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**SENATE BILL 5027**

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**State of Washington**

**55th Legislature**

**1997 Regular Session**

**By** Senators Swecker, Winsley and Anderson

Read first time 01/13/97. Referred to Committee on Agriculture & Environment.

1 AN ACT Relating to the water-related actions of the department of  
2 ecology; amending RCW 43.21B.110, 43.21B.130, 43.21B.240, 43.21B.310,  
3 43.27A.190, 90.03.383, 90.14.130, 90.14.190, 90.14.200, and 90.66.080;  
4 reenacting and amending RCW 34.05.514; adding new sections to chapter  
5 43.21B RCW; and creating a new section.

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

7 NEW SECTION. **Sec. 1.** The legislature recognizes that judicial  
8 review of certain water quantity-related appeals can be expedited to  
9 benefit the people of the state. Allowing direct appeals to superior  
10 court can reduce backlogs, conserve resources, and provide quicker  
11 guidance to individuals and communities concerning important matters  
12 impacting their area. The legislature therefore finds that it is in  
13 the public interest to reduce delays in obtaining a final resolution  
14 over certain water quantity matters by streamlining the judicial  
15 appeals process.

16 **Sec. 2.** RCW 34.05.514 and 1995 c 347 s 113 and 1995 c 292 s 9 are  
17 each reenacted and amended to read as follows:

1 (1) Except as provided in subsections (2) and (3) of this section,  
2 proceedings for review under this chapter shall be instituted by paying  
3 the fee required under RCW 36.18.020 and filing a petition in the  
4 superior court, at the petitioner's option, for (a) Thurston county,  
5 (b) the county of the petitioner's residence or principal place of  
6 business, or (c) in any county where the property owned by the  
7 petitioner and affected by the contested decision is located.

8 (2) For proceedings involving institutions of higher education, the  
9 petition shall be filed either in the county in which the principal  
10 office of the institution involved is located or in the county of a  
11 branch campus if the action involves such branch.

12 (3) For proceedings involving water quantity decisions made by the  
13 department of ecology, as defined in section 13 of this act, the  
14 petition shall be filed in the superior court specified in section 13  
15 of this act. For proceedings involving the relinquishment of a water  
16 right, the petition shall be filed in the superior court where the land  
17 is located upon which the water was used.

18 **Sec. 3.** RCW 43.21B.110 and 1993 c 387 s 22 are each amended to  
19 read as follows:

20 (1) The pollution control hearings board shall only have  
21 jurisdiction to hear and decide appeals from the following decisions of  
22 the department, the director, the administrator of the office of marine  
23 safety, and the air pollution control boards or authorities as  
24 established pursuant to chapter 70.94 RCW, or local health departments:

25 (a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431,  
26 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.48.144, 90.56.310, and  
27 90.56.330.

28 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,  
29 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,  
30 (~~90.14.130~~) and 90.48.120.

31 (c) The issuance, modification, or termination of any permit,  
32 certificate, or license by the department or any air authority in the  
33 exercise of its jurisdiction, including the issuance or termination of  
34 a waste disposal permit, the denial of an application for a waste  
35 disposal permit, or the modification of the conditions or the terms of  
36 a waste disposal permit.

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

1 (e) Decisions of local health departments regarding the issuance  
2 and enforcement of permits to use or dispose of biosolids under RCW  
3 70.95J.080.

4 (f) Any other decision by the department, the administrator of the  
5 office of marine safety, or an air authority which pursuant to law must  
6 be decided as an adjudicative proceeding under chapter 34.05 RCW.

7 (2) The jurisdiction of the pollution control hearings board is  
8 further limited as follows:

9 (a) The hearings board shall have no jurisdiction whatsoever to  
10 review water quantity decisions of the department of ecology as defined  
11 in section 13 of this act, that are appealed directly to a superior  
12 court, to review orders pertaining to the relinquishment of a water  
13 right under RCW 90.14.130, or to review proceedings regarding general  
14 adjudications of water rights conducted pursuant to chapter 90.03 or  
15 90.44 RCW.

16 (b) The following hearings shall not be conducted by the hearings  
17 board:

18 ~~((a))~~ (i) Hearings required by law to be conducted by the  
19 shorelines hearings board pursuant to chapter 90.58 RCW.

20 ~~((b))~~ (ii) Hearings conducted by the department pursuant to RCW  
21 70.94.332, 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and  
22 90.44.180.

