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

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

BRAD OWEN
President of the Senate

Approved May 9, 2001

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.

GARY LOCKE
Governor of the State of Washington

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

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

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

Sec. 2. RCW 43.21B.110 and 1998 c 262 s 18, 1998 c 156 s 8, and 1998 c 36 s 22 are each reenacted and amended to read as follows:
(1) The hearings board shall only have jurisdiction to hear and decide appeals from the following decisions of the department, the director, local conservation districts, and the air pollution control boards or authorities as established pursuant to chapter 70.94 RCW, or local health departments:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) For proceedings conducted by the pollution control hearings board pursuant to chapter 43.21B RCW or as otherwise provided in RCW 90.03.210(2) involving decisions of the department of ecology on applications for changes or transfers of water rights that are the subject of a general adjudication of water rights that is being litigated actively under chapter 90.03 or 90.44 RCW, the petition must be filed with the superior court conducting the adjudication, to be consolidated by the court with the general adjudication. A party to the adjudication shall be a party to the appeal under this chapter only if the party files or is served with a petition for review to the extent required by this chapter.
Sec. 4. RCW 43.21B.310 and 1992 c 73 s 3 are each amended to read as follows:

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

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

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

(4) Any appeal must contain the following in accordance with the rules of the hearings board:
   (a) The appellant’s name and address;
   (b) The date and docket number of the order, permit, or license appealed;
   (c) A description of the substance of the order, permit, or license that is the subject of the appeal;
   (d) A clear, separate, and concise statement of every error alleged to have been committed;
   (e) A clear and concise statement of facts upon which the requester relies to sustain his or her statements of error; and
   (f) A statement setting forth the relief sought.

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

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

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

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

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

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

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

(c) If the appeal includes a challenge to any portion of the department’s decision other than the tentative determinations of the validity and extent of the right, the court must certify to the pollution control hearings board for review and decision those portions of the department’s decision. Review by the pollution control hearings board shall be conducted consistent with chapter 43.21B RCW and the board’s implementing regulations, except that the requirements for
filing, service, and content of the notice of appeal shall be governed
by (a) of this subsection.

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

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

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

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

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

Passed the Senate April 21, 2001.
Approved by the Governor May 9, 2001.
Filed in Office of Secretary of State May 9, 2001.