
SENATE BILL 6603

State of Washington

53rd Legislature

1994 Regular Session

By Senator Talmadge

Read first time 02/10/94. Referred to Committee on Energy & Utilities.

1 AN ACT Relating to adjudication of water rights; amending RCW
2 90.03.110, 90.03.120, 90.03.130, 90.03.140, 90.03.200, 43.27A.190,
3 43.21A.064, and 90.14.140; adding new sections to chapter 90.03 RCW;
4 adding a new chapter to Title 2 RCW; creating new sections; and
5 repealing RCW 90.03.160, 90.03.170, 90.03.180, 90.03.190, and
6 90.03.243.

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

8 NEW SECTION. **Sec. 1.** LEGISLATIVE INTENT. The legislature finds
9 that lack of certainty in water rights within the water resource basins
10 of Washington impedes the management and planning for the use of the
11 state's water in the interests of all of the citizens of the state.
12 Therefore, it is the intent of this act to establish a comprehensive
13 program for the adjudication of water rights in all basins of the state
14 over the next twenty years, and that this program will be consistent
15 with and further the cooperative planning processes that may be
16 undertaken in these basins.

17 NEW SECTION. **Sec. 2.** DEFINITIONS. Unless the context clearly
18 requires otherwise, the definitions in this section apply throughout

1 this chapter and sections 5, 6, 11, 12, 13, 14, 16, 17, 18, and RCW
2 90.03.110, 90.03.120, 90.03.130, 90.03.140 and 90.03.200:

3 "Adjudication" or "water rights adjudication" means a proceeding
4 for the determination of all claims to the use of water within a water
5 resource basin, initiated pursuant to RCW 90.03.110.

6 "Person" means an individual, partnership, association, public or
7 private corporation, city or other municipality, tribal government, and
8 the United States.

9 NEW SECTION. **Sec. 3.** (1) There is created the water adjudication
10 department within the superior court. The department shall be divided
11 into two divisions as follows:

12 (a) Division one shall be located in Seattle, King county, and
13 shall include the counties of Clallam, Jefferson, Island, Kitsap, San
14 Juan, Skagit, Whatcom, King, Pierce, Snohomish, Clark, Cowlitz, Grays
15 Harbor, Lewis, Mason, Pacific, Skamania, Thurston, and Wahkiakum; and

16 (b) Division two shall be located in the city of Spokane, Spokane
17 county, and shall include the counties of Adams, Chelan, Douglas,
18 Ferry, Grant, Lincoln, Okanogan, Pend Oreille, Spokane, Stevens,
19 Whitman, Asotin, Benton, Columbia, Franklin, Garfield, Kittitas,
20 Klickitat, Walla Walla, and Yakima.

21 (2) There shall be one judge in division one of the water
22 adjudication department and one judge in division two of the water
23 adjudication department. With due regard to the qualification
24 considerations specified in subsection (4) of this section, the
25 governor shall appoint the judges by July 1, 1994. The judges shall be
26 elected at the general election in November 1994, and shall thereafter
27 be subject to election as for all superior court judges under this
28 title.

29 (3) The terms of office, salary, and filling of vacancies in office
30 of judges within the department shall be as provided for all superior
31 court judges under this title.

32 (4) The judges appointed by the governor shall be qualified by
33 experience or training in pertinent matters relating to water resources
34 laws and administration, including the adjudication of water rights.
35 The appointments shall meet all other qualifications required for
36 superior court judges by the Washington state Constitution and this
37 title.

1 NEW SECTION. **Sec. 4.** (1) The water adjudication department shall
2 have jurisdiction over all proceedings for the determination of water
3 rights filed under RCW 90.03.110. Any proceeding pending as of the
4 effective date of this act shall be administered within the water
5 adjudication department, but nothing in chapter . . . , Laws of 1994
6 (this act) shall affect the assignment of the judge to the proceeding.

