

CERTIFICATION OF ENROLLMENT

ENGROSSED HOUSE BILL 1350

Chapter 220, Laws of 2001

57th Legislature
2001 Regular Legislative Session

WATER RIGHT DECISIONS--APPEALS

EFFECTIVE DATE: 5/9/01

Passed by the House April 22, 2001
Yeas 83 Nays 0

FRANK CHOPP
Speaker of the House of Representatives

CLYDE BALLARD
Speaker of the House of Representatives

Passed by the Senate April 21, 2001
Yeas 44 Nays 1

BRAD OWEN
President of the Senate

Approved May 9, 2001

GARY LOCKE
Governor of the State of Washington

CERTIFICATE

We, Timothy A. Martin and Cynthia Zehnder, Co-Chief Clerks of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED HOUSE BILL 1350** as passed by the House of Representatives and the Senate on the dates hereon set forth.

TIMOTHY A. MARTIN
Chief Clerk

CYNTHIA ZEHNDER
Chief Clerk

FILED

May 9, 2001 - 8:42 a.m.

**Secretary of State
State of Washington**

ENGROSSED HOUSE BILL 1350

AS AMENDED BY THE SENATE

Passed Legislature - 2001 Regular Session

State of Washington 57th Legislature 2001 Regular Session

By Representatives G. Chandler and Linville

Read first time 01/24/2001. Referred to Committee on Agriculture & Ecology.

1 AN ACT Relating to appeals of water right decisions regarding water
2 rights subject to a general stream adjudication; amending RCW
3 43.21B.310 and 90.03.210; reenacting and amending RCW 43.21B.110 and
4 34.05.514; creating new sections; and declaring an emergency.

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

6 NEW SECTION. **Sec. 1.** The legislature intends to assure that
7 appeals of department of ecology decisions regarding changes or
8 transfers of water rights that are the subject of an ongoing general
9 adjudication of water rights are governed by an appeals process that is
10 efficient and eliminates unnecessary duplication, while fully
11 preserving the rights of all affected parties. The legislature intends
12 to address only the judicial review process for certain decisions of
13 the pollution control hearings board when a general adjudication is
14 being actively litigated. The legislature intends to fully preserve
15 the role of the pollution control hearings board, except as
16 specifically provided in this act.

17 **Sec. 2.** RCW 43.21B.110 and 1998 c 262 s 18, 1998 c 156 s 8, and
18 1998 c 36 s 22 are each reenacted and amended to read as follows:

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

6 (a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431,
7 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.48.144, 90.56.310, and
8 90.56.330.

9 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
10 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,
11 90.14.130, 90.48.120, and 90.56.330.

12 (c) Except as provided in RCW 90.03.210(2), the issuance,
13 modification, or termination of any permit, certificate, or license by
14 the department or any air authority in the exercise of its
15 jurisdiction, including the issuance or termination of a waste disposal
16 permit, the denial of an application for a waste disposal permit, the
17 modification of the conditions or the terms of a waste disposal permit,
18 or a decision to approve or deny an application for a solid waste
19 permit exemption under RCW 70.95.300.

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

22 (e) Decisions of local health departments regarding the issuance
23 and enforcement of permits to use or dispose of biosolids under RCW
24 70.95J.080.

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

28 (g) Decisions of local conservation districts related to the denial
29 of approval or denial of certification of a dairy nutrient management
30 plan; conditions contained in a plan; application of any dairy nutrient
31 management practices, standards, methods, and technologies to a
32 particular dairy farm; and failure to adhere to the plan review and
33 approval timelines in RCW 90.64.026.

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

37 (2) The following hearings shall not be conducted by the hearings
38 board:

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

3 (b) Hearings conducted by the department pursuant to RCW 70.94.332,
4 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

5 (c) Proceedings conducted by the department (~~relating to general~~
6 ~~adjudications of water rights pursuant to chapter 90.03 or 90.44 RCW~~),
7 or the department's designee, under RCW 90.03.160 through 90.03.210 or
8 90.44.220.

9 (d) Hearings conducted by the department to adopt, modify, or
10 repeal rules.

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

14 **Sec. 3.** RCW 34.05.514 and 1995 c 347 s 113 and 1995 c 292 s 9 are
15 each reenacted and amended to read as follows:

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

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

27 (3) For proceedings conducted by the pollution control hearings
28 board pursuant to chapter 43.21B RCW or as otherwise provided in RCW
29 90.03.210(2) involving decisions of the department of ecology on
30 applications for changes or transfers of water rights that are the
31 subject of a general adjudication of water rights that is being
32 litigated actively under chapter 90.03 or 90.44 RCW, the petition must
33 be filed with the superior court conducting the adjudication, to be
34 consolidated by the court with the general adjudication. A party to
35 the adjudication shall be a party to the appeal under this chapter only
36 if the party files or is served with a petition for review to the
37 extent required by this chapter.

