BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #: Z-0195.5/09 5th draft

ATTY/TYPIST: ML:lel

BRIEF DESCRIPTION: Regarding the adjudication of water rights.

AN ACT Relating to the adjudication of water rights; amending RCW 90.03.105, 90.03.110, 90.03.120, 90.03.130, 90.03.140, 90.03.160, 90.03.180, 90.03.200, 90.03.240, 90.03.243, 90.03.245, 90.44.220, and 43.21B.110; adding new sections to chapter 90.03 RCW; creating a new section; and repealing RCW 90.03.170 and 90.03.190.

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 90.03 RCW to read as follows:

(1) The department, in its discretion, may commence a limited adjudication of water rights under RCW 90.03.110 in order to determine the rights of one or a limited number of the total potential claimants to water from a source in circumstances where the issues requiring determination of water do not affect every water right holder in a given basin. The department may not join as a party an Indian tribe or the United States or any of its agencies or departments in a limited adjudication. The department shall consult with any federally recognized Indian tribe with an interest in the subject waters before filing a limited adjudication. An Indian tribe, the United States or any of its agencies or departments, or any other water right holder may

move to intervene or participate as an amicus in a limited adjudication if the movant's interests may be affected by the limited adjudication. The court in a limited adjudication may grant or deny a motion to intervene or participate as an amicus.

(2) The judgment in a limited adjudication is binding among the department and the water user or users whose rights are determined until such a time as a partial or final decree is entered in a general adjudication that includes rights to the uses determined under this section, but is not binding on any water user whose rights were not determined in the limited adjudication. The judgment in a limited adjudication is not binding in such a general adjudication, but is admissible as prima facie evidence of the existence and conditions of the right. A water master may rely on such a determination in dividing, regulating, and controlling the use of water under RCW 90.03.070.

(3) The procedures applicable to a general adjudication described in this chapter are applicable to a limited adjudication, unless special procedures for a limited adjudication are described.

Sec. 2. RCW 90.03.105 and 1997 c 442 s 301 are each amended to read as follows:

The legislature finds that the lack of certainty regarding water rights within a water resource basin may impede management and planning for water resources. The legislature further finds that planning units conducting water resource planning under chapter 90.82 RCW may find that the certainty provided by a general <u>or limited</u> adjudication of water rights under this chapter is required for water planning or water management in a water resource inventory area or in a portion of the area. Therefore, such planning units may petition the department to conduct such a general <u>or limited</u> adjudication and the department shall give high priority to such a request in initiating any such general <u>or limited</u> adjudication((~~s~~)) under this chapter.

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

<u>(1)</u> Upon the filing of a petition with the department <u>by a planning unit or</u> by one or more persons claiming the right to ((~~divert~~)) <u>use or store for use</u> any waters within the state or when, after investigation,

in the judgment of the department, ((~~the interest of the public will be subserved by a determination of the rights thereto, it shall be the duty of the department to~~)) an adjudication is needed for effective water management, the department will determine whether the public interest would be served by a determination of the rights to the waters. The department, in consultation with the administrative office of the courts, will determine whether sufficient resources are available to the department, and to the superior court in which an adjudication may be filed, to conduct an adjudication in addition to discharging other duties. If both of the department's determinations are affirmative, the department shall prepare a statement of the facts, together with a plan or map of the locality under investigation, and file such statement and plan or map in the superior court of the county in which said water is situated, or, in case such water flows or is situated in more than one county, in the county which the department shall determine to be the most convenient to the parties interested therein. Such statement shall contain substantially the following matter((~~, to wit~~)):

((~~(1)~~)) (a) For a general adjudication, either the names of all known persons claiming the right to ((~~divert said~~)) use or store for use the water((~~, the right to the diversion of which is sought to be determined, and~~

~~(2)~~)) or the names of all owners of real property in the area to be adjudicated, or both, at the department's discretion; or

(b) For a limited adjudication, the names of the persons whose rights to the diversion, withdrawal, or storage of water are sought to be determined; and

(c) For either a general or limited adjudication, a brief statement of the facts in relation to such water, and the necessity for a determination of the rights thereto.

(2) The department may, in its discretion, initiate a general adjudication or a limited adjudication of rights to surface water only, groundwater only, or both surface water and groundwater together.