7 (2) The judges of the superior courts comprising the counties
8 within each division of the water adjudication department may appoint
9 one or more court commissioners having the powers granted by chapter
10 2.24 RCW. Such commissioners shall perform such duties as are assigned
11 by the judge of the water adjudication division.

12 (3) Except as provided in this section, nothing in chapter . . . ,
13 Laws of 1994 (this act) shall affect a proceeding for the determination
14 of water rights pending on the effective date of this act, or to affect
15 the rights or obligations of any person under any water rights
16 determination decree previously entered.

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

19 (1) The department shall prepare a plan for initiating and
20 completing the adjudication of all water rights claims in the state by
21 July 1, 2014. The plan shall include a division of the state into
22 distinct hydrologic units to be called water resource basins, which
23 shall define the areas to be the subject of proceedings for the
24 adjudication of water rights under RCW 90.03.110. In defining the
25 units the department shall consider surface and ground water hydrology
26 and the physical characteristics of the area. Where possible the water
27 resource basins shall be consistent with areas developed for planning
28 and management purposes under RCW 90.54.040.

29 (2) The plan shall set forth a timeline for the filing and conduct
30 of petitions for adjudication proceedings under RCW 90.03.110. The
31 timeline shall be designed to meet the goal of the entry of final
32 adjudication decrees for all basins in the state by July 1, 2014. The
33 plan shall identify basins for early proceedings that exhibit the
34 greatest potential for existing conflicts among water claimants and the
35 greatest degree of potential overwithdrawal within the basin. In
36 prioritizing basins the department shall also place higher priority
37 upon basins with completed water resource plans or in which a plan is
38 nearing completion.

1 (3) The plan shall include a proposed timeline and budget for
2 adjudication proceedings in each basin, including a projection of the
3 costs on an annual basis for the department's participation in the
4 basin adjudication, and the costs to the superior court. These
5 projected costs shall be stated in the department's petition initiating
6 the adjudication proceeding, and shall be considered by the superior
7 court in determining the fees to be paid by claimants in the
8 proceedings under section 16 of this act.

9 (4) In preparing the plan the department shall provide an
10 opportunity to the public to comment upon a draft plan and to submit
11 suggestions for basins upon which to provide a priority in the
12 initiation of water adjudication proceedings.

13 (5) The plan shall be completed on or before December 1, 1994, and
14 submitted to the governor and the appropriate fiscal and standing
15 committees of the legislature. The plan shall be revised no less than
16 biennially and submitted to the governor and such committees of the
17 legislature by December 1 of each even-numbered year. Plan revisions
18 shall describe the progress in completing pending adjudications and any
19 changes in circumstances since the previous revision that may bear upon
20 the conduct and priority order of adjudication proceedings and the
21 costs of such proceedings. The plan shall also recommend
22 appropriations to fund water rights negotiations or comprehensive basin
23 program development that may be conducted concurrently with or
24 subsequent to a water adjudication within the basin.

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

27 (1) Except as provided in subsection (2) of this section, the
28 proceedings for water rights adjudications initiated under RCW
29 90.03.110 shall include all claimants of rights to the beneficial use
30 of waters within the basin, including surface and ground waters, and
31 without regard to the legal source upon which the claim is grounded.

32 (2) A person with a claim to the beneficial use of waters with a
33 claimed priority date on or before June 30, 1974, and who has
34 relinquished such right, title or interest in a water right for failure
35 to file a statement of claim pursuant to RCW 90.14.041 or 90.14.043,
36 may not assert a claim for any portion of the relinquished right.

