

CERTIFICATION OF ENROLLMENT

ENGROSSED SUBSTITUTE HOUSE BILL 1571

Chapter 332, Laws of 2009

61st Legislature
2009 Regular Session

WATER RIGHTS ADJUDICATION

EFFECTIVE DATE: 07/26/09

Passed by the House April 20, 2009
Yeas 69 Nays 29

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate April 14, 2009
Yeas 30 Nays 17

BRAD OWEN

President of the Senate

Approved May 5, 2009, 2:07 p.m.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 1571** as passed by the House of Representatives and the Senate on the dates hereon set forth.

BARBARA BAKER

Chief Clerk

FILED

May 8, 2009

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE HOUSE BILL 1571

AS AMENDED BY THE SENATE

Passed Legislature - 2009 Regular Session

State of Washington 61st Legislature 2009 Regular Session

By House Agriculture & Natural Resources (originally sponsored by Representatives Blake and Chandler; by request of Department of Ecology)

READ FIRST TIME 02/23/09.

1 AN ACT Relating to the adjudication of water rights; amending RCW
2 90.03.110, 90.03.120, 90.03.130, 90.03.140, 90.03.160, 90.03.180,
3 90.03.200, 90.03.210, 90.03.240, 90.03.243, 90.44.220, 43.21B.110,
4 4.12.040, and 4.12.050; adding new sections to chapter 90.03 RCW;
5 creating a new section; and repealing RCW 90.03.170 and 90.03.190.

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

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

9 (1) Upon the filing of a petition with the department by a planning
10 unit or by one or more persons claiming the right to ((divert)) any
11 waters within the state or when, after investigation, in the judgment
12 of the department, the ((interest of the public will be subserved by a
13 determination of the rights thereto, it shall be the duty of the
14 department to)) public interest will be served by a determination of
15 the rights thereto, the department shall prepare a statement of the
16 facts, together with a plan or map of the locality under investigation,
17 and file such statement and plan or map in the superior court of the
18 county in which said water is situated, or, in case such water flows or
19 is situated in more than one county, in the county which the department

1 shall determine to be the most convenient to the parties interested
2 therein. Such a statement shall ~~((contain substantially the following~~
3 ~~matter, to wit:~~

4 ~~(1) The names of all known persons claiming the right to divert~~
5 ~~said water, the right to the diversion of which is sought to be~~
6 ~~determined, and~~

7 ~~(2) A brief statement of the facts in relation to such water, and~~
8 ~~the necessity for a determination of the rights thereto)):~~

9 (a) Either (i) identify each person or entity owning real property
10 situated within the area to be adjudicated but outside the boundaries
11 of a city, town, or special purpose district that provides water to
12 property within its service area; (ii) identify all known persons
13 claiming a right to the water sought to be determined; or (iii)
14 identify both; and

15 (b) Include a brief statement of the facts in relation to such
16 water, and the necessity for a determination of the rights thereto.

17 (2) Prior to filing an adjudication under this chapter, the
18 department shall:

19 (a) Consult with the administrative office of the courts to
20 determine whether sufficient judicial resources are available to
21 commence and to prosecute the adjudication in a timely manner; and

22 (b) Report to the appropriate committees of the legislature on the
23 estimated budget needs for the court and the department to conduct the
24 adjudication.

25 **Sec. 2.** RCW 90.03.120 and 1987 c 109 s 73 are each amended to read
26 as follows:

27 (1) Upon the filing of the statement and map as provided in RCW
28 90.03.110 the judge of such superior court shall make an order
29 directing summons to be issued, and fixing the return day thereof,
30 which shall be not less than ~~((sixty))~~ one hundred nor more than
31 ~~((ninety))~~ one hundred thirty days, after the making of such order:
32 PROVIDED, That for good cause, the court, at the request of the
33 department, may modify said time period.