Sec. 4. RCW 90.03.120 and 1987 c 109 s 73 are each amended to read as follows:

(1) Upon the filing of the statement of facts and a plan or map as provided in RCW 90.03.110 the ((~~judge of such~~)) superior court shall

((~~make an~~)) order ((~~directing~~)) summons to be issued((~~, and fixing~~)). The return ((~~day thereof, which~~)) date of the summons shall ((~~be~~)) not be less than ((~~sixty~~)) one hundred nor more than ((~~ninety~~)) one hundred thirty days((~~,~~)) after the ((~~making~~)) entry of such order((~~: PROVIDED, That~~)). For good cause, the court, at the request of the department or any party, may modify ((~~said~~)) the time period. ((~~A~~)) The summons shall ((~~thereupon~~)) be issued out of ((~~said~~)) the superior court, signed and attested by the clerk thereof, served by the department, in the name of the state of Washington, as plaintiff, against:

(a) For a general adjudication, at the department's discretion, either (i) all known persons claiming the right to ((~~divert~~)) use or store for use the water involved and ((~~also~~)) all persons unknown claiming the right to ((~~divert~~)) use or store for use the water involved((~~, which said~~)); (ii) all owners of real property in the area to be adjudicated; or (iii) both (a)(i) and (ii) of this subsection; or

(b) For a limited adjudication, all persons whose right or claim to use water is sought to be determined.

(2) The summons shall contain a brief statement of the objects and purpose of the proceedings and a description of the subject water or waters. The summons shall require the defendants by a specified date to appear ((~~on the return day thereof~~)), and to make and file ((~~a statement of~~)) with the court an adjudication claim to((~~, or interest in,~~)) the subject water or waters involved ((~~and a statement that unless they appear at the time and place fixed and assert such right, judgment will be entered determining their rights according to the evidence: PROVIDED, HOWEVER, That any persons claiming the right to the use of water by virtue of a contract with claimant to the right to divert the same, shall not be necessary parties to the proceeding~~)) in the adjudication. The summons must also contain a statement that unless the defendant files an adjudication claim by the specified date, a default judgment may be issued by the superior court. The adjudication claim must contain the elements listed under RCW 90.03.140.

(3) Persons claiming the right to the use of water by virtue of a contract with a claimant for the right to use or store for use the water are not necessary parties to the proceeding.

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

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

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

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

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

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

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

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

(b) For a party who is joined in the adjudication after the original pleadings have been filed, a motion for disqualification is timely if it is filed (i) within thirty days of being joined in the adjudication; or (ii) before the judge issues a discretionary order or ruling relating to the joined party, whichever occurs first.

(c) When a motion for disqualification is untimely filed under this

subsection (3), the motion will be granted only when necessary to correct a substantial injustice.

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

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

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

(6) Except as stated in subsection (3)(d) of this section, RCW 4.12.040 and 4.12.050, which otherwise govern the disqualification of superior court judges, do not apply to limited or general water right adjudications filed under this chapter. The standards set forth in RCW 2.28.030, which govern the disqualification of judicial officers generally, may be grounds for disqualification under this section.

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

Upon expiration of the filing period established under RCW 90.03.120(2), the department shall file a motion for default against defendants who have been served but who have failed to file an adjudication claim under RCW 90.03.140. When a party served by summons fails to file a claim, it must be presumed that the party either has no valid claim to the use of water or waters being adjudicated or the party has since abandoned a preexisting right or claim to the water.

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

If an adjudication claim is for a use for which a statement of claim was required to be filed under chapter 90.14 RCW and no such claim was filed, the department may move that the adjudication claim be

denied. The court shall grant the department's motion unless the claimant shows good cause why the motion should not be granted.

Sec. 8. RCW 90.03.130 and 1987 c 109 s 74 are each amended to read as follows:

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

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

Sec. 9. RCW 90.03.140 and 1987 c 109 s 75 are each amended to read as follows:

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

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

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

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

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

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

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

~~(7) The legal description of the land upon which said water has been, or may be, put to beneficial use, and the legal description of the subdivision of land on which the point of diversion is located~~)) date specified in the summons, each defendant shall file with the clerk of the superior court an adjudication claim on a form and in a manner provided by the department, and mail or electronically mail a copy to the department, containing substantially the following:

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

(b) The purpose or purposes of use of the water and the extent of each use: For example, domestic (two residences served), stock watering (fifty cow/calf units), irrigation (ten acres), municipal, group domestic, industrial, commercial, power generation, fish propagation, instream flow, other.

(c) For each use, the date water was put to first use by the original appropriator.

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

(e) The dimensions and maximum capacity of the water conveyance system existing at the time the adjudication claim is made.

(f) The maximum amount of land ever under irrigation and the maximum annual and instantaneous quantities of water ever used thereon

prior to the date of the statement and if for power, or other purposes, the maximum annual and instantaneous quantities of water ever used prior to the date of the adjudication claim.