1 **Sec. 7.** RCW 90.03.110 and 1987 c 109 s 72 are each amended to read
2 as follows:

3 (~~Upon the filing of a petition with the department by one or more~~
4 ~~persons claiming the right to divert any waters within the state or~~
5 ~~when, after investigation, in the judgment of the department, the~~
6 ~~interest of the public will be subserved by a determination of the~~
7 ~~rights thereto, it shall be~~) The department shall prepare and file
8 with the appropriate superior court water adjudication division
9 petitions for the adjudication of claims within water resource basins,
10 in accordance with the plan for adjudication proceedings developed
11 under section 5 of this act. In so doing it shall be the duty of the
12 department to prepare a statement of the facts, together with a plan or
13 map of the ((locality)) basin under investigation, and file such
14 statement and plan or map in the ((superior court of the county in
15 which said water is situated, or, in case such water flows or is
16 situated in more than one county, in the county which the department
17 shall determine to be the most convenient to the parties interested
18 therein)) superior court water adjudication division in which a
19 majority of the geographic area of the basin lies. Such statement
20 shall contain substantially the following ((matter, to wit)):

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

24 (2) Claims or other sources of authority for the right to maintain
25 instream flows;

26 (3) Claims based upon federal or tribal reserved water rights;

27 (4) A description of any agreements relating to water rights or
28 water resources management within the basin entered among the state,
29 federal government, tribal governments, or water users within the
30 basin; and

31 (5) A brief statement of the facts in relation to such water(~~(, and~~
32 ~~the necessity for a determination of the rights thereto)~~).

33 **Sec. 8.** RCW 90.03.120 and 1987 c 109 s 73 are each amended to read
34 as follows:

35 Upon the filing of the statement and map as provided in RCW
36 90.03.110 the judge of such superior court shall make an order
37 directing summons to be issued, and fixing the return day thereof,
38 which shall be not less than sixty nor more than ninety days, after the

1 making of such order: PROVIDED, That for good cause, the court(~~(, at~~
2 ~~the request of the department,~~) may modify said time period. A
3 summons shall thereupon be issued out of said superior court, signed
4 and attested by the clerk thereof, in the name of the state of
5 Washington, as plaintiff, against all known persons claiming the right
6 to divert the water involved and also all persons unknown claiming the
7 right to divert the water involved, which said summons shall contain a
8 brief statement of the objects and purpose of the proceedings and shall
9 require the defendants to appear on the return day thereof, and make
10 and file a statement of claim to, or interest in, the water involved
11 and a statement that unless they appear at the time and place fixed and
12 assert such right, judgment will be entered determining their rights
13 according to the evidence: PROVIDED, HOWEVER, That any persons
14 claiming the right to the use of water by virtue of a contract with
15 claimant to the right to divert the same, shall not be necessary
16 parties to the proceeding.

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

19 Service of said summons shall be made in the same manner and with
20 the same force and effect as service of summons in civil actions
21 commenced in the superior courts of the state: PROVIDED, That for good
22 cause, the court(~~(, at the request of the department,~~) as an
23 alternative to personal service, may authorize service of summons to be
24 made by certified mail, with return receipt signed by defendant, a
25 spouse of a defendant, or another person authorized to accept service.
26 If the defendants, or either of them, cannot be found within the state
27 of Washington, (~~(of which the return of the sheriff of the county in~~
28 ~~which the proceeding is pending shall be prima facie evidence,~~) upon
29 the filing of an affidavit by the department, or its attorney, in
30 conformity with the statute relative to the service of summons by
31 publication in civil actions, such service may be made by publication
32 in a newspaper of general circulation in the county in which (~~(such~~
33 ~~proceeding is pending, and also publication of said summons in a~~
34 ~~newspaper of general circulation in each county in which any portion of~~
35 ~~the water is situated,~~) the defendant's last known residence address
36 is situated once a week for (~~(six))~~ two consecutive weeks (~~((six))~~ two
37 publications). In cases where personal service can be had, such
38 summons shall be served at least twenty days before the return day

1 thereof. The summons by publication shall state that statements of
2 claim must be filed within twenty days after the last publication or
3 before the return date, whichever is later.

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

6 **Sec. 10.** RCW 90.03.140 and 1987 c 109 s 75 are each amended to
7 read as follows:

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

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

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

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

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

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

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

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

27 (a) The person's name and mailing address.