34 (2) A summons issued under this section shall ~~((thereupon))~~ be
35 issued out of said superior court, signed and attested by the clerk
36 thereof, in the name of the state of Washington, as plaintiff, against
37 all known persons ~~((claiming the right to divert the water involved and~~

1 ~~also all persons unknown claiming the right to divert the water~~
2 ~~involved, which said))~~ identified by the department under RCW
3 90.03.110. The summons shall contain a brief statement of the objects
4 and purpose of the proceedings and shall require the defendants to
5 appear on the return day thereof, and make and file (~~a statement of~~)
6 an adjudication claim to, or interest in, the water involved and a
7 statement that unless they appear at the time and place fixed and
8 assert such right, judgment will be entered determining their rights
9 according to the evidence: PROVIDED, HOWEVER, That any persons
10 claiming the right to (~~the use of~~) water by virtue of a contract with
11 a claimant to the right to divert the same, shall not be necessary
12 parties to the proceeding.

13 (3) To the extent consistent with court rules and subject to the
14 availability of funds provided either by direct appropriation or funded
15 through the administrative office of the courts for this specific
16 adjudicative proceeding, the court is encouraged to conduct the water
17 rights adjudication employing innovative practices and technologies
18 appropriate to large scale and complex cases, such as: (a) Electronic
19 filing of documents, including notice and claims; (b) appearance via
20 teleconferencing; (c) prefiling of testimony; and (d) other practices
21 and technologies consistent with court rules and emerging technologies.

22 NEW SECTION. Sec. 3. A new section is added to chapter 90.03 RCW
23 to read as follows:

24 (1) A judge in a water right adjudication filed under this chapter
25 may be partially or fully disqualified from hearing the adjudication.
26 Partial disqualification means disqualification from hearing specified
27 claims. Full disqualification means disqualification from hearing any
28 aspect of the adjudication.

29 (a) A judge is partially disqualified when the judge's impartiality
30 might reasonably be questioned and the apparent or actual partiality is
31 limited to specified claims.

32 (b) A judge is fully disqualified when the judge's impartiality
33 might reasonably be questioned and the apparent or actual partiality
34 extends beyond limited claims such that the judge should not hear any
35 part of the adjudication.

36 (2) A judge may recuse himself or herself under this section or a

1 party may file a motion for disqualification. A motion for
2 disqualification must state whether the remedy being sought is full or
3 partial disqualification.

4 (3)(a) For parties who are named in the original pleadings, a
5 motion for disqualification is timely if it is filed before the judge
6 issues a discretionary order or ruling in the adjudication.

7 (b) For a party who is joined in the adjudication after the
8 original pleadings have been filed, a motion for disqualification is
9 timely if it is filed within the earliest of either (i) thirty days of
10 being joined in the adjudication; or (ii) after the joinder of the
11 party, before the judge issues a discretionary order or ruling relating
12 to the joined party.

13 (c) When a motion for disqualification is untimely filed under this
14 subsection (3), the motion will be granted only when necessary to
15 correct a substantial injustice.

16 (d) For purposes of this section, "discretionary order or ruling"
17 has the same meaning as "order or ruling involving discretion" in RCW
18 4.12.050.

19 (4) A party filing a motion for disqualification under this section
20 has the burden of proving by a preponderance of the evidence that the
21 judge should be disqualified under the standards of subsection (1) of
22 this section.

23 (5) The motion for disqualification may not be heard by the judge
24 against whom the motion is filed. Subject to this limitation, the
25 court may assign the disqualification motion to any superior court
26 judge of the judicial district in which the adjudication was filed or
27 to a visiting superior court judge under RCW 2.56.040.

28 (6) The standards set forth in RCW 2.28.030, which govern the
29 disqualification of judicial officers generally, may be grounds for
30 disqualification under this section.

31 NEW SECTION. **Sec. 4.** A new section is added to chapter 90.03 RCW
32 to read as follows:

33 Upon expiration of the filing period established under RCW
34 90.03.120(2), the department shall file a motion for default against
35 defendants who have been served but who have failed to file an
36 adjudication claim under RCW 90.03.140. A party in default may file a

1 late claim under the same circumstances the party could respond or
2 defend under court rules on default judgments.

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

5 If an adjudication claim is for a use for which a statement of
6 claim was required to be filed under chapter 90.14 RCW and no such
7 claim was filed, the department may move that the adjudication claim be
8 denied. The court shall grant the department's motion unless the
9 claimant shows good cause why the motion should not be granted.

10 **Sec. 6.** RCW 90.03.130 and 1987 c 109 s 74 are each amended to read
11 as follows:

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

1 must be served at least sixty days before the return day thereof. For
2 summons by certified mail, completion of service occurs upon the date
3 of receipt by the defendant.