23 ~~((c) Proceedings by the department relating to general~~  
24 ~~adjudications of water rights pursuant to chapter 90.03 or 90.44 RCW.~~

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

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

30 **Sec. 4.** RCW 43.21B.130 and 1990 c 65 s 3 are each amended to read  
31 as follows:

32 The administrative procedure act, chapter 34.05 RCW, shall apply to  
33 the appeal of rules and regulations adopted by the board to the same  
34 extent as it applied to the review of rules and regulations adopted by  
35 the directors and/or boards or commissions of the various departments  
36 whose powers, duties and functions were transferred by section 6,  
37 chapter 62, Laws of 1970 ex. sess. to the department. Except with  
38 regard to water quantity decisions by the department, as defined in

1 section 13 of this act, that are appealed directly to a superior court  
2 and orders pertaining to the relinquishment of a water right under RCW  
3 90.14.130, all other decisions and orders of the director and all  
4 decisions of air pollution control boards or authorities established  
5 pursuant to chapter 70.94 RCW shall be subject to review by the  
6 hearings board as provided in this chapter.

7 **Sec. 5.** RCW 43.21B.240 and 1989 c 175 s 105 are each amended to  
8 read as follows:

9 The department and air authorities shall not have authority to hold  
10 adjudicative proceedings pursuant to the Administrative Procedure Act,  
11 chapter 34.05 RCW. ~~((Such))~~ All other hearings, except for water  
12 quantity decisions as defined in section 13 of this act that are  
13 appealed directly to a superior court and appeals of orders pertaining  
14 to the relinquishment of a water right under RCW 90.14.130, shall be  
15 held by the pollution control hearings board.

16 **Sec. 6.** RCW 43.21B.310 and 1992 c 73 s 3 are each amended to read  
17 as follows:

18 (1) Except as provided in subsection (2) of this section, any order  
19 issued by the department, the administrator of the office of marine  
20 safety, or authority pursuant to RCW 70.94.211, 70.94.332, 70.105.095,  
21 43.27A.190, 86.16.020, 88.46.070, or 90.48.120(2) or any provision  
22 enacted after July 26, 1987, or any permit, certificate, or license  
23 issued by the department may be appealed to the pollution control  
24 hearings board if the appeal is filed with the board and served on the  
25 department or authority within thirty days after receipt of the order.  
26 Except as provided under chapter 70.105D RCW, ~~((this is))~~ these are the  
27 exclusive means of appeal of such an order.

28 ~~((+2))~~ (a) The department, the administrator, or the authority in  
29 its discretion may stay the effectiveness of an order during the  
30 pendency of such an appeal.

31 ~~((+3))~~ (b) At any time during the pendency of an appeal of such an  
32 order to the board, the appellant may apply pursuant to RCW 43.21B.320  
33 to the hearings board for a stay of the order or for the removal  
34 thereof.

35 ~~((+4))~~ (c) Any appeal before the hearings board must contain the  
36 following in accordance with the rules of the hearings board:

37 ~~((+a))~~ (i) The appellant's name and address;

1       (~~(b)~~) (ii) The date and docket number of the order, permit, or  
2 license appealed;

3       (~~(c)~~) (iii) A description of the substance of the order, permit,  
4 or license that is the subject of the appeal;

5       (~~(d)~~) (iv) A clear, separate, and concise statement of every  
6 error alleged to have been committed;

7       (~~(e)~~) (v) A clear and concise statement of facts upon which the  
8 requester relies to sustain his or her statements of error; and

9       (~~(f)~~) (vi) A statement setting forth the relief sought.

10       (~~(5)~~) (d) Upon failure to comply with any final order of the  
11 department or the administrator, the attorney general, on request of  
12 the department or the administrator, may bring an action in the  
13 superior court of the county where the violation occurred or the  
14 potential violation is about to occur to obtain such relief as  
15 necessary, including injunctive relief, to insure compliance with the  
16 order. The air authorities may bring similar actions to enforce their  
17 orders.

18       (~~(6)~~) (e) An appealable decision or order shall be identified as  
19 such and shall contain a conspicuous notice to the recipient that it  
20 may be appealed only by filing an appeal with the hearings board and  
21 serving it on the department within thirty days of receipt.

22       (2) Water quantity decisions of the department, as defined in  
23 section 13 of this act, may be appealed either to the pollution control  
24 hearings board or directly to a superior court as provided in section  
25 13 of this act. Appeals of orders pertaining to the relinquishment of  
26 a water right shall be filed in superior court as provided by RCW  
27 90.14.130.

