

ESHB 1571 - S COMM AMD

By Committee on Environment, Water & Energy

ADOPTED AND ENGROSSED 04/14/2009

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 90.03.110 and 1987 c 109 s 72 are each amended to
4 read as follows:

5 (1) Upon the filing of a petition with the department by a planning
6 unit or by one or more persons claiming the right to ((divert)) any
7 waters within the state or when, after investigation, in the judgment
8 of the department, the ((interest of the public will be subserved by a
9 determination of the rights thereto, it shall be the duty of the
10 department to)) public interest will be served by a determination of
11 the rights thereto, the department shall prepare a statement of the
12 facts, together with a plan or map of the locality under investigation,
13 and file such statement and plan or map in the superior court of the
14 county in which said water is situated, or, in case such water flows or
15 is situated in more than one county, in the county which the department
16 shall determine to be the most convenient to the parties interested
17 therein. Such a statement shall ~~((contain substantially the following~~
18 ~~matter, to wit:~~

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

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

24 (a) Either (i) identify each person or entity owning real property
25 situated within the area to be adjudicated but outside the boundaries
26 of a city, town, or special purpose district that provides water to
27 property within its service area; (ii) identify all known persons
28 claiming a right to the water sought to be determined; or (iii)
29 identify both; and

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

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

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

8 (b) Report to the appropriate committees of the legislature on the
9 estimated budget needs for the court and the department to conduct the
10 adjudication.

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

13 (1) Upon the filing of the statement and map as provided in RCW
14 90.03.110 the judge of such superior court shall make an order
15 directing summons to be issued, and fixing the return day thereof,
16 which shall be not less than ((sixty)) one hundred nor more than
17 ((ninety)) one hundred thirty days, after the making of such order:
18 PROVIDED, That for good cause, the court, at the request of the
19 department, may modify said time period.

20 (2) A summons issued under this section shall ((thereupon)) be
21 issued out of said superior court, signed and attested by the clerk
22 thereof, in the name of the state of Washington, as plaintiff, against
23 all known persons ((claiming the right to divert the water involved and
24 also all persons unknown claiming the right to divert the water
25 involved, which said)) identified by the department under RCW
26 90.03.110. The summons shall contain a brief statement of the objects
27 and purpose of the proceedings and shall require the defendants to
28 appear on the return day thereof, and make and file ((a statement of))
29 an adjudication claim to, or interest in, the water involved and a
30 statement that unless they appear at the time and place fixed and
31 assert such right, judgment will be entered determining their rights
32 according to the evidence: PROVIDED, HOWEVER, That any persons
33 claiming the right to ((the use of)) water by virtue of a contract with
34 a claimant to the right to divert the same, shall not be necessary
35 parties to the proceeding.

36 (3) To the extent consistent with court rules and subject to the
37 availability of funds provided either by direct appropriation or funded

1 through the administrative office of the courts for this specific
2 adjudicative proceeding, the court is encouraged to conduct the water
3 rights adjudication employing innovative practices and technologies
4 appropriate to large scale and complex cases, such as: (a) Electronic
5 filing of documents, including notice and claims; (b) appearance via
6 teleconferencing; (c) prefiling of testimony; and (d) other practices
7 and technologies consistent with court rules and emerging technologies.

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

10 (1) A judge in a water right adjudication filed under this chapter
11 may be partially or fully disqualified from hearing the adjudication.
12 Partial disqualification means disqualification from hearing specified
13 claims. Full disqualification means disqualification from hearing any
14 aspect of the adjudication.

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

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

22 (2) A judge may recuse himself or herself under this section or a
23 party may file a motion for disqualification. A motion for
24 disqualification must state whether the remedy being sought is full or
25 partial disqualification.

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

29 (b) For a party who is joined in the adjudication after the
30 original pleadings have been filed, a motion for disqualification is
31 timely if it is filed within the earliest of either (i) thirty days of
32 being joined in the adjudication; or (ii) after the joinder of the
33 party, before the judge issues a discretionary order or ruling relating
34 to the joined party.