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

6 **Sec. 7.** RCW 90.03.140 and 1987 c 109 s 75 are each amended to read
7 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 ~~Such statement))~~ date specified in the summons, each defendant
28 shall file with the clerk of the superior court an adjudication claim
29 on a form and in a manner provided by the department, and mail or
30 electronically mail a copy to the department. The department shall
31 provide information that will assist claimants of small uses of water
32 in completing their adjudication claims. The adjudication claim must
33 contain substantially the following, except that when the legal basis
34 for the claimed right is a federally reserved right, the information
35 must be filed only as applicable:

36 (a) The name, mailing address, and telephone contact number of each
37 defendant on the claim, and e-mail address, if available;

1 (b) The purpose or purposes of use of the water and the annual and
2 instantaneous quantities of water put to beneficial use;

3 (c) For each use, the date the first steps were taken under the law
4 to put the water to beneficial use;

5 (d) The date of beginning and completion of the construction of
6 wells, ditches, or other works to put the water to use;

7 (e) The maximum amount of land ever under irrigation and the
8 maximum annual and instantaneous quantities of water ever used thereon
9 prior to the date of the statement and if for power, or other purposes,
10 the maximum annual and instantaneous quantities of water ever used
11 prior to the date of the adjudication claim;

12 (f) The dates between which water is used annually;

13 (g) If located outside the boundaries of a city, town, or special
14 purpose district that provides water to property within its service
15 area, the legal description and county tax parcel number of the land
16 upon which the water as presently claimed has been, or may be, put to
17 beneficial use;

18 (h) The legal description and county tax parcel number of the
19 subdivision of land on which the point of diversion or withdrawal is
20 located as well as land survey and geographic positioning coordinates
21 of the same if available;

22 (i) Whether a right to surface or groundwater, or both, is claimed
23 and the source of the surface water and the location and depth of all
24 wells;

25 (j) The legal basis for the claimed right;

26 (k) Whether a statement of claim relating to the water right was
27 filed under chapter 90.14 RCW or whether a declaration relating to the
28 water right was filed under chapter 90.44 RCW and, if so, the claim or
29 declaration number, and whether the right is documented by a permit or
30 certificate and, if so, the permit number or certificate number. When
31 the source is a well, the well log number must be provided, when
32 available;

33 (1) The amount of land and the annual and instantaneous quantities
34 of water used thereon, or used for power or other purposes, that the
35 defendant claims as a present right.

36 (2) The adjudication claim shall be verified on oath by the
37 defendant (, and in the discretion of the court may be amended)). The
38 department shall furnish the form for the adjudication claim. A

1 claimant may file an adjudication claim electronically if authorized
2 under state and local court rules. The department may assist claimants
3 in their effort by making the department's pertinent records and
4 information accessible electronically or by other means and through
5 conferring with claimants.

6 NEW SECTION. Sec. 8. A new section is added to chapter 90.03 RCW
7 to read as follows:

8 Within the date set by the court for filing evidence, each claimant
9 shall file with the court evidence to support the claimant's
10 adjudication claims. The court is encouraged to set a date for filing
11 evidence that is reasonable and fair for the timely processing of the
12 adjudication. The evidence may include, without limitation, permits or
13 certificates of water right, statements of claim made under chapter
14 90.14 RCW, deeds, documents related to issuance of a land patent,
15 aerial photographs, decrees of previous water rights adjudications,
16 crop records, records of livestock purchases and sales, records of
17 power use, metering records, declarations containing testimonial
18 evidence, records of diversion, withdrawal or storage and delivery by
19 irrigation districts or ditch companies, and any other evidence to
20 support that a water right was obtained and was not thereafter
21 abandoned or relinquished. The evidence filed may include matters that
22 are outside the original adjudication claim filed, and within the date
23 set by the court for filing evidence, the claimant may amend the
24 adjudication claim to conform to the evidence filed. Thereafter,
25 except for good cause shown, a claimant may not file additional
26 evidence to support the claim.