28       **Sec. 7.** RCW 43.27A.190 and 1987 c 109 s 11 are each amended to  
29 read as follows:

30       Notwithstanding and in addition to any other powers granted to the  
31 department of ecology, whenever it appears to the department that a  
32 person is violating or is about to violate any of the provisions of the  
33 following:

- 34       (1) Chapter 90.03 RCW; or  
35       (2) Chapter 90.44 RCW; or  
36       (3) Chapter 86.16 RCW; or  
37       (4) Chapter 43.37 RCW; or  
38       (5) Chapter 43.27A RCW; or

1 (6) Any other law relating to water resources administered by the  
2 department; or

3 (7) A rule or regulation adopted, or a directive or order issued by  
4 the department relating to subsections (1) through (6) of this section;  
5 the department may cause a written regulatory order to be served upon  
6 (~~said~~) the person either personally, or by registered or certified  
7 mail delivered to addressee only with return receipt requested and  
8 acknowledged by him or her. The order shall specify the provision of  
9 the statute, rule, regulation, directive or order alleged to be or  
10 about to be violated, and the facts upon which the conclusion of  
11 violating or potential violation is based, and shall order the act  
12 constituting the violation or the potential violation to cease and  
13 desist or, in appropriate cases, shall order necessary corrective  
14 action to be taken with regard to such acts within a specific and  
15 reasonable time. The regulation of a headgate or controlling works as  
16 provided in RCW 90.03.070, by a watermaster, stream patrolman, or other  
17 person so authorized by the department shall constitute a regulatory  
18 order within the meaning of this section. A regulatory order issued  
19 hereunder shall become effective immediately upon receipt by the person  
20 to whom the order is directed, except for regulations under RCW  
21 90.03.070 which shall become effective when a written notice is  
22 attached as provided therein. Any person aggrieved by such order may  
23 appeal the order pursuant to RCW 43.21B.310 unless the order is a water  
24 quantity decision of the department, as defined in section 13 of this  
25 act, in which case it may be appealed either to the pollution control  
26 hearings board or directly to a superior court as provided in section  
27 13 of this act.

28 **Sec. 8.** RCW 90.03.383 and 1991 c 350 s 1 are each amended to read  
29 as follows:

30 (1) The legislature recognizes the value of interties for improving  
31 the reliability of public water systems, enhancing their management,  
32 and more efficiently utilizing the increasingly limited resource.  
33 Given the continued growth in the most populous areas of the state, the  
34 increased complexity of public water supply management, and the trend  
35 toward regional planning and regional solutions to resource issues,  
36 interconnections of public water systems through interties provide a  
37 valuable tool to ensure reliable public water supplies for the citizens  
38 of the state. Public water systems have been encouraged in the past to

1 utilize interties to achieve public health and resource management  
2 objectives. The legislature finds that it is in the public interest to  
3 recognize interties existing and in use as of January 1, 1991, and to  
4 have associated water rights modified by the department of ecology to  
5 reflect current use of water through those interties, pursuant to  
6 subsection (3) of this section. The legislature further finds it in  
7 the public interest to develop a coordinated process to review  
8 proposals for interties commencing use after January 1, 1991.

9 (2) For the purposes of this section, the following definitions  
10 shall apply:

11 (a) "Interties" are interconnections between public water systems  
12 permitting exchange or delivery of water between those systems for  
13 other than emergency supply purposes, where such exchange or delivery  
14 is within established instantaneous and annual withdrawal rates  
15 specified in the systems' existing water right permits or certificates,  
16 or contained in claims filed pursuant to chapter 90.14 RCW, and which  
17 results in better management of public water supply consistent with  
18 existing rights and obligations. Interties include interconnections  
19 between public water systems permitting exchange or delivery of water  
20 to serve as primary or secondary sources of supply, but do not include  
21 development of new sources of supply to meet future demand.

22 (b) "Service area" is the area designated in a water system plan or  
23 a coordinated water system plan pursuant to chapter 43.20 or 70.116 RCW  
24 respectively. When a public water system does not have a designated  
25 service area subject to the approval process of those chapters, the  
26 service area shall be the designated place of use contained in the  
27 water right permit or certificate, or contained in the claim filed  
28 pursuant to chapter 90.14 RCW.