28 (b) The name of the water source from which the right to divert or
29 make use of water is claimed.

30 (c) The quantity of water used based on an instantaneous rate of
31 withdrawal in cubic feet per second or gallons per minute and on a
32 yearly quantity in acre feet per year for each year since 1967. All
33 documentation available to the person that supports the quantity of use
34 shall be provided, including but not limited to flow meter records and
35 electrical records.

36 (d) The legal description of the area where the water has been
37 beneficially used for each of the last ten years from 1994. The area
38 of use shall be described with specificity by metes and bounds,

1 sections or a portion thereof, or by parcel numbers within a platted
2 area, and represented on a map drawn to scale.

3 (e) The legal description of the point or points of diversion, or
4 withdrawal, the method of diversion or withdrawal, the method of
5 conveying the water to the place of use, including the dimension and
6 capacity of all ditches, pipelines, and other diversion works, existing
7 at the time of making the statement.

8 (f) The purposes of the water use for each of the last ten years
9 from 1994, and specifying the number of residences, if any, served by
10 the water.

11 (g) The legal basis of the water right claimed, whether by permit,
12 certificate, or regulation issued by the state, a statement of claim
13 filed pursuant to chapter 90.14 RCW, the right to use ground water by
14 exemption under RCW 90.44.050, reserved rights under federal law, or
15 other legal basis.

16 (h) The date of initiation of such right and commencement of such
17 use.

18 (i) The date of beginning and completion of construction.

19 (j) The amount of land under irrigation and the maximum quantity of
20 water used therein for the previous ten years from 1994 and, if for
21 power or other purposes, maximum quantity of water used on an annual
22 basis for the previous ten years from 1994.

23 (2) Such statement shall be verified on oath by the defendant, and
24 in the discretion of the court may be amended.

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

27 (1) Upon the filing of the statement and map by the department
28 under RCW 90.03.110, the court shall by order direct the department to
29 commence an investigation of all uses of and demands for water in the
30 basin. The court upon motion by the department may stay the order
31 pending the resolution of any ongoing negotiations relating to water
32 rights in the basin whose resolution may expedite the resolution of the
33 adjudication proceeding.

34 (2) In conducting the investigation the department shall notify all
35 persons having filed an appearance in the proceeding, advising them of
36 the manner in which information relevant to the investigation may be
37 submitted to the department.

1 (3) The department shall have all powers necessary to fully
2 investigate the claims made in the proceeding, including the conduct of
3 field investigations by the entry onto real property following
4 landowner permission, and the power to subpoena and inspect all books,
5 papers, or other records pertaining to the claims.

6 (4) In making its investigation, the department shall develop
7 findings regarding:

8 (a) The quantity of water available under reasonable predictions of
9 annual yield or flow, for use in the basin, including the safe
10 sustaining yield of all ground water sources;

11 (b) The necessary base flows in all rivers and streams in the basin
12 and the water level of other water bodies in the basin based on and in
13 recognition of the public's interest in the protection of wildlife,
14 fish, scenic, aesthetic, and other environmental values, and
15 navigational values; and

16 (c) The uses of water stated in the statements of water use filed
17 pursuant to RCW 90.03.140, and provide a preliminary determination as
18 to the existence, priority, quantity, places of use, and points of
19 diversion for each water use.

20 (5) In conducting the investigation the department shall hold at
21 least one public hearing within the basin, in which all interested
22 parties may comment upon the issues and claims identified by the
23 department as within the scope of the investigation. The department
24 shall also afford any interested party an opportunity to submit
25 comments in writing for consideration by the department in developing
26 its preliminary report.

27 NEW SECTION. **Sec. 12.** A new section is added to chapter 90.03 RCW
28 to read as follows:

29 (1) The attorney general shall represent the interests of the state
30 of Washington in each adjudication proceeding regarding:

31 (a) The public's interest in maintaining the base flows necessary
32 to provide for the preservation and enhancement of wildlife, fish,
33 scenic, aesthetic, and other environmental values, and navigational
34 values.