27 NEW SECTION. Sec. 9. A new section is added to chapter 90.03 RCW
28 to read as follows:

29 (1) Upon the receipt of adjudication claims and the filing of
30 claimants' evidence, the department shall conduct a preliminary
31 investigation for the purpose of examining:

32 (a) The uses of the subject waters by and any physical works in
33 connection with the persons to whom the adjudication applies; and

34 (b) The uses for which a statement of claim has been filed under
35 chapter 90.14 RCW or for which the department has a permit or
36 certificate of water right on record.

1 (2)(a) The examination may include, as the department deems
2 appropriate:

3 (i) An estimation of the amount of water that is reasonably
4 necessary to accomplish various beneficial uses within the area;

5 (ii) The measurement of stream flows;

6 (iii) The measurement of any diversion or withdrawal rates;

7 (iv) An estimation of storage capacity and the amount of water
8 stored;

9 (v) The types and numbers of stock watered;

10 (vi) The number of residences served;

11 (vii) The location and size of any irrigated land areas; and

12 (viii) Any other information pertinent to the determination of
13 water rights in an adjudication under this chapter.

14 (b) The department may also take other necessary steps and gather
15 other data and information as may be essential to the proper
16 understanding of the water uses and associated rights of the affected
17 water users, including review of each claimant's adjudication claim and
18 evidence the claimant filed to support the claim. The claimants and
19 the department are encouraged to confer as may be beneficial to clarify
20 the factual and legal basis for the claim. To the extent consistent
21 with court rules, the court may deem it appropriate to encourage
22 claimants and the department to work closely together to reach
23 agreement on a claimed water right that may result in timely settlement
24 of water rights, reduced costs for the parties, greater equity and
25 general public service, and better information that may be used for
26 overall water management.

27 (3) The department shall file with the court the department's
28 report of findings as to each adjudication claim filed timely under RCW
29 90.03.140. The department may divide its report of findings into two
30 or more segments, covering particular drainages, uses, or other
31 appropriate bases for dividing the report on adjudication claims.
32 Based on the evidence filed by claimants and the department's report of
33 findings, the department shall file with the superior court either or
34 both of the following motions:

35 (a) A motion for a partial decree in favor of all stated claims
36 under RCW 90.03.140 that the department finds to be substantiated with
37 factual evidence; or

1 (b) A motion seeking determination of contested claims before the
2 court.

3 **Sec. 10.** RCW 90.03.160 and 1989 c 80 s 1 are each amended to read
4 as follows:

5 ~~(1) Upon ((the completion of the service of summons as hereinbefore~~
6 ~~provided, the superior court in which said proceeding is pending shall~~
7 ~~make an order referring said proceeding to the department to take~~
8 ~~testimony by its duly authorized designee, as referee, and the designee~~
9 ~~shall report to and file with the superior court of the county in which~~
10 ~~such cause is pending a transcript of such testimony for adjudication~~
11 ~~thereon by such court. The superior court may, in any complex case~~
12 ~~with more than one thousand named defendants, including the United~~
13 ~~States, retain for hearing and further processing such portions of the~~
14 ~~proceeding as pertain to a discrete class or classes of defendants or~~
15 ~~claims of water rights if the court determines that: (1) Resolution of~~
16 ~~claims of such classes appear to involve significant issues of law,~~
17 ~~either procedural or substantive; and (2) such a retention will both~~
18 ~~expedite the conclusion of the case and reduce the overall expenditures~~
19 ~~of the plaintiff, defendants, and the court)) filing of the~~
20 ~~department's motion or motions under section 9(3) of this act, any~~
21 ~~party with a claim filed under RCW 90.03.140 for the appropriation of~~
22 ~~water or waters of the subject adjudication may file and serve a~~
23 ~~response to the department's motion or motions within the time set by~~
24 ~~the court for such a response. Objections must include specific~~
25 ~~information in regard to the particular disposition against which the~~
26 ~~objection is being made. Objections must also state the underlying~~
27 ~~basis of the objection being made, including general information about~~
28 ~~the forms of evidence that support the objection. Any party may file~~
29 ~~testimony with the court and serve it on other parties. If a party~~
30 ~~intends to cross-examine a claimant or witness based on another party's~~
31 ~~prefiled testimony, the party intending to cross-examine shall file a~~
32 ~~notice of intent to cross-examine no later than fifteen days in advance~~
33 ~~of the hearing. If no notice of intent to cross-examine based on the~~
34 ~~prefiled testimony is given, then the claimant or witness is not~~
35 ~~required to appear at the hearing. Any party may present evidence in~~
36 ~~support of or in response to an objection.~~

1 (2) The superior court may appoint a referee or other judicial
2 officer to assist the court.