29 (3) Public water systems with interties existing and in use as of  
30 January 1, 1991, or that have received written approval from the  
31 department of health prior to that date, shall file written notice of  
32 those interties with the department of health and the department of  
33 ecology. The notice may be incorporated into the public water system's  
34 five-year update of its water system plan, but shall be filed no later  
35 than June 30, 1996. The notice shall identify the location of the  
36 intertie; the dates of its first use; the purpose, capacity, and  
37 current use; the intertie agreement of the parties and the service  
38 areas assigned; and other information reasonably necessary to modify  
39 the water right permit. Notwithstanding the provisions of RCW

1 90.03.380 and 90.44.100, for public water systems with interties  
2 existing and in use as of January 1, 1991, the department of ecology,  
3 upon receipt of notice meeting the requirements of this subsection,  
4 shall, as soon as practicable, modify the place of use descriptions in  
5 the water right permits, certificates, or claims to reflect the actual  
6 use through such interties, provided that the place of use is within  
7 service area designations established in a water system plan approved  
8 pursuant to chapter 43.20 RCW, or a coordinated water system plan  
9 approved pursuant to chapter 70.116 RCW, and further provided that the  
10 water used is within the instantaneous and annual withdrawal rates  
11 specified in the water right permit and that no outstanding complaints  
12 of impairment to existing water rights have been filed with the  
13 department of ecology prior to September 1, 1991. Where such  
14 complaints of impairment have been received, the department of ecology  
15 shall make all reasonable efforts to resolve them in a timely manner  
16 through agreement of the parties or through available administrative  
17 remedies.

18 (4) Notwithstanding the provisions of RCW 90.03.380 and 90.44.100,  
19 exchange or delivery of water through interties commencing use after  
20 January 1, 1991, shall be permitted when the intertie improves overall  
21 system reliability, enhances the manageability of the systems, provides  
22 opportunities for conjunctive use, or delays or avoids the need to  
23 develop new water sources, and otherwise meets the requirements of this  
24 section, provided that each public water system's water use shall not  
25 exceed the instantaneous or annual withdrawal rate specified in its  
26 water right authorization, shall not adversely affect existing water  
27 rights, and shall not be inconsistent with state-approved plans such as  
28 water system plans or other plans which include specific proposals for  
29 construction of interties. Interties commencing use after January 1,  
30 1991, shall not be inconsistent with regional water resource plans  
31 developed pursuant to chapter 90.54 RCW.

32 (5) For public water systems subject to the approval process of  
33 chapter 43.20 RCW or chapter 70.116 RCW, proposals for interties  
34 commencing use after January 1, 1991, shall be incorporated into water  
35 system plans pursuant to chapter 43.20 RCW or coordinated water system  
36 plans pursuant to chapter 70.116 RCW and submitted to the department of  
37 health and the department of ecology for review and approval as  
38 provided for in subsections (5) through (9) of this section. The plan  
39 shall state how the proposed intertie will improve overall system

1 reliability, enhance the manageability of the systems, provide  
2 opportunities for conjunctive use, or delay or avoid the need to  
3 develop new water sources.

4 (6) The department of health shall be responsible for review and  
5 approval of proposals for new interties. In its review the department  
6 of health shall determine whether the intertie satisfies the criteria  
7 of subsection (4) of this section, with the exception of water rights  
8 considerations, which are the responsibility of the department of  
9 ecology, and shall determine whether the intertie is necessary to  
10 address emergent public health or safety concerns associated with  
11 public water supply.

12 (7) If the intertie is determined by the department of health to be  
13 necessary to address emergent public health or safety concerns  
14 associated with public water supply, the public water system shall  
15 amend its water system plan as required and shall file an application  
16 with the department of ecology to change its existing water right to  
17 reflect the proposed use of the water as described in the approved  
18 water system plan. The department of ecology shall process the  
19 application for change pursuant to RCW 90.03.380 or 90.44.100 as  
20 appropriate, except that, notwithstanding the requirements of those  
21 sections regarding notice and protest periods, applicants shall be  
22 required to publish notice one time, and the comment period shall be  
23 fifteen days from the date of publication of the notice. Within sixty  
24 days of receiving the application, the department of ecology shall  
25 issue findings and advise the department of health if existing water  
26 rights are determined to be adversely affected. If no determination is  
27 provided by the department of ecology within the sixty-day period, the  
28 department of health shall proceed as if existing rights are not  
29 adversely affected by the proposed intertie. The department of ecology  
30 may obtain an extension of the sixty-day period by submitting written  
31 notice to the department of health and to the applicant indicating a  
32 definite date by which its determination will be made. No additional  
33 extensions shall be granted, and in no event shall the total review  
34 period for the department of ecology exceed one hundred eighty days.