1 **Sec. 4.** RCW 43.21B.310 and 1992 c 73 s 3 are each amended to read
2 as follows:

3 (1) Except as provided in RCW 90.03.210(2), any order issued by the
4 department, the administrator of the office of marine safety, or
5 authority pursuant to RCW 70.94.211, 70.94.332, 70.105.095, 43.27A.190,
6 86.16.020, 88.46.070, or 90.48.120(2) or any provision enacted after
7 July 26, 1987, or any permit, certificate, or license issued by the
8 department may be appealed to the pollution control hearings board if
9 the appeal is filed with the board and served on the department or
10 authority within thirty days after receipt of the order. Except as
11 provided under chapter 70.105D RCW and RCW 90.03.210(2), this is the
12 exclusive means of appeal of such an order.

13 (2) The department, the administrator, or the authority in its
14 discretion may stay the effectiveness of an order during the pendency
15 of such an appeal.

16 (3) At any time during the pendency of an appeal of such an order
17 to the board, the appellant may apply pursuant to RCW 43.21B.320 to the
18 hearings board for a stay of the order or for the removal thereof.

19 (4) Any appeal must contain the following in accordance with the
20 rules of the hearings board:

21 (a) The appellant's name and address;

22 (b) The date and docket number of the order, permit, or license
23 appealed;

24 (c) A description of the substance of the order, permit, or license
25 that is the subject of the appeal;

26 (d) A clear, separate, and concise statement of every error alleged
27 to have been committed;

28 (e) A clear and concise statement of facts upon which the requester
29 relies to sustain his or her statements of error; and

30 (f) A statement setting forth the relief sought.

31 (5) Upon failure to comply with any final order of the department
32 or the administrator, the attorney general, on request of the
33 department or the administrator, may bring an action in the superior
34 court of the county where the violation occurred or the potential
35 violation is about to occur to obtain such relief as necessary,
36 including injunctive relief, to insure compliance with the order. The
37 air authorities may bring similar actions to enforce their orders.

38 (6) An appealable decision or order shall be identified as such and
39 shall contain a conspicuous notice to the recipient that it may be

1 appealed only by filing an appeal with the hearings board and serving
2 it on the department within thirty days of receipt.

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

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

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

21 (a) The appeal shall be filed with the court conducting the
22 adjudication and served under RCW 34.05.542(3). The content of the
23 notice of appeal shall conform to RCW 34.05.546. Standing to appeal
24 shall be based on the requirements of RCW 34.05.530 and is not limited
25 to parties to the adjudication.

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

32 (c) If the appeal includes a challenge to any portion of the
33 department's decision other than the tentative determinations of the
34 validity and extent of the right, the court must certify to the
35 pollution control hearings board for review and decision those portions
36 of the department's decision. Review by the pollution control hearings
37 board shall be conducted consistent with chapter 43.21B RCW and the
38 board's implementing regulations, except that the requirements for

1 filing, service, and content of the notice of appeal shall be governed
2 by (a) of this subsection.

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

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

10 (3) Nothing in this section shall be construed to affect or modify
11 any treaty or other federal rights of an Indian tribe, or the rights of
12 any federal agency or other person or entity arising under federal law.
13 Nothing in this section is intended or shall be construed as affecting
14 or modifying any existing right of a federally recognized Indian tribe
15 to protect from impairment its federally reserved water rights in
16 federal court.

17 NEW SECTION. Sec. 6. Nothing in this act shall be construed to
18 affect or modify any treaty or other federal rights of an Indian tribe,
19 or the rights of any federal agency or other person or entity arising
20 under federal law. Nothing in this act is intended or shall be
21 construed as affecting or modifying any existing right of a federally
22 recognized Indian tribe to protect from impairment its federally
23 reserved water rights in federal court.

24 NEW SECTION. Sec. 7. This act is necessary for the immediate
25 preservation of the public peace, health, or safety, or support of the
26 state government and its existing public institutions, and takes effect
27 immediately.

Passed the House April 22, 2001.

Passed the Senate April 21, 2001.

Approved by the Governor May 9, 2001.

Filed in Office of Secretary of State May 9, 2001.