3 (3) The superior court may adopt special rules of procedure for an
4 adjudication of water rights under this chapter, including simplified
5 procedures for claimants of small uses of water. The rules of
6 procedure for a superior court apply to an adjudication of water rights
7 under this chapter unless superseded by special rules of the court
8 under this subsection. The superior court is encouraged to consider
9 entering, after notice and hearing and as the court determines
10 appropriate, pretrial orders from an adjudication commenced on October
11 12, 1977.

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

14 (1) The legislature finds that early settlement of contested claims
15 is needed for a fair and efficient adjudication of water rights.
16 Therefore, the department and other parties should identify
17 opportunities for settlement following the date set by the court for
18 filing evidence for all parties. To the extent consistent with court
19 rules, the court as it deems beneficial is encouraged to urge as many
20 parties to the adjudication as possible to reach timely agreement on
21 claimed water rights in a manner that limits costs to the public,
22 claimants, counties, courts, and the department. Further, at
23 appropriate times throughout the process the court as it deems
24 beneficial is encouraged to direct parties to utilize alternative
25 methods of dispute resolution, including informal meetings,
26 negotiation, mediation, or other methods to reach agreement on disputed
27 claims.

28 (2) Any time after the filing of all claims under RCW 90.03.140,
29 the department or another party may move the superior court to allow
30 parties to meet for settlement discussions for a set length of time,
31 either before an appointed mediator or without a mediator. For good
32 cause shown, the court may extend the length of time for settlement
33 discussions. The costs of mediation must be equitably borne by the
34 parties to the mediation.

35 (3) If the department and a claimant reach agreement on settlement,
36 the department shall file a motion to approve the settlement pursuant
37 to section 9(3)(a) of this act and shall disclose the terms of the

1 settlement to other parties to the adjudication. The court shall
2 conduct a hearing prior to approving a settlement and any party to the
3 adjudication may object or offer modifications to the settlement.

4 **Sec. 12.** RCW 90.03.180 and 1995 c 292 s 21 are each amended to
5 read as follows:

6 At the time of filing the (~~statement~~) adjudication claim as
7 provided in RCW 90.03.140, each defendant, except the United States or
8 an Indian tribe under 43 U.S.C. Sec. 666, shall pay to the clerk of the
9 superior court a fee as set under RCW (~~36.18.020~~) 36.18.016.

10 **Sec. 13.** RCW 90.03.200 and 1988 c 202 s 91 are each amended to
11 read as follows:

12 Upon the (~~filing of the evidence and the report of the department,~~
13 ~~any interested party may, on or before five days prior to the date of~~
14 ~~said hearing, file exceptions to such report in writing and such~~
15 ~~exception shall set forth the grounds therefor and a copy thereof shall~~
16 ~~be served personally or by registered mail upon all parties who have~~
17 ~~appeared in the proceeding. If no exceptions be filed, the court shall~~
18 ~~enter a decree determining the rights of the parties according to the~~
19 ~~evidence and the report of the department, whether such parties have~~
20 ~~appeared therein or not. If exceptions are filed the action shall~~
21 ~~proceed as in case of reference of a suit in equity and the court may~~
22 ~~in its discretion take further evidence or, if necessary, remand the~~
23 ~~case for such further evidence to be taken by the department's~~
24 ~~designee, and may require further report by him. Costs, not including~~
25 ~~taxable attorneys fees, may be allowed or not; if allowed, may be~~
26 ~~apportioned among the parties in the discretion of the court~~)) court's
27 determination of all issues, the court shall issue a final decree and
28 provide notice of the decree to all parties. The final decree must
29 order each party whose rights have been confirmed, except the United
30 States or an Indian tribe under 43 U.S.C. Sec. 666, to pay the
31 department the fees required by RCW 90.03.470(10) and any other
32 applicable fee schedule within ninety days after the department sends
33 notice to the party under RCW 90.03.240. Appellate review of the
34 decree shall be in the same manner as in other cases in equity, except
35 that review must be sought within sixty days from the entry thereof.