35 (b) The furtherance of the fundamental water resources policies as
36 expressed in chapter 90.54 RCW, including maximizing the beneficial
37 uses of the state's waters and encouraging water use efficiency and
38 water reuse.

1 (2) In performing its responsibilities under this section the
2 attorney general shall solicit the views and information of other
3 agencies of state government having expertise or jurisdiction regarding
4 water uses and water resources management.

5 (3) This section shall not affect the court's authority to permit
6 other persons or organizations to participate in adjudication
7 proceedings based upon established judicial principles of standing.

8 NEW SECTION. **Sec. 13.** A new section is added to chapter 90.03 RCW
9 to read as follows:

10 (1) Within twenty-four months of initiating the investigation, the
11 department shall prepare and file a preliminary report containing the
12 determinations relating to water use and water rights claims within the
13 basin.

14 (2) Upon filing of the preliminary report and the conclusion of any
15 negotiations initiated under section 14 of this act, the court shall
16 set a time for hearing of the report. The court shall cause to be
17 served upon all persons having appeared in the proceeding, their
18 agents, or attorneys, a copy of a notice of the date and location of
19 the hearing, together with a copy of the report.

20 NEW SECTION. **Sec. 14.** A new section is added to chapter 90.03 RCW
21 to read as follows:

22 (1) Upon the filing of a petition for an adjudication proceeding
23 under RCW 90.03.110, the department shall advise the governor as to
24 whether initiating negotiations for the development of a comprehensive
25 water resources program within the basin may materially assist in
26 resolving issues presented in the water rights adjudication. The
27 department shall consult with all interested parties in developing its
28 recommendations to the governor, including water users and water rights
29 claimants in the basin, appropriate state and federal agencies, Indian
30 tribes, and local governments.

31 (2) Following receipt of the department's recommendations, the
32 governor may direct the department to initiate negotiations for the
33 development of a comprehensive water resources program pursuant to RCW
34 90.54.040. Where an adjudication proceeding is pending in the basin,
35 the department shall by motion, with notice to all parties, request the
36 court to stay the proceeding for a reasonable time not to exceed
37 twenty-four months, in order to complete the negotiations and to seek

1 agreements among the parties regarding water use and allocation that
2 may facilitate resolution of outstanding issues in the adjudication
3 proceeding.

4 (3) The department shall include the results of the negotiations
5 and program development in its preliminary report filed with the court
6 in the adjudication proceeding. The court shall accord substantial
7 deference to the findings and agreements contained in the report that
8 bear upon the issues presented in the adjudication proceeding.

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

11 (1) Upon the filing of the ((evidence and the)) preliminary report
12 ((of the department)), any interested party may, on or before five days
13 prior to the date of said hearing, file exceptions to such report in
14 writing and such exception shall set forth the grounds therefor and a
15 copy thereof shall be served personally or by registered mail upon all
16 parties who have appeared in the proceeding. If no exceptions be
17 filed, the court shall enter a decree determining the rights of the
18 parties according to the ((evidence and the)) preliminary report ((of
19 the department, whether such parties have appeared therein or not)),
20 and such report shall be made final. If exceptions are filed the
21 action shall proceed as in case of reference of a suit in equity and
22 the court may in its discretion take further evidence ~~((or, if~~
23 ~~necessary, remand the case for such further evidence to be taken by the~~
24 ~~department's designee, and may require further report by him. Costs,~~
25 ~~not including taxable attorneys fees, may be allowed or not; if~~
26 ~~allowed, may be apportioned among the parties in the discretion of the~~
27 ~~court)).~~ Appellate review of the decree shall be in the same manner as
28 in other cases in equity, except that review must be sought within
29 sixty days from the entry thereof.

