30 adjudication claim under RCW 90.03.140. When a party served by summons
31 fails to file a claim, it must be presumed that the party either has no
32 valid claim to water or waters being adjudicated or the party has since
33 abandoned a preexisting right or claim to the water. A party in
34 default may file a late claim under the same circumstances the party
35 could respond or defend under court rules on default judgments.

1 NEW SECTION. **Sec. 6.** A new section is added to chapter 90.03 RCW
2 to read as follows:

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

8 **Sec. 7.** RCW 90.03.130 and 1987 c 109 s 74 are each amended to read
9 as follows:

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

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

3 **Sec. 8.** RCW 90.03.140 and 1987 c 109 s 75 are each amended to read
4 as follows:

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

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

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

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

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

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

17 ~~(6) The amount of land under irrigation and the maximum quantity of~~
18 ~~water used thereon prior to the date of said statement and if for~~
19 ~~power, or other purposes, the maximum quantity of water used prior to~~
20 ~~date of said statement.~~

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

24 ~~Such statement)) date specified in the summons, each defendant~~
25 ~~shall file with the clerk of the superior court an adjudication claim~~
26 ~~on a form and in a manner provided by the department, and mail or~~
27 ~~electronically mail a copy to the department. The adjudication claim~~
28 ~~must contain substantially the following, except that when the legal~~
29 ~~basis for the claimed right is a federally reserved right, the~~
30 ~~information must be filed only as applicable:~~

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

33 ~~(b) The purpose or purposes of use of the water and the annual and~~
34 ~~instantaneous quantities of water put to beneficial use;~~

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

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

3 (e) The maximum amount of land ever under irrigation and the
4 maximum annual and instantaneous quantities of water ever used thereon
5 prior to the date of the statement and if for power, or other purposes,
6 the maximum annual and instantaneous quantities of water ever used
7 prior to the date of the adjudication claim;

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

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

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

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

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

22 (k) Whether a statement of claim relating to the water right was
23 filed under chapter 90.14 RCW or whether a declaration relating to the
24 water right was filed under chapter 90.44 RCW and, if so, the claim or
25 declaration number, and whether the right is documented by a permit or
26 certificate and, if so, the permit number or certificate number. When
27 the source is a well, the well log number must be provided, when
28 available;

29 (l) The amount of land and the annual and instantaneous quantities
30 of water used thereon, or used for power or other purposes, that the
31 defendant claims as a present right.

32 (2) The adjudicated claim shall be verified on oath by the
33 defendant, and in the discretion of the court may be amended. The
34 department shall furnish the form for the adjudication claim. A
35 claimant may file an adjudication claim electronically if authorized
36 under state and local court rules. The department may assist claimants
37 in their effort by making the department's pertinent records and

1 information accessible electronically or by other means and through
2 conferring with claimants.

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

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

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

26 Within one hundred twenty days after the date set by the court for
27 filing an adjudication claim, unless the time period is extended by the
28 court, each claimant shall file with the court evidence to support the
29 claimant's adjudication claims. The evidence may include, without
30 limitation, permits or certificates of water right, statements of claim
31 made under chapter 90.14 RCW, deeds, aerial photographs, decrees of
32 previous water rights adjudications, crop records, records of livestock
33 purchases and sales, records of power use, metering records,
34 declarations containing testimonial evidence, records of diversion,
35 withdrawal or storage and delivery by irrigation districts or ditch
36 companies, and any other evidence to support that a water right was

1 obtained and was not thereafter abandoned or relinquished. Thereafter,
2 except for good cause shown, a claimant may not file additional
3 evidence to support the claim.

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

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

9 (a) The uses of the subject waters by and any physical works in
10 connection with the persons to whom the general or limited adjudication
11 applies; and

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

15 (2)(a) The examination may include, as the department deems
16 appropriate:

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

19 (ii) The measurement of stream flows;

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

21 (iv) An estimation of storage capacity and the amount of water
22 stored;

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

24 (vi) The number of residences served;

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

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

28 (b) The department may also take other necessary steps and gather
29 other data and information as may be essential to the proper
30 understanding of the water uses and associated rights of the affected
31 water users, including review of each claimant's adjudication claim and
32 evidence the claimant filed to support the claim. The claimants and
33 the department are encouraged to confer as may be beneficial to clarify
34 the factual and legal basis for the claim. To the extent consistent
35 with court rules, the court may deem it appropriate to encourage
36 claimants and the department to work closely together to reach
37 agreement on a claimed water right that may result in timely settlement

1 of water rights, reduced costs for the parties, greater equity and
2 general public service, and better information that may be used for
3 overall water management.

