

2 EHB 1350 - S COMM AMD

3 By Committee on Environment, Energy & Water

4 ADOPTED 04/21/01

5 Strike everything after the enacting clause and insert the  
6 following:

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

18 **Sec. 2.** RCW 43.21B.110 and 1998 c 262 s 18, 1998 c 156 s 8, and  
19 1998 c 36 s 22 are each reenacted and amended to read as follows:

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

25 (a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431,  
26 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.48.144, 90.56.310, and  
27 90.56.330.

28 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,  
29 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,  
30 90.14.130, 90.48.120, and 90.56.330.

31 (c) Except as provided in RCW 90.03.210(2), the issuance,  
32 modification, or termination of any permit, certificate, or license by  
33 the department or any air authority in the exercise of its  
34 jurisdiction, including the issuance or termination of a waste disposal  
35 permit, the denial of an application for a waste disposal permit, the

1 modification of the conditions or the terms of a waste disposal permit,  
2 or a decision to approve or deny an application for a solid waste  
3 permit exemption under RCW 70.95.300.

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

6 (e) Decisions of local health departments regarding the issuance  
7 and enforcement of permits to use or dispose of biosolids under RCW  
8 70.95J.080.

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

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

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

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

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

25 (b) Hearings conducted by the department pursuant to RCW 70.94.332,  
26 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

27 (c) Proceedings conducted by the department (~~relating to general~~  
28 ~~adjudications of water rights pursuant to chapter 90.03 or 90.44 RCW)~~,  
29 or the department's designee, under RCW 90.03.160 through 90.03.210 or  
30 90.44.220.

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

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

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

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

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

12 (3) For proceedings conducted by the pollution control hearings  
13 board pursuant to chapter 43.21B RCW or as otherwise provided in RCW  
14 90.03.210(2) involving decisions of the department of ecology on  
15 applications for changes or transfers of water rights that are the  
16 subject of a general adjudication of water rights that is being  
17 litigated actively under chapter 90.03 or 90.44 RCW, the petition must  
18 be filed with the superior court conducting the adjudication, to be  
19 consolidated by the court with the general adjudication. A party to  
20 the adjudication shall be a party to the appeal under this chapter only  
21 if the party files or is served with a petition for review to the  
22 extent required by this chapter.

23 **Sec. 4.** RCW 43.21B.310 and 1992 c 73 s 3 are each amended to read  
24 as follows:

25 (1) Except as provided in RCW 90.03.210(2), any order issued by the  
26 department, the administrator of the office of marine safety, or  
27 authority pursuant to RCW 70.94.211, 70.94.332, 70.105.095, 43.27A.190,  
28 86.16.020, 88.46.070, or 90.48.120(2) or any provision enacted after  
29 July 26, 1987, or any permit, certificate, or license issued by the  
30 department may be appealed to the pollution control hearings board if  
31 the appeal is filed with the board and served on the department or  
32 authority within thirty days after receipt of the order. Except as  
33 provided under chapter 70.105D RCW and RCW 90.03.210(2), this is the  
34 exclusive means of appeal of such an order.

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

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

4 (4) Any appeal must contain the following in accordance with the  
5 rules of the hearings board:

6 (a) The appellant's name and address;

7 (b) The date and docket number of the order, permit, or license  
8 appealed;

9 (c) A description of the substance of the order, permit, or license  
10 that is the subject of the appeal;

11 (d) A clear, separate, and concise statement of every error alleged  
12 to have been committed;

13 (e) A clear and concise statement of facts upon which the requester  
14 relies to sustain his or her statements of error; and

15 (f) A statement setting forth the relief sought.

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

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

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

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

1 with sureties satisfactory to the court, conditioned to perform the  
2 judgment of the court.

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

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

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

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

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

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

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

1 to protect from impairment its federally reserved water rights in  
2 federal court.

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

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

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15 By Committee on Environment, Energy & Water

16 ADOPTED 04/21/01

17 On page 1, line 2 of the title, after "adjudication;" strike the  
18 remainder of the title and insert "amending RCW 43.21B.310 and  
19 90.03.210; reenacting and amending RCW 43.21B.110 and 34.05.514;  
20 creating new sections; and declaring an emergency."

EFFECT: The intent of the legislature to fully preserve the role  
of the Pollution Control Hearings Board (PCHB), except as specifically  
provided in this act is stated, and clarifying language to that effect  
is added.

A party to an adjudication becomes a party to an appeal from the  
PCHB only if it files or is served with a petition.

It is expressly stated that standing is not limited to parties to  
the adjudication.

Appeals must be scheduled to afford all parties full opportunity to  
participate before the adjudication court and the PCHB.

Nothing will be construed to affect any existing right of a  
federally recognized Indian tribe to protect its federally reserved  
water rights in federal court.

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