
HOUSE BILL 2701

State of Washington

54th Legislature

1996 Regular Session

By Representatives Mastin, Chandler, Honeyford and Johnson

Read first time 01/16/96. Referred to Committee on Agriculture & Ecology.

1 AN ACT Relating to general adjudication proceedings for water
2 rights; and amending RCW 90.03.160, 90.03.170, 90.03.190, 90.03.200,
3 90.03.210, and 90.03.243.

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

5 **Sec. 1.** RCW 90.03.160 and 1989 c 80 s 1 are each amended to read
6 as follows:

7 (1) Upon the completion of the service of summons as hereinbefore
8 provided, the superior court in which said proceeding is pending shall
9 make an order referring said proceeding to ~~((the department))~~ a referee
10 appointed by the court to take testimony ~~((by its duly authorized~~
11 ~~designee, as referee,))~~ and the ~~((designee))~~ referee shall report to
12 and file with the superior court of the county in which such cause is
13 pending a transcript of such testimony for adjudication thereon by such
14 court. The superior court may, in any complex case with more than one
15 thousand named defendants, including the United States, retain for
16 hearing and further processing such portions of the proceeding as
17 pertain to a discrete class or classes of defendants or claims of water
18 rights if the court determines that: ~~((+1))~~ (a) Resolution of claims
19 of such classes appear to involve significant issues of law, either

1 procedural or substantive; and ~~((2))~~ (b) such a retention will both
2 expedite the conclusion of the case and reduce the overall expenditures
3 of the plaintiff, defendants, and the court.

4 (2) No person appointed as a referee under this section may be an
5 employee of the department of ecology or an employee of any other party
6 to the proceeding and such a person may not have been such an employee
7 within three years prior to the commencement of the proceeding.

8 **Sec. 2.** RCW 90.03.170 and 1987 c 109 s 77 are each amended to read
9 as follows:

10 Thereupon the ~~((department))~~ referee shall fix a time and place for
11 such hearing and serve written notice thereof upon all persons who have
12 appeared in said proceeding, their agents or attorneys. Notice of such
13 hearing shall be served at least ten days before the time fixed
14 therefor. Such hearings may be adjourned from time to time and place
15 to place. The duly authorized ~~((designee))~~ referee shall have
16 authority to subpoena witnesses and administer oaths in the same manner
17 and with the same powers as referees in civil actions. The fees and
18 mileage of witnesses shall be advanced by the party at whose instance
19 they are called as in civil actions. A final decree adjudicating
20 rights or priorities, entered in any case decided prior to June 6,
21 1917, shall be conclusive among the parties thereto and the extent of
22 use so determined shall be prima facie evidence of rights to the amount
23 of water and priorities so fixed as against any person not a party to
24 said decree.

25 **Sec. 3.** RCW 90.03.190 and 1987 c 109 s 78 are each amended to read
26 as follows:

27 Upon the completion of the taking of testimony it shall be the duty
28 of the ~~((department's designee))~~ referee to prepare and file with the
29 clerk of the superior court where such proceeding is pending, a
30 transcript of the testimony taken at such hearing, in triplicate,
31 together with all papers and exhibits offered and received in evidence
32 and not already a part of the record. ~~((He))~~ The referee shall also
33 make and file in said court a full and complete report as in other
34 cases of reference in the superior court. Two of said transcripts
35 shall be for the use of the parties as the court may direct. The court
36 shall set a time for the hearing and the ~~((designee))~~ referee shall
37 thereupon prepare a notice designating a time for the hearing of said

1 report and serve a copy thereof, together with a copy of ((his)) the
2 referee's report, on all persons, their agents or attorneys who have
3 appeared in such proceeding. Such service shall be made not less than
4 twenty days before the time for said hearing, either personally or by
5 registered mail, and an affidavit of such service filed with the clerk.

6 **Sec. 4.** RCW 90.03.200 and 1988 c 202 s 91 are each amended to read
7 as follows:

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

27 **Sec. 5.** RCW 90.03.210 and 1988 c 202 s 92 are each amended to read
28 as follows:

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

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

4 **Sec. 6.** RCW 90.03.243 and 1982 c 15 s 1 are each amended to read
5 as follows:

6 The expenses incurred by the state in a proceeding to determine
7 rights to water initiated under RCW 90.03.110 or 90.44.220 or upon
8 appeal of such a determination shall be borne by the state.

9 Expenses incurred by the court for the use of a referee appointed
10 under RCW 90.03.160 may be paid from appropriations made expressly for
11 this purpose to the office of the administrator for the courts, to the
12 extent of such appropriations.

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