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

1 (d) For purposes of this section, "discretionary order or ruling"
2 has the same meaning as "order or ruling involving discretion" in RCW
3 4.12.050.

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

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

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

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

18 Upon expiration of the filing period established under RCW
19 90.03.120(2), the department shall file a motion for default against
20 defendants who have been served but who have failed to file an
21 adjudication claim under RCW 90.03.140. A party in default may file a
22 late claim under the same circumstances the party could respond or
23 defend under court rules on default judgments.

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

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

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

33 Service of said summons shall be made in the same manner and with
34 the same force and effect as service of summons in civil actions
35 commenced in the superior courts of the state: PROVIDED, That (~~for~~

1 ~~good cause, the court, at the request of the department, as an~~
2 ~~alternative to personal service, may authorize service of summons to~~
3 ~~be)) as an alternative to personal service, service may be made by~~
4 ~~certified mail, with return receipt signed and dated by defendant, a~~
5 ~~spouse of a defendant, or another person authorized to accept service.~~
6 ~~If the defendants, or either of them, cannot be found within the state~~
7 ~~of Washington, of which the return of the sheriff of the county in~~
8 ~~which the proceeding is pending or the failure to sign a receipt for~~
9 ~~certified mail shall be prima facie evidence, upon the filing of an~~
10 ~~affidavit by the department, or its attorney, in conformity with the~~
11 ~~statute relative to the service of summons by publication in civil~~
12 ~~actions, such service may be made by publication in a newspaper of~~
13 ~~general circulation in the county in which such proceeding is pending,~~
14 ~~and also publication of said summons in a newspaper of general~~
15 ~~circulation in each county in which any portion of the water is~~
16 ~~situated, once a week for six consecutive weeks (six publications).~~
17 ~~((In cases where personal service can be had, such summons shall be~~
18 ~~served at least twenty days before the return day thereof.)) The~~
19 ~~summons by publication shall state that ((~~statements of~~)) adjudication~~
20 ~~claims must be filed within ((~~twenty~~)) sixty days after the last~~
21 ~~publication or before the return date, whichever is later. In cases~~
22 ~~where personal service or service by certified mail is had, summons~~
23 ~~must be served at least sixty days before the return day thereof. For~~
24 ~~summons by certified mail, completion of service occurs upon the date~~
25 ~~of receipt by the defendant.~~

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

28 **Sec. 7.** RCW 90.03.140 and 1987 c 109 s 75 are each amended to read
29 as follows:

30 (1) On or before the ((~~return day of such summons, each defendant~~
31 ~~shall file in the office of the clerk of said court a statement, and~~
32 ~~therewith a copy thereof for the department, containing substantially~~
33 ~~the following:~~

34 ~~(1) The name and post office address of defendant.~~

35 ~~(2) The full nature of the right, or use, on which the claim is~~
36 ~~based.~~

1 ~~(3) The time of initiation of such right and commencement of such~~
2 ~~use.~~

3 ~~(4) The date of beginning and completion of construction.~~

4 ~~(5) The dimensions and capacity of all ditches existing at the time~~
5 ~~of making said statement.~~

6 ~~(6) The amount of land under irrigation and the maximum quantity of~~
7 ~~water used thereon prior to the date of said statement and if for~~
8 ~~power, or other purposes, the maximum quantity of water used prior to~~
9 ~~date of said statement.~~

10 ~~(7) The legal description of the land upon which said water has~~
11 ~~been, or may be, put to beneficial use, and the legal description of~~
12 ~~the subdivision of land on which the point of diversion is located.~~

13 ~~Such statement))~~ date specified in the summons, each defendant
14 shall file with the clerk of the superior court an adjudication claim
15 on a form and in a manner provided by the department, and mail or
16 electronically mail a copy to the department. The department shall
17 provide information that will assist claimants of small uses of water
18 in completing their adjudication claims. The adjudication claim must
19 contain substantially the following, except that when the legal basis
20 for the claimed right is a federally reserved right, the information
21 must be filed only as applicable:

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

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

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

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

30 (e) The maximum amount of land ever under irrigation and the
31 maximum annual and instantaneous quantities of water ever used thereon
32 prior to the date of the statement and if for power, or other purposes,
33 the maximum annual and instantaneous quantities of water ever used
34 prior to the date of the adjudication claim;

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

36 (g) If located outside the boundaries of a city, town, or special
37 purpose district that provides water to property within its service

1 area, the legal description and county tax parcel number of the land
2 upon which the water as presently claimed has been, or may be, put to
3 beneficial use;

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

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

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

12 (k) Whether a statement of claim relating to the water right was
13 filed under chapter 90.14 RCW or whether a declaration relating to the
14 water right was filed under chapter 90.44 RCW and, if so, the claim or
15 declaration number, and whether the right is documented by a permit or
16 certificate and, if so, the permit number or certificate number. When
17 the source is a well, the well log number must be provided, when
18 available;

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

22 (2) The adjudication claim shall be verified on oath by the
23 defendant(, and in the discretion of the court may be amended)). The
24 department shall furnish the form for the adjudication claim. A
25 claimant may file an adjudication claim electronically if authorized
26 under state and local court rules. The department may assist claimants
27 in their effort by making the department's pertinent records and
28 information accessible electronically or by other means and through
29 conferring with claimants.

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

32 Within the date set by the court for filing evidence, each claimant
33 shall file with the court evidence to support the claimant's
34 adjudication claims. The court is encouraged to set a date for filing
35 evidence that is reasonable and fair for the timely processing of the
36 adjudication. The evidence may include, without limitation, permits or
37 certificates of water right, statements of claim made under chapter

1 90.14 RCW, deeds, documents related to issuance of a land patent,
2 aerial photographs, decrees of previous water rights adjudications,
3 crop records, records of livestock purchases and sales, records of
4 power use, metering records, declarations containing testimonial
5 evidence, records of diversion, withdrawal or storage and delivery by
6 irrigation districts or ditch companies, and any other evidence to
7 support that a water right was obtained and was not thereafter
8 abandoned or relinquished. The evidence filed may include matters that
9 are outside the original adjudication claim filed, and within the date
10 set by the court for filing evidence, the claimant may amend the
11 adjudication claim to conform to the evidence filed. Thereafter,
12 except for good cause shown, a claimant may not file additional
13 evidence to support the claim.

14 NEW SECTION. **Sec. 9.** A new section is added to chapter 90.03 RCW
15 to read as follows:

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

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

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

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

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

28 (ii) The measurement of stream flows;

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

30 (iv) An estimation of storage capacity and the amount of water
31 stored;

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

33 (vi) The number of residences served;

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

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

1 (b) The department may also take other necessary steps and gather
2 other data and information as may be essential to the proper
3 understanding of the water uses and associated rights of the affected
4 water users, including review of each claimant's adjudication claim and
5 evidence the claimant filed to support the claim. The claimants and
6 the department are encouraged to confer as may be beneficial to clarify
7 the factual and legal basis for the claim. To the extent consistent
8 with court rules, the court may deem it appropriate to encourage
9 claimants and the department to work closely together to reach
10 agreement on a claimed water right that may result in timely settlement
11 of water rights, reduced costs for the parties, greater equity and
12 general public service, and better information that may be used for
13 overall water management.

14 (3) The department shall file with the court the department's
15 report of findings as to each adjudication claim filed timely under RCW
16 90.03.140. The department may divide its report of findings into two
17 or more segments, covering particular drainages, uses, or other
18 appropriate bases for dividing the report on adjudication claims.
19 Based on the evidence filed by claimants and the department's report of
20 findings, the department shall file with the superior court either or
21 both of the following motions:

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

25 (b) A motion seeking determination of contested claims before the
26 court.