4 (3) The department shall file with the court the department's
5 report of findings as to each adjudication claim filed timely under RCW
6 90.03.140. The department may divide its report of findings into two
7 or more segments, covering particular drainages, uses, or other
8 appropriate bases for dividing the report on adjudication claims.
9 Based on the evidence filed by claimants and the department's report of
10 findings, the department shall file with the superior court either or
11 both of the following motions:

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

15 (b) A motion seeking determination of contested claims before the
16 court.

17 **Sec. 12.** RCW 90.03.160 and 1989 c 80 s 1 are each amended to read
18 as follows:

19 ~~(1) Upon ((the completion of the service of summons as hereinbefore~~
20 ~~provided, the superior court in which said proceeding is pending shall~~
21 ~~make an order referring said proceeding to the department to take~~
22 ~~testimony by its duly authorized designee, as referee, and the designee~~
23 ~~shall report to and file with the superior court of the county in which~~
24 ~~such cause is pending a transcript of such testimony for adjudication~~
25 ~~thereon by such court. The superior court may, in any complex case~~
26 ~~with more than one thousand named defendants, including the United~~
27 ~~States, retain for hearing and further processing such portions of the~~
28 ~~proceeding as pertain to a discrete class or classes of defendants or~~
29 ~~claims of water rights if the court determines that: (1) Resolution of~~
30 ~~claims of such classes appear to involve significant issues of law,~~
31 ~~either procedural or substantive; and (2) such a retention will both~~
32 ~~expedite the conclusion of the case and reduce the overall expenditures~~
33 ~~of the plaintiff, defendants, and the court)) filing of the~~
34 ~~department's motion or motions under section 11(3) of this act, any~~
35 ~~party with a claim filed under RCW 90.03.140 for the appropriation of~~
36 ~~water or waters of the subject adjudication may file and serve a~~
37 ~~response to the department's motion or motions within the time set by~~

1 the court for such a response. Objections must include specific
2 information in regard to the particular disposition against which the
3 objection is being made. Objections must also state the underlying
4 basis of the objection being made, including general information about
5 the forms of evidence that support the objection. Any party may file
6 testimony with the court and serve it on other parties. If a party
7 intends to cross-examine a claimant or witness based on another party's
8 prefiled testimony, the party intending to cross-examine shall file a
9 notice of intent to cross-examine no later than fifteen days in advance
10 of the hearing. If no notice of intent to cross-examine based on the
11 prefiled testimony is given, then the claimant or witness is not
12 required to appear at the hearing. Any party may present evidence in
13 support of or in response to an objection.

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

16 (3) The superior court may adopt special rules of procedure for an
17 adjudication of water rights under this chapter. The rules of
18 procedure for a superior court apply to an adjudication of water rights
19 under this chapter unless superseded by special rules of the court
20 under this subsection. The superior court is encouraged to consider
21 entering, after notice and hearing and as the court determines
22 appropriate, pretrial orders from an adjudication commenced on October
23 12, 1977.

24 NEW SECTION. Sec. 13. A new section is added to chapter 90.03 RCW
25 to read as follows:

26 (1) The legislature finds that early settlement of contested claims
27 is needed for a fair and efficient adjudication of water rights.
28 Therefore, the department and other parties should identify
29 opportunities for settlement. To the extent consistent with court
30 rules, the court as it deems beneficial is encouraged to urge as many
31 parties to the adjudication as possible to reach timely agreement on
32 claimed water rights in a manner that limits costs to the public,
33 claimants, counties, courts, and the department. Further, at
34 appropriate times throughout the process the court as it deems
35 beneficial is encouraged to direct parties to utilize alternative
36 methods of dispute resolution, including informal meetings,

1 negotiation, mediation, or other methods to reach agreement on disputed
2 claims.

3 (2) Any time after the filing of all claims under RCW 90.03.140,
4 the department or another party may move the superior court to allow
5 parties to meet for settlement discussions for a set length of time,
6 either before an appointed mediator or without a mediator. For good
7 cause shown, the court may extend the length of time for settlement
8 discussions. The costs of mediation must be equitably borne by the
9 parties to the mediation. If the department and a claimant reach
10 agreement on settlement, the department shall file a motion to approve
11 the settlement pursuant to section 11(3)(a) of this act and shall
12 disclose the terms of the settlement to other parties to the
13 adjudication. The court shall conduct a hearing prior to approving a
14 settlement and any party to the adjudication may object or offer
15 modifications to the settlement.