30 (2) Upon entry of the decree, the court shall by order establish a
31 schedule by which the department shall periodically file with the court
32 a summary of all subsequent actions in the basin relating to water
33 rights, including the issuance of new permits, transfers, and
34 relinquishments. The court's order shall inform all parties to the
35 proceeding of the manner in which to obtain such information, but
36 notice thereafter of each filing by the department is not necessary.

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

3 (1) All persons making a claim in a water adjudication proceeding
4 shall be responsible for assisting in the funding of the proceedings.
5 The court shall periodically assess a fee upon all claimants in the
6 proceedings, which amount shall be determined based upon the proportion
7 that the volume of the water claimed in the response to the summons in
8 the proceeding bears to the total volume of water in all claims
9 submitted in the proceeding.

10 (2) The court shall establish a system to account for the total
11 costs of the proceedings on a periodic basis no less frequently than
12 quarterly. The department shall likewise establish a system to account
13 for its costs of conducting investigations and other participation in
14 the proceedings, and shall forward this cost accounting information to
15 the court no less frequently than quarterly. The department shall also
16 separately account for the costs of conducting proceedings for the
17 development of comprehensive water resources programs under RCW
18 90.54.040 and section 5 of this act, but no portion of such costs shall
19 be included in the fees assessed to the parties to the water
20 adjudication proceedings pursuant to this section.

21 (3) For the initial four-year period following the filing of an
22 adjudication proceeding under RCW 90.03.110, the court shall not assess
23 a fee to the claimants. During this period the administrator for the
24 courts shall advise the governor of such costs, who shall include them
25 in his or her budget recommendations to the legislature. However,
26 these costs shall be reimbursed to the state by the claimants in the
27 proceeding in the manner described in this subsection. Beginning with
28 the fifth year of the proceeding, the court shall assess a fee based
29 upon the formula described in subsection (1) of this section to each
30 claimant in the proceeding, including one-quarter of the claimant's
31 proportionate share of the costs of the initial four-year period of the
32 proceeding. Thereafter, the court shall assess fees among all
33 claimants annually to fund the court's and the department's costs of
34 the proceedings, including one-quarter of the costs of the initial
35 four-year period of the proceeding. In the event that a final decree
36 is proposed for entry prior to the completion of the eighth year of the
37 proceeding, the final fee assessed to the claimants shall include the
38 proportionate share of the unreimbursed costs of the initial four-year
39 period of the proceeding.

1 NEW SECTION. **Sec. 17.** (1) The water adjudication account is
2 hereby created in the state treasury. The fees assessed to parties to
3 adjudication proceedings shall be deposited into the water adjudication
4 account, together with such appropriations to the account as the
5 legislature shall make. Moneys in the account may be expended without
6 appropriation for the purpose of reimbursing the court's costs of water
7 adjudication proceedings. Moneys in the account are also available for
8 the costs of the department's participation in such proceedings, but
9 shall be expended by the department only upon appropriation by the
10 legislature.

11 (2) The treasurer shall maintain a separate subaccount within the
12 water adjudication account for each adjudication proceeding. The
13 superior court deposits into the account of fees assessed to parties to
14 the proceeding shall identify the proceeding for purposes of depositing
15 the fees into the correct subaccount. The treasurer shall reimburse
16 the court periodically for its costs of each proceeding, by
17 disbursement from the subaccount for such proceeding.

18 NEW SECTION. **Sec. 18.** A new section is added to chapter 90.03 RCW
19 to read as follows:

20 (1) The decree entered in an adjudication proceeding shall be
21 conclusive as to all rights to the use of water in the watershed in any
22 proceeding in which such rights are at issue.

23 (2) The department shall establish a registry containing
24 information relating to the water rights confirmed in the decree, and
25 which contains all subsequent actions in each basin affecting water
26 rights, including transfers, relinquishments, and issuance of new
27 permits. The registry shall be accessible by the public and
28 information in the registry shall be made available to each county for
29 consolidation with its real property records.