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

29 ~~(1) Upon ((the completion of the service of summons as hereinbefore~~
30 ~~provided, the superior court in which said proceeding is pending shall~~
31 ~~make an order referring said proceeding to the department to take~~
32 ~~testimony by its duly authorized designee, as referee, and the designee~~
33 ~~shall report to and file with the superior court of the county in which~~
34 ~~such cause is pending a transcript of such testimony for adjudication~~
35 ~~thereon by such court. The superior court may, in any complex case~~
36 ~~with more than one thousand named defendants, including the United~~
37 ~~States, retain for hearing and further processing such portions of the~~

1 ~~proceeding as pertain to a discrete class or classes of defendants or~~
2 ~~claims of water rights if the court determines that: (1) Resolution of~~
3 ~~claims of such classes appear to involve significant issues of law,~~
4 ~~either procedural or substantive; and (2) such a retention will both~~
5 ~~expedite the conclusion of the case and reduce the overall expenditures~~
6 ~~of the plaintiff, defendants, and the court)) filing of the~~
7 department's motion or motions under section 9(3) of this act, any
8 party with a claim filed under RCW 90.03.140 for the appropriation of
9 water or waters of the subject adjudication may file and serve a
10 response to the department's motion or motions within the time set by
11 the court for such a response. Objections must include specific
12 information in regard to the particular disposition against which the
13 objection is being made. Objections must also state the underlying
14 basis of the objection being made, including general information about
15 the forms of evidence that support the objection. Any party may file
16 testimony with the court and serve it on other parties. If a party
17 intends to cross-examine a claimant or witness based on another party's
18 prefiled testimony, the party intending to cross-examine shall file a
19 notice of intent to cross-examine no later than fifteen days in advance
20 of the hearing. If no notice of intent to cross-examine based on the
21 prefiled testimony is given, then the claimant or witness is not
22 required to appear at the hearing. Any party may present evidence in
23 support of or in response to an objection.

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

26 (3) The superior court may adopt special rules of procedure for an
27 adjudication of water rights under this chapter, including simplified
28 procedures for claimants of small uses of water. The rules of
29 procedure for a superior court apply to an adjudication of water rights
30 under this chapter unless superseded by special rules of the court
31 under this subsection. The superior court is encouraged to consider
32 entering, after notice and hearing and as the court determines
33 appropriate, pretrial orders from an adjudication commenced on October
34 12, 1977.

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

37 (1) The legislature finds that early settlement of contested claims

1 is needed for a fair and efficient adjudication of water rights.
2 Therefore, the department and other parties should identify
3 opportunities for settlement following the date set by the court for
4 filing evidence for all parties. To the extent consistent with court
5 rules, the court as it deems beneficial is encouraged to urge as many
6 parties to the adjudication as possible to reach timely agreement on
7 claimed water rights in a manner that limits costs to the public,
8 claimants, counties, courts, and the department. Further, at
9 appropriate times throughout the process the court as it deems
10 beneficial is encouraged to direct parties to utilize alternative
11 methods of dispute resolution, including informal meetings,
12 negotiation, mediation, or other methods to reach agreement on disputed
13 claims.

14 (2) Any time after the filing of all claims under RCW 90.03.140,
15 the department or another party may move the superior court to allow
16 parties to meet for settlement discussions for a set length of time,
17 either before an appointed mediator or without a mediator. For good
18 cause shown, the court may extend the length of time for settlement
19 discussions. The costs of mediation must be equitably borne by the
20 parties to the mediation.

21 (3) If the department and a claimant reach agreement on settlement,
22 the department shall file a motion to approve the settlement pursuant
23 to section 9(3)(a) of this act and shall disclose the terms of the
24 settlement to other parties to the adjudication. The court shall
25 conduct a hearing prior to approving a settlement and any party to the
26 adjudication may object or offer modifications to the settlement.

