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**SUBSTITUTE SENATE BILL 5533**

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**State of Washington**

**61st Legislature**

**2009 Regular Session**

**By** Senate Environment, Water & Energy (originally sponsored by Senators Rockefeller, Honeyford, Morton, Fraser, and Shin; by request of Department of Ecology)

READ FIRST TIME 02/25/09.

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11 decree in a limited adjudication may be superseded in a subsequent  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 the department determines an adjudication is needed, the  
19 department shall prepare a statement of the facts, together with a plan  
20 or map of the locality under investigation, and file such statement and  
21 plan or map in the superior court of the county in which said water is  
22 situated, or, in case such water flows or is situated in more than one  
23 county, in the county which the department shall determine to be the  
24 most convenient to the parties interested therein. Such a statement  
25 shall ~~((contain substantially the following matter, to wit:~~

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

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

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

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

1 all known persons claiming a right to the water sought to be  
2 determined; or (iii) identify both; and

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

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

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

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

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

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

21 (2) A summons ~~issued under this section~~ shall (~~thereupon~~) be  
22 issued out of said superior court, signed and attested by the clerk  
23 thereof, in the name of the state of Washington, as plaintiff, against  
24 all known persons (~~claiming the right to divert the water involved and~~  
25 ~~also all persons unknown claiming the right to divert the water~~  
26 ~~involved, which said~~) identified by the department under RCW  
27 90.03.110. The summons shall contain a brief statement of the objects  
28 and purpose of the proceedings and shall require the defendants to  
29 appear on the return day thereof, and make and file a statement of  
30 claim to, or interest in, the water involved and a statement that  
31 unless they appear at the time and place fixed and assert such right,  
32 judgment will be entered determining their rights according to the  
33 evidence: PROVIDED, HOWEVER, That any persons claiming the right to  
34 (~~the use of~~) water by virtue of a contract with claimant to the right  
35 to divert the same, shall not be necessary 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 by the department through the administrative office of the courts for  
2 this specific adjudicative proceeding, the court is encouraged to  
3 conduct the water rights adjudication employing innovative practices  
4 and technologies appropriate to large scale and complex cases, such as:  
5 (a) Electronic filing of documents, including notice and claims; (b)  
6 appearance via teleconferencing; (c) prefiling of testimony; and (d)  
7 other practices and technologies consistent with court rules and  
8 emerging technologies.

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

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

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

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

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

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

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

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

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

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

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

17 (6) Except as stated in subsection (3)(d) of this section, RCW  
18 4.12.040 and 4.12.050, which otherwise govern the disqualification of  
19 superior court judges, do not apply to limited or general water right  
20 adjudications filed under this chapter. The standards set forth in RCW  
21 2.28.030, which govern the disqualification of judicial officers  
22 generally, may be grounds for disqualification under this section.

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

25 Upon expiration of the filing period established under RCW  
26 90.03.120(2), the department shall file a motion for default against  
27 defendants who have been served but who have failed to file an  
28 adjudication claim under RCW 90.03.140. When a party served by summons  
29 fails to file a claim, it must be presumed that the party either has no  
30 valid claim to water or waters being adjudicated or the party has since  
31 abandoned a preexisting right or claim to the water. A party in  
32 default may file a late claim under the same circumstances the party  
33 could respond or defend under court rules on default judgments.

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

36 If an adjudication claim is for a use for which a statement of

1 claim was required to be filed under chapter 90.14 RCW and no such  
2 claim was filed, the department may move that the adjudication claim be  
3 denied. The court shall grant the department's motion unless the  
4 claimant shows good cause why the motion should not be granted.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37       (e) The maximum amount of land ever under irrigation and the  
38 maximum annual and instantaneous quantities of water ever used thereon



1 prior to the date of the statement and if for power, or other purposes,  
2 the maximum annual and instantaneous quantities of water ever used  
3 prior to the date of the adjudication claim;

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

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

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

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

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

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

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

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

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

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

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

22           Within one hundred twenty days after the date set by the court for  
23 filing an adjudication claim, unless the time period is extended by the  
24 court, each claimant shall file with the court evidence to support the  
25 claimant's adjudication claims. The evidence may include, without  
26 limitation, permits or certificates of water right, statements of claim  
27 made under chapter 90.14 RCW, deeds, aerial photographs, decrees of  
28 previous water rights adjudications, crop records, records of livestock  
29 purchases and sales, records of power use, metering records,  
30 declarations containing testimonial evidence, records of diversion,  
31 withdrawal or storage and delivery by irrigation districts or ditch  
32 companies, and any other evidence to support that a water right was  
33 obtained and was not thereafter abandoned or relinquished. Thereafter,  
34 except for good cause shown, a claimant may not file additional  
35 evidence to support the claim.