30 **Sec. 19.** RCW 43.27A.190 and 1987 c 109 s 11 are each amended to
31 read as follows:

32 (1) Except as provided in (2) of this subsection, notwithstanding
33 and in addition to any other powers granted to the department of
34 ecology, whenever it appears to the department that a person is
35 violating or is about to violate any of the provisions of the
36 following:

37 (~~(1)~~) (a) Chapter 90.03 RCW; or

1 ~~((2))~~ (b) Chapter 90.44 RCW; or
2 ~~((3))~~ (c) Chapter 86.16 RCW; or
3 ~~((4))~~ (d) Chapter 43.37 RCW; or
4 ~~((5))~~ (e) Chapter 43.27A RCW; or
5 ~~((6))~~ (f) Any other law relating to water resources administered
6 by the department; or

7 ~~((7))~~ (g) A rule or regulation adopted, or a directive or order
8 issued by the department relating to (a) through (f) of this
9 subsection(~~(s (1) through (6) of this section)~~); the department may
10 cause a written regulatory order to be served upon said person either
11 personally, or by registered or certified mail delivered to addressee
12 only with return receipt requested and acknowledged by him. The order
13 shall specify the provision of the statute, rule, regulation, directive
14 or order alleged to be or about to be violated, and the facts upon
15 which the conclusion of violating or potential violation is based, and
16 shall order the act constituting the violation or the potential
17 violation to cease and desist or, in appropriate cases, shall order
18 necessary corrective action to be taken with regard to such acts within
19 a specific and reasonable time. The regulation of a headgate or
20 controlling works as provided in RCW 90.03.070, by a watermaster,
21 stream patrolman, or other person so authorized by the department shall
22 constitute a regulatory order within the meaning of this section. A
23 regulatory order issued hereunder shall become effective immediately
24 upon receipt by the person to whom the order is directed, except for
25 regulations under RCW 90.03.070 which shall become effective when a
26 written notice is attached as provided therein.

27 (2) If it appears that a person is violating a provision of chapter
28 90.03 RCW in the use of water that is adversely affecting rights senior
29 to that person, in a water source for which a general stream
30 adjudication decree has not been entered, the department may issue a
31 regulatory order only after compliance with this subsection. Prior to
32 issuing a regulatory order the department shall notify the person
33 alleged to be in violation, which notice shall specify the provision of
34 the law alleged to be or about to be violated, and the facts upon which
35 the conclusion of a violation or potential violation is based. The
36 notice shall also state any necessary corrective action to be taken to
37 avoid the entry of a regulatory order. The notice shall state that the
38 order shall be issued no sooner than five days after receipt, unless
39 the recipient notifies the department that it intends to contest the

1 order and requests a hearing before the department prior to its
2 issuance. The order shall be effective immediately upon issuance,
3 unless otherwise stated in the order. The department's determination
4 of the validity of a water right shall not be binding in any subsequent
5 general adjudication, but is admissible as prima facie evidence of the
6 existence and conditions of the right.

7 (3) Any person aggrieved by such order may appeal the order
8 pursuant to RCW 43.21B.310.

9 **Sec. 20.** RCW 43.21A.064 and 1977 c 75 s 46 are each amended to
10 read as follows:

11 The director of the department of ecology shall have the following
12 powers and duties:

13 (1) The supervision of public waters within the state and their
14 appropriation, diversion, and use, and of the various officers
15 connected therewith;

16 (2) Insofar as may be necessary to assure safety to life or
17 property, he or she shall inspect the construction of all dams, canals,
18 ditches, irrigation systems, hydraulic power plants, and all other
19 works, systems, and plants pertaining to the use of water, and he or
20 she may require such necessary changes in the construction or
21 maintenance of said works, to be made from time to time, as will
22 reasonably secure safety to life and property;

23 (3) He or she shall regulate and control the diversion of water in
24 accordance with the rights thereto, as determined by adjudication
25 decrees entered for each basin in the state. In the absence of an
26 adjudication decree, the director's regulation under this subsection
27 may be exercised following notice and an opportunity to be heard by the
28 affected parties, under the procedures required by RCW 43.27A.190;