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

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

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

35 Upon the (~~filing of the evidence and the report of the department,~~
36 ~~any interested party may, on or before five days prior to the date of~~

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

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

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

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

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

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

16 (c) If the appeal includes a challenge to any portion of the
17 department's decision other than the tentative determinations of the
18 validity and extent of the right, the court must certify to the
19 pollution control hearings board for review and decision those portions
20 of the department's decision. Review by the pollution control hearings
21 board shall be conducted consistent with chapter 43.21B RCW and the
22 board's implementing regulations, except that the requirements for
23 filing, service, and content of the notice of appeal shall be governed
24 by (a) of this subsection. Any party to an appeal may move the court
25 to certify portions of the appeal to the pollution control hearings
26 board, but the appellant must file a motion for certification no later
27 than ninety days after the appeal is filed under this section.

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

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

35 (3) Nothing in this section shall be construed to affect or modify
36 any treaty or other federal rights of an Indian tribe, or the rights of
37 any federal agency or other person or entity arising under federal law.
38 Nothing in this section is intended or shall be construed as affecting

1 or modifying any existing right of a federally recognized Indian tribe
2 to protect from impairment its federally reserved water rights in
3 federal court.

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

6 Upon the court's final determination of the rights to ~~((the~~
7 ~~diversion of))~~ water ~~((it shall be the duty of))~~, the department ~~((to))~~
8 shall issue to each person entitled to ~~((the diversion of))~~ a water
9 right by such a determination, a certificate ~~((under his official~~
10 ~~seal))~~ of adjudicated water right, setting forth the name and ~~((post~~
11 ~~office))~~ mailing address of record with the court of such person; the
12 priority and purpose of the right; the period during which said right
13 may be exercised, the point of diversion or withdrawal, and the place
14 of use; the land to which said water right is appurtenant ~~((and when~~
15 ~~applicable))~~; the maximum ~~((quantity))~~ annual and instantaneous
16 quantities of water allowed; and specific provisions or limitations or
17 both under which the water right has been confirmed.

18 The department shall provide notice to the water right holder that
19 the certificate has been prepared for issuance and that fees for the
20 issuance of the certificate are due in accordance with RCW 90.03.470
21 and any other applicable fee schedule. If the water right holder fails
22 to submit the required fees within one year from the date the notice
23 was issued by the department, the department may move the court for
24 sanctions for violation of the court's order in the final decree
25 requiring payment.

26 **Sec. 16.** RCW 90.03.243 and 1982 c 15 s 1 are each amended to read
27 as follows:

28 The expenses incurred by the state in a proceeding to determine
29 rights to water initiated under RCW 90.03.110 or 90.44.220 or upon
30 appeal of such a determination shall be borne by the state. Subject to
31 the availability of state funding provided either by direct
32 appropriation or funded through the administrative office of the courts
33 for this specific purpose, the county in which an adjudication or a
34 suit to administer an adjudication is being held must be provided the
35 extraordinary costs imposed on the superior court of that county due to
36 the adjudication.

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

3 (~~In its discretion or upon the application of any party claiming~~
4 ~~right to the withdrawal and use of public groundwater, the department~~
5 ~~may file a petition~~) Upon the filing of a petition with the department
6 by a planning unit or by one or more persons claiming a right to any
7 waters within the state or when, after investigation, in the judgment
8 of the department, the public interest will be served by a
9 determination of the rights thereto, the department shall file a
10 petition to conduct an adjudication with the superior court of the
11 county for the determination of the rights of appropriators of any
12 particular groundwater body and all the provisions of RCW 90.03.110
13 through 90.03.240 (~~as heretofore amended~~) and sections 3 through 5,
14 8, 9, and 11 of this act, shall govern and apply to the adjudication
15 and determination of such groundwater body and to the ownership
16 thereof. Hereafter, in any proceedings for the adjudication and
17 determination of water rights--either rights to the use of surface
18 water or to the use of groundwater, or both--pursuant to chapter 90.03
19 RCW (~~as heretofore amended~~), all appropriators of groundwater or of
20 surface water in the particular basin or area may be included as
21 parties to such adjudication, as (~~pertinent~~) set forth in chapter
22 90.03 RCW.