1 **Sec. 14.** RCW 90.03.210 and 2001 c 220 s 5 are each amended to read
2 as follows:

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

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

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

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

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

1 to certify portions of the appeal to the pollution control hearings
2 board, but the appellant must file a motion for certification no later
3 than ninety days after the appeal is filed under this section.

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

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

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

18 **Sec. 15.** RCW 90.03.240 and 1987 c 109 s 82 are each amended to
19 read as follows:

20 Upon the court's final determination of the rights to ~~((the~~
21 ~~diversion of))~~ water ~~((it shall be the duty of))~~, the department ~~((to))~~
22 shall issue to each person entitled to ~~((the diversion of))~~ a water
23 right by such a determination, a certificate ~~((under his official~~
24 ~~seal))~~ of adjudicated water right, setting forth the name and ~~((post~~
25 ~~office))~~ mailing address of record with the court of such person; the
26 priority and purpose of the right; the period during which said right
27 may be exercised, the point of diversion or withdrawal, and the place
28 of use; the land to which said water right is appurtenant ~~((and when~~
29 ~~applicable))~~; the maximum ~~((quantity))~~ annual and instantaneous
30 quantities of water allowed; and specific provisions or limitations or
31 both under which the water right has been confirmed.

32 The department shall provide notice to the water right holder that
33 the certificate has been prepared for issuance and that fees for the
34 issuance of the certificate are due in accordance with RCW 90.03.470
35 and any other applicable fee schedule. If the water right holder fails
36 to submit the required fees within one year from the date the notice

1 was issued by the department, the department may move the court for
2 sanctions for violation of the court's order in the final decree
3 requiring payment.

4 **Sec. 16.** 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. Subject to
9 the availability of state funding provided either by direct
10 appropriation or funded through the administrative office of the courts
11 for this specific purpose, the county in which an adjudication or a
12 suit to administer an adjudication is being held must be provided the
13 extraordinary costs imposed on the superior court of that county due to
14 the adjudication.

15 **Sec. 17.** RCW 90.44.220 and 1987 c 109 s 119 are each amended to
16 read as follows:

17 ~~((In its discretion or upon the application of any party claiming~~
18 ~~right to the withdrawal and use of public groundwater, the department~~
19 ~~may file a petition)) Upon the filing of a petition with the department
20 by a planning unit or by one or more persons claiming a right to any
21 waters within the state or when, after investigation, in the judgment
22 of the department, the public interest will be served by a
23 determination of the rights thereto, the department shall file a
24 petition to conduct an adjudication with the superior court of the
25 county for the determination of the rights of appropriators of any
26 particular groundwater body and all the provisions of RCW 90.03.110
27 through 90.03.240 ~~((as heretofore amended))~~ and sections 3 through 5,
28 8, 9, and 11 of this act, shall govern and apply to the adjudication
29 and determination of such groundwater body and to the ownership
30 thereof. Hereafter, in any proceedings for the adjudication and
31 determination of water rights--either rights to the use of surface
32 water or to the use of groundwater, or both--pursuant to chapter 90.03
33 RCW ~~((as heretofore amended))~~, all appropriators of groundwater or of
34 surface water in the particular basin or area may be included as
35 parties to such adjudication, as ~~((pertinent))~~ set forth in chapter
36 90.03 RCW.~~

1 **Sec. 18.** RCW 43.21B.110 and 2003 c 393 s 19 are each amended to
2 read as follows:

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

8 (a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431,
9 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.48.144, 90.56.310, and
10 90.56.330.

11 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
12 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,
13 90.14.130, 90.48.120, and 90.56.330.

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

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

24 (e) Decisions of local health departments regarding the issuance
25 and enforcement of permits to use or dispose of biosolids under RCW
26 70.95J.080.

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

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

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

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

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

5 (b) Hearings conducted by the department pursuant to RCW 70.94.332,
6 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

7 (c) (~~Proceedings conducted by the department, or the department's~~
8 ~~designee, under RCW 90.03.160 through 90.03.210 or 90.44.220.~~) Appeals
9 of decisions by the department under RCW 90.03.110 and 90.44.220.

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

12 (e) Appeals of decisions by the department as provided in chapter
13 43.21L RCW.