(g) The period of time in which water is used annually (e.g. year-around, April 1st through October 15th, etc.).

(h) The legal description and county tax parcel number of the land upon which the water as presently claimed has been, or may be, put to beneficial use, and the legal description and county tax parcel number of the subdivision of land on which the point of diversion is located as well as land survey or geographic positioning coordinates of the same if available, or both.

(i) Whether a right to surface or groundwater or both is claimed and the source of the surface water and the location and depth of all wells.

(j) The legal basis for the claimed right: For example, by appropriation, riparian, federally reserved, or other.

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

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

((~~Such statement~~)) (2) The adjudication claim shall be verified on oath by the defendant, and in the discretion of the court may be amended. The department shall furnish the form for the adjudication claim. A claimant may file an adjudication claim electronically if authorized under state and local court rule. The department may assist claimants in their effort by making its pertinent records and information accessible electronically or by other means and through conferring with claimants.

NEW SECTION. **Sec. 10.** A new section is added to chapter 90.03 RCW to read as follows:

Within one hundred twenty days after the date set by the court for

filing an adjudication claim, unless the time period is extended by the court, each claimant shall file with the court evidence to support the claimant's adjudication claims. The evidence may include, without limitation, permits or certificates of water right, statements of claim made under chapter 90.14 RCW, deeds, aerial photographs, decrees of previous water rights adjudications, crop records, records of livestock purchases and sales, records of power use, metering records, declarations containing testimonial evidence, records of diversion, withdrawal or storage and delivery by irrigation districts or ditch companies, and any other evidence to support that a water right was obtained and was not thereafter abandoned or relinquished. Thereafter, except for good cause shown, a claimant may not file additional evidence to support the claim.

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

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

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

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

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

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

(ii) The measurement of stream flows;

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

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

(v) The types and numbers of stock watered;

(vi) The number of residences served;

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

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

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

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

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

(b) A motion seeking determination of contested claims before the court or a court commissioner.

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

After a claimant files an adjudication claim under RCW 90.03.140, the department shall have the right to enter upon the lands appurtenant to such a claim in order to conduct an examination under section 11 of this act, except the department does not have the right to enter upon lands held in trust by the United States on behalf of a tribe or an allottee or lands owned by tribal members or a tribe within an Indian reservation.

The department shall make a good faith effort to notify a landowner or a person with a right to possess the land prior to entering upon

private land. If a water right holder, a claimant, or a person with a right to possess the land refuses to allow entry onto private lands, the department may obtain a civil warrant for entry from the superior court of the county in which the land is located. The superior court has jurisdiction to issue such a warrant.

Sec. 13. RCW 90.03.160 and 1989 c 80 s 1 are each amended to read as follows:

Upon ((~~the completion of the service of summons as hereinbefore provided, the superior court in which said proceeding is pending shall make an order referring said proceeding to the department to take testimony by its duly authorized designee, as referee, and the designee shall report to and file with the superior court of the county in which such cause is pending a transcript of such testimony for adjudication thereon by such court. The superior court may, in any complex case with more than one thousand named defendants, including the United States, retain for hearing and further processing such portions of the proceeding as pertain to a discrete class or classes of defendants or claims of water rights if the court determines that: (1) Resolution of claims of such classes appear to involve significant issues of law, either procedural or substantive; and (2) such a retention will both expedite the conclusion of the case and reduce the overall expenditures of the plaintiff, defendants, and the court~~)) filing of the department's motion or motions under section 11(3) of this act, a party with a claim filed under RCW 90.03.140 for the appropriation of water or waters of the subject adjudication has ninety days to file and serve a response to the department's motion or motions. For good cause shown, the court may extend the period in which to file and serve a response. Objections must include specific information in regard to the particular disposition against which the objection is being made. Objections must also state the underlying basis of the objection being made, including general information about the forms of evidence that support the objection. Any party may file testimony with the court and serve it on other parties. If a party intends to cross-examine a claimant or witness based on another party's prefiled testimony, the party intending to cross-examine shall file a notice of intent to cross-examine no later than fifteen days in advance of the hearing. If no notice of intent to cross-examine based on the prefiled testimony is

given, then the claimant or witness is not required to appear at the hearing. Any party may present evidence in support of or in response to an objection.