35 (8) If the department of health determines the proposed intertie  
36 appears to meet the requirements of subsection (4) of this section but  
37 is not necessary to address emergent public health or safety concerns  
38 associated with public water supply, the department of health shall  
39 instruct the applicant to submit to the department of ecology an

1 application for change to the underlying water right or claim as  
2 necessary to reflect the new place of use. The department of ecology  
3 shall consider the applications pursuant to the provisions of RCW  
4 90.03.380 and 90.44.100 as appropriate. If in its review of proposed  
5 interties and associated water rights the department of ecology  
6 determines that additional information is required to act on the  
7 application, the department may request applicants to provide  
8 information necessary for its decision, consistent with agency rules  
9 and written guidelines. Parties disagreeing with the decision of the  
10 department of ecology ((~~en~~)) to approve or deny the application for  
11 change in place of use may appeal the decision to the pollution control  
12 hearings board or directly to a superior court as provided in section  
13 13 of this act.

14 (9) The department of health may approve plans containing intertie  
15 proposals prior to the department of ecology's decision on the water  
16 right application for change in place of use. However, notwithstanding  
17 such approval, construction work on the intertie shall not begin until  
18 the department of ecology issues the appropriate water right document  
19 to the applicant consistent with the approved plan.

20 **Sec. 9.** RCW 90.14.130 and 1987 c 109 s 13 are each amended to read  
21 as follows:

22 When it appears to the department of ecology that a person entitled  
23 to the use of water has not beneficially used his or her water right or  
24 some portion thereof, and it appears that ((~~said~~)) the right has or may  
25 have reverted to the state because of such nonuse, as provided by RCW  
26 90.14.160, 90.14.170, or 90.14.180, the department of ecology shall  
27 notify such person by order: PROVIDED, That where a company,  
28 association, district, or the United States has filed a blanket claim  
29 under the provisions of RCW 90.14.060 for the total benefits of those  
30 served by it, the notice shall be served on such company, association,  
31 district or the United States and not upon any of its individual water  
32 users who may not have used the water or some portion thereof which  
33 they were entitled to use. The order shall contain: (1) A description  
34 of the water right, including the approximate location of the point of  
35 diversion, the general description of the lands or places where such  
36 waters were used, the water source, the amount involved, the purpose of  
37 use, and the apparent authority upon which the right is based; (2) a  
38 statement that unless sufficient cause be shown on appeal the water

1 right will be declared relinquished; and (3) a statement that such  
2 order may be appealed to (~~(the pollution control hearings board)~~)  
3 superior court. Any person aggrieved by such an order may appeal it to  
4 (~~(the pollution control hearings board pursuant to RCW 43.21B.310)~~) the  
5 superior court in the county where the land is located upon which the  
6 water was used. Any such appeal to superior court shall be de novo.  
7 The order shall be served by registered or certified mail to the last  
8 known address of the person and be posted at the point of division or  
9 withdrawal. The order by itself shall not alter the recipient's right  
10 to use water, if any.

11 **Sec. 10.** RCW 90.14.190 and 1987 c 109 s 14 are each amended to  
12 read as follows:

13 Any person feeling aggrieved by any decision of the department of  
14 ecology may have the same reviewed by the pollution control hearings  
15 board or directly to a superior court pursuant to ((RCW 43.21B.310))  
16 section 13 of this act. In any such review, the findings of fact as  
17 set forth in the report of the department of ecology shall be prima  
18 facie evidence of the fact of any waiver or relinquishment of a water  
19 right or portion thereof. If the hearings board affirms the decision  
20 of the department, a party seeks review in superior court of that  
21 hearings board decision pursuant to chapter 34.05 RCW, and the court  
22 determines that the party was injured by an arbitrary, capricious, or  
23 erroneous order of the department, the court may award reasonable  
24 attorneys' fees. Any order regarding the relinquishment of a water  
25 right shall be appealed pursuant to RCW 90.14.130.

26 **Sec. 11.** RCW 90.14.200 and 1989 c 175 s 180 are each amended to  
27 read as follows:

28 (1) All matters relating to the implementation and enforcement of  
29 this chapter by the department of ecology shall be carried out in  
30 accordance with chapter 34.05 RCW, the Administrative Procedure Act,  
31 except where the provisions of this chapter expressly conflict with  
32 chapter 34.05 RCW. Proceedings held pursuant to RCW 90.14.130 are  
33 (~~(adjudicative proceedings within the meaning of chapter 34.05 RCW.~~  
34 ~~Final decisions of the department of ecology in these proceedings))~~  
35 appealable to superior court as provided in that section. Other final  
36 decisions of the department of ecology under this chapter are subject

1 to review by the pollution control hearings board or a superior court  
2 in accordance with (~~chapter 43.21B RCW~~) section 13 of this act.