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

17 **Sec. 19.** RCW 4.12.040 and 1989 c 15 s 1 are each amended to read
18 as follows:

19 (1) No judge of a superior court of the state of Washington shall
20 sit to hear or try any action or proceeding when it shall be
21 established as hereinafter provided that said judge is prejudiced
22 against any party or attorney, or the interest of any party or attorney
23 appearing in such cause. In such case the presiding judge in judicial
24 districts where there is more than one judge shall forthwith transfer
25 the action to another department of the same court, or call in a judge
26 from some other court. In all judicial districts where there is only
27 one judge, a certified copy of the motion and affidavit filed in the
28 cause shall be transmitted by the clerk of the superior court to the
29 clerk of the superior court designated by the chief justice of the
30 supreme court. Upon receipt the clerk of said superior court shall
31 transmit the forwarded affidavit to the presiding judge who shall
32 direct a visiting judge to hear and try such action as soon as
33 convenient and practical.

34 (2) The presiding judge in judicial districts where there is more
35 than one judge, or the presiding judge of judicial districts where
36 there is only one judge, may send a case for trial to another court if
37 the convenience of witnesses or the ends of justice will not be

1 interfered with by such a course and the action is of such a character
2 that a change of venue may be ordered: PROVIDED, That in criminal
3 prosecutions the case shall not be sent for trial to any court outside
4 the county unless the accused shall waive his or her right to a trial
5 by a jury of the county in which the offense is alleged to have been
6 committed.

7 (3) This section does not apply to water right adjudications filed
8 under chapter 90.03 or 90.44 RCW. Disqualification of judges in water
9 right adjudications is governed by section 3 of this act.

10 **Sec. 20.** RCW 4.12.050 and 1941 c 148 s 1 are each amended to read
11 as follows:

12 (1) Any party to or any attorney appearing in any action or
13 proceeding in a superior court, may establish such prejudice by motion,
14 supported by affidavit that the judge before whom the action is pending
15 is prejudiced against such party or attorney, so that such party or
16 attorney cannot, or believes that he or she cannot, have a fair and
17 impartial trial before such judge: PROVIDED, That such motion and
18 affidavit is filed and called to the attention of the judge before he
19 or she shall have made any ruling whatsoever in the case, either on the
20 motion of the party making the affidavit, or on the motion of any other
21 party to the action, of the hearing of which the party making the
22 affidavit has been given notice, and before the judge presiding has
23 made any order or ruling involving discretion, but the arrangement of
24 the calendar, the setting of an action, motion or proceeding down for
25 hearing or trial, the arraignment of the accused in a criminal action
26 or the fixing of bail, shall not be construed as a ruling or order
27 involving discretion within the meaning of this proviso; and in any
28 event, in counties where there is but one resident judge, such motion
29 and affidavit shall be filed not later than the day on which the case
30 is called to be set for trial: AND PROVIDED FURTHER, That
31 notwithstanding the filing of such motion and affidavit, if the parties
32 shall, by stipulation in writing agree, such judge may hear argument
33 and rule upon any preliminary motions, demurrers, or other matter
34 thereafter presented: AND PROVIDED FURTHER, That no party or attorney
35 shall be permitted to make more than one such application in any action
36 or proceeding under this section and RCW 4.12.040.

1 (2) This section does not apply to water right adjudications filed
2 under chapter 90.03 or 90.44 RCW. Disqualification of judges in water
3 right adjudications is governed by section 3 of this act.

4 NEW SECTION. Sec. 21. Except for section 14 of this act, this act
5 applies only to adjudications initiated after the effective date of
6 this section.

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

9 (1) RCW 90.03.170 (Determination of water rights--Hearing--Notice--
10 Prior rights preserved) and 1987 c 109 s 77 & 1917 c 117 s 20; and

11 (2) RCW 90.03.190 (Determination of water rights--Transcript of
12 testimony--Filing--Notice of hearing) and 1987 c 109 s 78 & 1917 c 117
13 s 22.

14 NEW SECTION. Sec. 23. If any provision of this act or its
15 application to any person or circumstance is held invalid, the
16 remainder of the act or the application of the provision to other
17 persons or circumstances is not affected.

Passed by the House April 20, 2009.

Passed by the Senate April 14, 2009.

Approved by the Governor May 5, 2009.

Filed in Office of Secretary of State May 8, 2009.