29 (4) He or she shall determine the discharge of streams and springs
30 and other sources of water supply, and the capacities of lakes and of
31 reservoirs whose waters are being or may be utilized for beneficial
32 purposes;

33 (5) He or she shall keep such records as may be necessary for the
34 recording of the financial transactions and statistical data thereof,
35 and shall procure all necessary documents, forms, and blanks. He or
36 she shall keep a seal of the office, and all certificates by him or her
37 covering any of his or her acts or the acts of his or her office, or

1 the records and files of his or her office, under such seal, shall be
2 taken as evidence thereof in all courts;

3 (6) He or she shall render when required by the governor, a full
4 written report of the work of his or her office with such
5 recommendations for legislation as he or she may deem advisable for the
6 better control and development of the water resources of the state;

7 (7) The director and duly authorized deputies may administer oaths;

8 (8) He or she shall establish and promulgate rules governing the
9 administration of chapter 90.03 RCW;

10 (9) He or she shall perform such other duties as may be prescribed
11 by law.

12 **Sec. 21.** RCW 90.14.140 and 1987 c 125 s 1 are each amended to read
13 as follows:

14 (1) For the purposes of RCW 90.14.130 through 90.14.180,
15 "sufficient cause" shall be defined as the nonuse of all or a portion
16 of the water by the owner of a water right for a period of five or more
17 consecutive years where such nonuse occurs as a result of:

18 (a) Drought, or other unavailability of water;

19 (b) Active service in the armed forces of the United States during
20 military crisis;

21 (c) Nonvoluntary service in the armed forces of the United States;

22 (d) The operation of legal proceedings other than an adjudication
23 proceeding initiated under RCW 90.03.110;

24 (e) Federal laws imposing land or water use restrictions either
25 directly or through the voluntary enrollment of a landowner in a
26 federal program implementing those laws, or acreage limitations, or
27 production quotas.

28 (2) Notwithstanding any other provisions of RCW 90.14.130 through
29 90.14.180, there shall be no relinquishment of any water right:

30 (a) If such right is claimed for power development purposes under
31 chapter 90.16 RCW and annual license fees are paid in accordance with
32 chapter 90.16 RCW, or

33 (b) If such right is used for a standby or reserve water supply to
34 be used in time of drought or other low flow period so long as
35 withdrawal or diversion facilities are maintained in good operating
36 condition for the use of such reserve or standby water supply, or

1 (c) If such right is claimed for a determined future development to
2 take place either within fifteen years of July 1, 1967, or the most
3 recent beneficial use of the water right, whichever date is later, or

4 (d) If such right is claimed for municipal water supply purposes
5 under chapter 90.03 RCW, or

6 (e) If such waters are not subject to appropriation under the
7 applicable provisions of RCW 90.40.030 as now or hereafter amended.

8 NEW SECTION. **Sec. 22.** REPEALERS. The following acts or parts of
9 acts are each repealed:

10 (1) RCW 90.03.160 and 1989 c 80 s 1, 1987 c 109 s 76, & 1917 c 117
11 s 19;

12 (2) RCW 90.03.170 and 1987 c 109 s 77 & 1917 c 117 s 20;

13 (3) RCW 90.03.180 and 1982 c 15 s 2, 1979 ex.s. c 216 s 3, 1929 c
14 122 s 3, 1919 c 71 s 2, & 1917 c 117 s 21;

15 (4) RCW 90.03.190 and 1987 c 109 s 78 & 1917 c 117 s 22; and

16 (5) RCW 90.03.243 and 1982 c 15 s 1.

17 NEW SECTION. **Sec. 23.** CAPTIONS. Captions as used in this act do
18 not constitute any part of the law.

19 NEW SECTION. **Sec. 24.** Sections 2, 3, and 4 of this act shall
20 constitute a new chapter in Title 2 RCW.

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