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

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

30 (a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431,
31 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.48.144, 90.56.310, and
32 90.56.330.

33 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
34 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,
35 90.14.130, 90.48.120, and 90.56.330.

36 (c) Except as provided in RCW 90.03.210(2), the issuance,
37 modification, or termination of any permit, certificate, or license by

1 the department or any air authority in the exercise of its
2 jurisdiction, including the issuance or termination of a waste disposal
3 permit, the denial of an application for a waste disposal permit, the
4 modification of the conditions or the terms of a waste disposal permit,
5 or a decision to approve or deny an application for a solid waste
6 permit exemption under RCW 70.95.300.

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

9 (e) Decisions of local health departments regarding the issuance
10 and enforcement of permits to use or dispose of biosolids under RCW
11 70.95J.080.

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

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

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

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

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

28 (b) Hearings conducted by the department pursuant to RCW 70.94.332,
29 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

30 ~~((Proceedings conducted by the department, or the department's~~
31 ~~designee, under RCW 90.03.160 through 90.03.210 or 90.44.220.)) Appeals~~
32 ~~of decisions by the department under RCW 90.03.110 and 90.44.220.~~

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

35 (e) Appeals of decisions by the department as provided in chapter
36 43.21L RCW.

37 (3) Review of rules and regulations adopted by the hearings board

1 shall be subject to review in accordance with the provisions of the
2 Administrative Procedure Act, chapter 34.05 RCW.

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

5 (1) No judge of a superior court of the state of Washington shall
6 sit to hear or try any action or proceeding when it shall be
7 established as hereinafter provided that said judge is prejudiced
8 against any party or attorney, or the interest of any party or attorney
9 appearing in such cause. In such case the presiding judge in judicial
10 districts where there is more than one judge shall forthwith transfer
11 the action to another department of the same court, or call in a judge
12 from some other court. In all judicial districts where there is only
13 one judge, a certified copy of the motion and affidavit filed in the
14 cause shall be transmitted by the clerk of the superior court to the
15 clerk of the superior court designated by the chief justice of the
16 supreme court. Upon receipt the clerk of said superior court shall
17 transmit the forwarded affidavit to the presiding judge who shall
18 direct a visiting judge to hear and try such action as soon as
19 convenient and practical.

20 (2) The presiding judge in judicial districts where there is more
21 than one judge, or the presiding judge of judicial districts where
22 there is only one judge, may send a case for trial to another court if
23 the convenience of witnesses or the ends of justice will not be
24 interfered with by such a course and the action is of such a character
25 that a change of venue may be ordered: PROVIDED, That in criminal
26 prosecutions the case shall not be sent for trial to any court outside
27 the county unless the accused shall waive his or her right to a trial
28 by a jury of the county in which the offense is alleged to have been
29 committed.

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

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

35 (1) Any party to or any attorney appearing in any action or
36 proceeding in a superior court, may establish such prejudice by motion,

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

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

27 NEW SECTION. Sec. 21. Except for section 14 of this act, this act
28 applies only to adjudications initiated after the effective date of
29 this section.

30 NEW SECTION. Sec. 22. The following acts or parts of acts are
31 each repealed:

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

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

1 NEW SECTION. **Sec. 23.** If any provision of this act or its
2 application to any person or circumstance is held invalid, the
3 remainder of the act or the application of the provision to other
4 persons or circumstances is not affected."

ESHB 1571 - S COMM AMD

By Committee on Environment, Water & Energy

ADOPTED AND ENGROSSED 04/14/2009

5 On page 1, line 1 of the title, after "rights;" strike the
6 remainder of the title and insert "amending RCW 90.03.110, 90.03.120,
7 90.03.130, 90.03.140, 90.03.160, 90.03.180, 90.03.200, 90.03.210,
8 90.03.240, 90.03.243, 90.44.220, 43.21B.110, 4.12.040, and 4.12.050;
9 adding new sections to chapter 90.03 RCW; creating a new section; and
10 repealing RCW 90.03.170 and 90.03.190."

--- END ---