3 (2) RCW 90.14.130 provides nonexclusive procedures for determining  
4 a relinquishment of water rights under RCW 90.14.160, 90.14.170, and  
5 90.14.180. RCW 90.14.160, 90.14.170, and 90.14.180 may be applied in,  
6 among other proceedings, general adjudication proceedings initiated  
7 under RCW 90.03.110 or 90.44.220: PROVIDED, That nothing herein shall  
8 apply to litigation involving determinations of the department of  
9 ecology under RCW 90.03.290 relating to the impairment of existing  
10 rights.

11 **Sec. 12.** RCW 90.66.080 and 1979 c 3 s 8 are each amended to read  
12 as follows:

13 The department is hereby empowered to promulgate such rules as may  
14 be necessary to carry out the provisions of this chapter. Decisions of  
15 the department, other than rule making, shall be subject to review by  
16 the pollution control hearings board or a superior court in accordance  
17 with (~~chapter 43.21B RCW~~) section 13 of this act.

18 NEW SECTION. **Sec. 13.** A new section is added to chapter 43.21B  
19 RCW to read as follows:

20 (1) A person who is aggrieved or adversely affected by a water  
21 quantity decision may appeal the decision either to the pollution  
22 control hearings board pursuant to RCW 43.21B.310 or directly to a  
23 superior court. Any direct appeal to a superior court as authorized by  
24 this section shall be de novo. An appeal of a decision regarding a  
25 withdrawal shall be filed in the county in which the water withdrawal  
26 would or does take place. An appeal of a decision regarding an  
27 instream flow or a water management plan shall be filed in the county  
28 with the greatest amount of territory governed by the flow or plan.

29 (2) For purposes of this section, a "water quantity decision"  
30 includes the following:

31 (a) A decision to grant or deny a permit or certificate for a right  
32 to the beneficial use of water or to amend, change, or transfer such a  
33 right;

34 (b) A decision to enforce the conditions of a permit for, or right  
35 to, the beneficial use of water or to require any person to discontinue  
36 the use of water;

1 (c) A decision to establish or modify a minimum flow or level for  
2 water under chapter 90.03, 90.22, or 90.54 RCW, or to reserve water for  
3 such a minimum flow or level; and

4 (d) A decision to establish a water management plan under chapter  
5 90.03, 90.44, or 90.54 RCW.

6 NEW SECTION. **Sec. 14.** A new section is added to chapter 43.21B  
7 RCW to read as follows:

8 The hearings board shall ensure that a hearing pertaining to a  
9 water quantity decision, as defined in section 13 of this act, shall be  
10 conducted in the general area where the petitioner resides or provide  
11 for the hearing to be conducted by telephone. A single member of the  
12 board may conduct such hearings.

13 NEW SECTION. **Sec. 15.** A new section is added to chapter 43.21B  
14 RCW to read as follows:

15 In all appeals of water quantity decisions by the department, as  
16 defined in section 13 of this act, over which the hearings board has  
17 jurisdiction, a party taking an appeal may elect either a formal or an  
18 informal hearing. The election shall be made according to rules of  
19 practice and procedure adopted by the hearings board. This section  
20 shall not be construed to modify RCW 43.21B.190. In the event that  
21 appeals are taken from the same decision, order, or determination, as  
22 the case may be, by different parties and only one of such parties  
23 elects an informal hearing, an informal hearing shall be granted.

24 NEW SECTION. **Sec. 16.** A new section is added to chapter 43.21B  
25 RCW to read as follows:

26 In all appeals involving a decision or an order of the hearings  
27 board after an informal hearing of a water quantity decision by the  
28 department, as defined in section 13 of this act, the appeal to  
29 superior court shall be de novo. The petition shall be filed in the  
30 superior court specified in section 13 of this act. Such appeal may be  
31 perfected by filing with the clerk of the superior court a notice of  
32 appeal, and by serving a copy thereof by mail, or personally on the  
33 director or on the board as the case may be. The hearings board shall  
34 serve upon the appealing party, the director, and on any other party  
35 appearing at the hearings board's proceeding, and file with the clerk  
36 of the court before trial, a certified copy of the hearings board's

1 decision and order. Appellate review of a decision of the superior  
2 court may be sought as in other civil cases. No bond may be required  
3 on appeals to the superior court or on review by the supreme court  
4 unless specifically required by the judge of the superior court.

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