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

(1) The legislature finds that early settlement of contested claims is needed for a fair and efficient adjudication of water rights. Therefore, the department and other parties should identify opportunities for settlement. To the extent consistent with court rules, the court as it deems beneficial is encouraged to urge as many parties to the adjudication as possible to reach timely agreement on claimed water rights in a manner that limits costs to the public, claimants, counties, courts, and the department. Further, at appropriate times throughout the process the court as it deems beneficial is encouraged to direct parties to utilize alternative methods of dispute resolution, including informal meetings, negotiation, mediation, or other methods to reach agreement on disputed claims.

(2) Any time after the filing of all claims under RCW 90.03.140, the department or another party may move the superior court to allow parties to meet for settlement discussions for a set length of time, either before an appointed mediator or without a mediator. For good cause shown, the court may extend the length of time for settlement discussions. The costs of mediation must be equitably borne by the parties to the mediation. If the department and a claimant reach agreement on settlement, the department shall file a motion to approve the settlement pursuant to section 11(3)(a) of this act.

Sec. 15. RCW 90.03.180 and 1995 c 292 s 21 are each amended to read as follows:

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

Sec. 16. RCW 90.03.200 and 1988 c 202 s 91 are each amended to read as follows:

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

Sec. 17. RCW 90.03.240 and 1987 c 109 s 82 are each amended to read as follows:

Upon the court's final determination of the rights to the ((~~diversion~~)) use or storage of water ((~~it shall be the duty of~~)), the department ((~~to~~)) shall issue to each person entitled to the ((~~diversion~~)) use or storage of water by such determination, a certificate ((~~under his official seal~~)) of adjudicated water right, setting forth the name and ((~~post office~~)) mailing address of record with the court of such person; the priority and purpose of the right; the period during which said right may be exercised, the point of diversion or withdrawal, location of storage, if any, and maximum storage capacity, and the place of use; the land to which said water right is appurtenant ((~~and when applicable~~)); the maximum ((~~quantity~~))

annual and instantaneous quantities of water allowed; and specific provisions or limitations or both under which the water right has been confirmed.

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

Sec. 18. RCW 90.03.243 and 1982 c 15 s 1 are each amended to read as follows:

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

Sec. 19. RCW 90.03.245 and 1979 ex.s. c 216 s 1 are each amended to read as follows:

Except as otherwise provided, rights subject to determination proceedings conducted under this chapter and RCW ((~~90.03.110 through 90.03.240 and~~)) 90.44.220 include all rights to the use of water, including all diversionary and instream water rights, rights to groundwater, rights to store and use stored water, and include rights to the use of water claimed by the United States.

Nothing in this section may be construed as establishing or creating any new rights to the use of water. This section relates exclusively to the confirmation of water rights established or created under other provisions of state law or under federal laws.

Sec. 20. RCW 90.44.220 and 1987 c 109 s 119 are each amended to read as follows:

((~~In its discretion or upon the application of any party claiming right to the withdrawal and use of public groundwater, the department may~~)) Upon the filing of a petition with the department by a planning unit or by one or more persons claiming the right to use or store for use any waters within the state or when, after investigation, in the judgment of the department an adjudication is needed for effective water management, the department will determine whether the public interest would be served by a determination of the rights to the waters. The department, in consultation with the administrative office of the courts, will determine whether sufficient resources are available to the department, and to the superior court in which an adjudication may be filed, to conduct an adjudication in addition to discharging other duties. If both the department's determinations are affirmative, the department shall file a petition to conduct a limited or general adjudication with the superior court of the county for the determination of the rights of appropriators of any particular groundwater body and all the provisions of RCW 90.03.110 through 90.03.240 ((~~as heretofore amended~~)) and sections 1, 5 through 7, 10 through 12, and 14 of this act, shall govern and apply to the adjudication and determination of such groundwater body and to the ownership thereof. Hereafter, in any proceedings for the limited or general adjudication and determination of water rights--either rights to the use of surface water or to the use of groundwater, or both--pursuant to chapter 90.03 RCW ((~~as heretofore amended~~)), all or part of the appropriators of groundwater or of surface water in the particular basin or area may be included as parties to such adjudication, as ((~~pertinent~~)) set forth in chapter 90.03 RCW.

Sec. 21. RCW 43.21B.110 and 2003 c 393 s 19 are each 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:

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

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

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

(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.

NEW SECTION. **Sec. 22.** This act applies retroactively to all pending adjudications, including any future proceeding involving currently existing cases, and to all adjudications initiated after the effective date of this section. To this extent, this act applies retroactively, but in all other respects it applies prospectively.

NEW SECTION. **Sec. 23.** The following acts or parts of acts are each repealed:

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

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

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