

# FINAL BILL REPORT

## EHB 1350

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Synopsis as Enacted

**Brief Description:** Changing water right appeals procedures for rights subject to a general stream adjudication.

**Sponsors:** By Representatives G. Chandler and Linville.

**House Committee on Agriculture & Ecology**

**Senate Committee on Environment, Energy & Water**

### **Background:**

The Surface Water Code has established a means by which the various existing rights to surface water from a water body may be adjudicated in court to determine the validity of claims to water rights and to identify the amounts of water to which each person with a right is entitled, the order of priority (seniority) of those rights, and other aspects of the rights. It is called a general adjudication of water rights and is analogous to a quiet title action involving various claims of land ownership in a particular area. The Ground Water Code applies this procedure to determining rights to ground water as well. The rights subject to such an adjudication proceeding include all rights to use the water, including diversionary and instream uses and water rights of the United States. Federal law authorizes the water rights of the United States to be adjudicated in state court if certain findings are made by a federal court. A general adjudication proceeding for water rights has been underway for surface water rights in the Yakima River watershed since the late 1970s.

In such a general adjudication proceeding, the Department of Ecology (DOE) acts as a referee for the superior court conducting the proceeding. Although the Pollution Control Hearings Board (PCHB) generally has jurisdiction to review appeals of the decisions of the DOE, that jurisdiction does not apply to proceedings of the department relating to such a general adjudication proceeding.

### **Summary:**

The jurisdiction of the PCHB is altered regarding actions related to general adjudication proceedings for water rights. Excluded from the jurisdiction of the PCHB are such general adjudication proceedings that are conducted by the DOE, rather than proceedings of the DOE that are simply related to such general adjudications. Once the PCHB has reviewed a decision of the DOE regarding transfers or changes of existing water rights that are themselves subject to a general adjudication proceeding for water rights, any

petition for obtaining superior court review of the PCHB's decision must be filed directly with the superior court conducting the general adjudication. The petition for review must be consolidated with the general adjudication.

Special rules are established for any review of change or transfer decisions made by the DOE for rights that are subject to a general adjudication proceeding that was begun before October 13, 1977. If the appeal includes a challenge to the DOE's tentative determinations regarding the validity and extent of the water right being changed or transferred, the court's review is de novo. If the appeal includes a challenge to a part of the DOE's decisions other than those regarding the validity and extent of the water right, that part must be certified by the court to the PCHB for the board's review and decision. The PCHB's review must be scheduled to afford all parties full opportunity to participate before the court and the board.

The decision of the PCHB may be appealed to the court conducting the general adjudication proceeding. A party to the general adjudication is a party to such an appeal of the PCHB's decision only if the party files or is served with a petition for review. Standing to appeal is not limited to the parties to the general adjudication proceeding.

The provisions of this act do not affect or modify any rights of an Indian tribe, or the rights of a federal agency or other entity arising under federal law. Nothing in the act may 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.

**Votes on Final Passage:**

House 89 5  
Senate 44 1 (Senate amended)  
House 83 0 (House concurred)

**Effective:** May 9, 2001