16 **Sec. 14.** RCW 90.03.180 and 1995 c 292 s 21 are each amended to
17 read as follows:

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

22 **Sec. 15.** RCW 90.03.200 and 1988 c 202 s 91 are each amended to
23 read as follows:

24 ~~Upon the (filing of the evidence and the report of the department,~~
25 ~~any interested party may, on or before five days prior to the date of~~
26 ~~said hearing, file exceptions to such report in writing and such~~
27 ~~exception shall set forth the grounds therefor and a copy thereof shall~~
28 ~~be served personally or by registered mail upon all parties who have~~
29 ~~appeared in the proceeding. If no exceptions be filed, the court shall~~
30 ~~enter a decree determining the rights of the parties according to the~~
31 ~~evidence and the report of the department, whether such parties have~~
32 ~~appeared therein or not. If exceptions are filed the action shall~~
33 ~~proceed as in case of reference of a suit in equity and the court may~~
34 ~~in its discretion take further evidence or, if necessary, remand the~~
35 ~~case for such further evidence to be taken by the department's~~
36 ~~designee, and may require further report by him. Costs, not including~~

1 ~~taxable attorneys fees, may be allowed or not; if allowed, may be~~
2 ~~apportioned among the parties in the discretion of the court)) court's~~
3 ~~determination of all issues, the court shall issue a final decree and~~
4 ~~provide notice of the decree to all parties. The final decree must~~
5 ~~order each party whose rights have been confirmed, except the United~~
6 ~~States or an Indian tribe under 43 U.S.C. Sec. 666, to pay the~~
7 ~~department the fees required by RCW 90.03.470(10) and any other~~
8 ~~applicable fee schedule within ninety days after the department sends~~
9 ~~notice to the party under RCW 90.03.240.~~ Appellate review of the
10 decree shall be in the same manner as in other cases in equity, except
11 that review must be sought within sixty days from the entry thereof.

12 **Sec. 16.** RCW 90.03.210 and 2001 c 220 s 5 are each amended to read
13 as follows:

14 (1) During the pendency of such adjudication proceedings prior to
15 judgment or upon review by an appellate court, the stream or other
16 water involved shall be regulated or partially regulated according to
17 the schedule of rights specified in the department's report upon an
18 order of the court authorizing such regulation: PROVIDED, Any
19 interested party may file a bond and obtain an order staying the
20 regulation of said stream as to him, in which case the court shall make
21 such order regarding the regulation of the stream or other water as he
22 may deem just. The bond shall be filed within five days following the
23 service of notice of appeal in an amount to be fixed by the court and
24 with sureties satisfactory to the court, conditioned to perform the
25 judgment of the court.

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

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

35 (b) If the appeal includes a challenge to the portion of the
36 department's decision that pertains to tentative determinations of the
37 validity and extent of the water right, review of those tentative

1 determinations shall be conducted by the court consistent with the
2 provisions of RCW 34.05.510 through 34.05.598, except that the review
3 shall be de novo.

4 (c) If the appeal includes a challenge to any portion of the
5 department's decision other than the tentative determinations of the
6 validity and extent of the right, the court must certify to the
7 pollution control hearings board for review and decision those portions
8 of the department's decision. Review by the pollution control hearings
9 board shall be conducted consistent with chapter 43.21B RCW and the
10 board's implementing regulations, except that the requirements for
11 filing, service, and content of the notice of appeal shall be governed
12 by (a) of this subsection. Any party to an appeal may move the court
13 to certify portions of the appeal to the pollution control hearings
14 board, but the appellant must file a motion for certification no later
15 than ninety days after the appeal is filed under this section.

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

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

23 (3) Nothing in this section shall be construed to affect or modify
24 any treaty or other federal rights of an Indian tribe, or the rights of
25 any federal agency or other person or entity arising under federal law.
26 Nothing in this section is intended or shall be construed as affecting
27 or modifying any existing right of a federally recognized Indian tribe
28 to protect from impairment its federally reserved water rights in
29 federal court.

30 **Sec. 17.** RCW 90.03.240 and 1987 c 109 s 82 are each amended to
31 read as follows:

32 Upon the court's final determination of the rights to ~~((the~~
33 ~~diversion of))~~ water ~~((it shall be the duty of))~~, the department ~~((to))~~
34 shall issue to each person entitled to ~~((the diversion of))~~ a water
35 right by such a determination, a certificate ~~((under his official~~
36 ~~seal))~~ of adjudicated water right, setting forth the name and ~~((post~~
37 ~~office))~~ mailing address of record with the court of such person; the

1 priority and purpose of the right; the period during which said right
2 may be exercised, the point of diversion or withdrawal, and the place
3 of use; the land to which said water right is appurtenant (~~and when~~
4 ~~applicable~~); the maximum (~~quantity~~) annual and instantaneous
5 quantities of water allowed; and specific provisions or limitations or
6 both under which the water right has been confirmed.