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

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

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

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

12        (2)(a) The examination may include, as the department deems  
13 appropriate:

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

16            (ii) The measurement of stream flows;

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

18            (iv) An estimation of storage capacity and the amount of water  
19 stored;

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

21            (vi) The number of residences served;

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

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

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

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

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

12 (b) A motion seeking determination of contested claims before the  
13 court.

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

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

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

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

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

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

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

36 (2) Any time after the filing of all claims under RCW 90.03.140,  
37 the department or another party may move the superior court to allow

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

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

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

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

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

1 order each party whose rights have been confirmed, except the United  
2 States or an Indian tribe under 43 U.S.C. Sec. 666, to pay the  
3 department the fees required by RCW 90.03.470(10) and any other  
4 applicable fee schedule within ninety days after the department sends  
5 notice to the party under RCW 90.03.240. Appellate review of the  
6 decree shall be in the same manner as in other cases in equity, except  
7 that review must be sought within sixty days from the entry thereof.

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

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

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

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

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

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

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

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

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

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

29 Upon the court's final determination of the rights to ~~((the~~  
30 ~~diversion of))~~ water ~~((it shall be the duty of))~~, the department ~~((to))~~  
31 shall issue to each person entitled to ~~((the diversion of))~~ a water  
32 right by such a determination, a certificate ~~((under his official~~  
33 ~~seal))~~ of adjudicated water right, setting forth the name and ~~((post~~  
34 ~~office))~~ mailing address of record with the court of such person; the  
35 priority and purpose of the right; the period during which said right  
36 may be exercised, the point of diversion or withdrawal, and the place  
37 of use; the land to which said water right is appurtenant ~~((and when~~



1 applicable)); the maximum ((quantity)) annual and instantaneous  
2 quantities of water allowed; and specific provisions or limitations or  
3 both under which the water right has been confirmed.

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

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

14 The expenses incurred by the state in a proceeding to determine  
15 rights to water initiated under RCW 90.03.110 or 90.44.220 or upon  
16 appeal of such a determination shall be borne by the state. Subject to  
17 the availability of state funding provided either by direct  
18 appropriation or funded by the department through the administrative  
19 office of the courts for this specific purpose, the county in which an  
20 adjudication is being held must be provided the extraordinary costs  
21 imposed on the superior court of that county due to the adjudication.

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

24 ~~((In its discretion or upon the application of any party claiming~~  
25 ~~right to the withdrawal and use of public groundwater, the department~~  
26 ~~may file a petition)) Upon the filing of a petition with the department  
27 by a planning unit or by one or more persons claiming a right to any  
28 waters within the state or when, after investigation, in the judgment  
29 of the department, the public interest will be served by a  
30 determination of the rights thereto, the department shall file a  
31 petition to conduct a limited or general adjudication with the superior  
32 court of the county for the determination of the rights of  
33 appropriators of any particular groundwater body and all the provisions  
34 of RCW 90.03.110 through 90.03.240 ((as heretofore amended)) and  
35 sections 1, 4 through 6, 9 through 11, and 13 of this act, shall govern  
36 and apply to the adjudication and determination of such groundwater~~

1 body and to the ownership thereof. Hereafter, in any proceedings for  
2 the limited or general adjudication and determination of water rights--  
3 either rights to the use of surface water or to the use of groundwater,  
4 or both--pursuant to chapter 90.03 RCW (~~as heretofore amended~~), all  
5 or part of the appropriators of groundwater or of surface water in the  
6 particular basin or area may be included as parties to such  
7 adjudication, as (~~pertinent~~) set forth in chapter 90.03 RCW.

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

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

15 (a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431,  
16 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.48.144, 90.56.310, and  
17 90.56.330.

18 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,  
19 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,  
20 90.14.130, 90.48.120, and 90.56.330.

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

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

31 (e) Decisions of local health departments regarding the issuance  
32 and enforcement of permits to use or dispose of biosolids under RCW  
33 70.95J.080.

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

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

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

10 (2) The following hearings shall not be conducted by the hearings  
11 board:

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

14 (b) Hearings conducted by the department pursuant to RCW 70.94.332,  
15 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

16 (c) ~~((Proceedings conducted by the department, or the department's  
17 designee, under RCW 90.03.160 through 90.03.210 or 90.44.220.))~~ Appeals  
18 of decisions by the department under RCW 90.03.110 and 90.44.220.

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

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

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

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

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

32 NEW SECTION. Sec. 22. The following acts or parts of acts are  
33 each repealed:

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

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

--- END ---