7 The department shall provide notice to the water right holder that
8 the certificate has been prepared for issuance and that fees for the
9 issuance of the certificate are due in accordance with RCW 90.03.470
10 and any other applicable fee schedule. If the water right holder fails
11 to submit the required fees within one year from the date the notice
12 was issued by the department, the department may move the court for
13 sanctions for violation of the court's order in the final decree
14 requiring payment.

15 **Sec. 18.** RCW 90.03.243 and 1982 c 15 s 1 are each amended to read
16 as follows:

17 The state shall bear its expenses incurred by the state in a
18 proceeding to determine rights to water initiated under RCW 90.03.110
19 or 90.44.220 or upon appeal of such a determination (~~shall be borne by~~
20 ~~the state~~) and, subject to the availability of state funding provided
21 either by direct appropriation or funded by the department through the
22 administrative office of the courts for this specific purpose, shall
23 reimburse the county in which an adjudication is being held the
24 extraordinary costs imposed on the superior court of that county due to
25 the adjudication.

26 **Sec. 19.** RCW 90.44.220 and 1987 c 109 s 119 are each amended to
27 read as follows:

28 (~~In its discretion or upon the application of any party claiming~~
29 ~~right to the withdrawal and use of public groundwater, the department~~
30 ~~may file a petition~~) Upon the filing of a petition with the department
31 by a planning unit or by one or more persons claiming a right to any
32 waters within the state or when, after investigation, in the judgment
33 of the department, the public interest will be served by a
34 determination of the rights thereto, the department shall file a
35 petition to conduct a limited or general adjudication with the superior
36 court of the county for the determination of the rights of

1 appropriators of any particular groundwater body and all the provisions
2 of RCW 90.03.110 through 90.03.240 (~~as heretofore amended~~) and
3 sections 1, 4 through 6, 9 through 11, and 13 of this act, shall govern
4 and apply to the adjudication and determination of such groundwater
5 body and to the ownership thereof. Hereafter, in any proceedings for
6 the limited or general adjudication and determination of water rights--
7 either rights to the use of surface water or to the use of groundwater,
8 or both--pursuant to chapter 90.03 RCW (~~as heretofore amended~~), all
9 or part of the appropriators of groundwater or of surface water in the
10 particular basin or area may be included as parties to such
11 adjudication, as (~~pertinent~~) set forth in chapter 90.03 RCW.

12 **Sec. 20.** RCW 43.21B.110 and 2003 c 393 s 19 are each amended to
13 read as follows:

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

19 (a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431,
20 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.48.144, 90.56.310, and
21 90.56.330.

22 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
23 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,
24 90.14.130, 90.48.120, and 90.56.330.

25 (c) Except as provided in RCW 90.03.210(2), the issuance,
26 modification, or termination of any permit, certificate, or license by
27 the department or any air authority in the exercise of its
28 jurisdiction, including the issuance or termination of a waste disposal
29 permit, the denial of an application for a waste disposal permit, the
30 modification of the conditions or the terms of a waste disposal permit,
31 or a decision to approve or deny an application for a solid waste
32 permit exemption under RCW 70.95.300.

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

35 (e) Decisions of local health departments regarding the issuance
36 and enforcement of permits to use or dispose of biosolids under RCW
37 70.95J.080.

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

4 (g) Decisions of local conservation districts related to the denial
5 of approval or denial of certification of a dairy nutrient management
6 plan; conditions contained in a plan; application of any dairy nutrient
7 management practices, standards, methods, and technologies to a
8 particular dairy farm; and failure to adhere to the plan review and
9 approval timelines in RCW 90.64.026.

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

13 (2) The following hearings shall not be conducted by the hearings
14 board:

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

17 (b) Hearings conducted by the department pursuant to RCW 70.94.332,
18 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

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

22 (d) Appeals of decisions by the department to administer or enforce
23 a final adjudication decree if a superior court has retained
24 jurisdiction to administer or enforce such a decree.

25 (e) Hearings conducted by the department to adopt, modify, or
26 repeal rules.

27 ~~((e))~~ (f) Appeals of decisions by the department as provided in
28 chapter 43.21L RCW.

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

32 NEW SECTION. Sec. 21. Except as provided in RCW 43.21B.110, this
33 act applies only to adjudications initiated after the effective date of
34 this section.

35 NEW SECTION. Sec. 22. The following acts or parts of acts are
36 each repealed:

1 (1) RCW 90.03.170 (Determination of water rights--Hearing--Notice--
2 Prior rights preserved) and 1987 c 109 s 77 & 1917 c 117 s 20; and
3 (2) RCW 90.03.190 (Determination of water rights--Transcript of
4 testimony--Filing--Notice of hearing) and 1987 c 109 s 78 & 1917 c 117
5 s 22.

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