

General Stream Adjudications

The proposal: Ecology must develop a workplan and a proposed budget for conducting general adjudications in areas with existing and projected water use conflicts, and in which permit-exempt ground water uses are a significant water use.

Elements of the proposal: Ecology would be directed to develop a work plan for initiating general stream adjudications throughout the state from 2011 to 2021, targeted to water sources experiencing significant water use conflicts and shortages currently or that are projected to experience such shortages. The work plan must target basins in which existing or projected ground water shortages are in significant part due to permit-exempt uses. The work plan should discuss the proposed design of each proceeding in a source-specific way, using the tools provided in the adjudication legislation enacted in the 2009 session. It should discuss the advantages for water management of adjudicating all the rights to the water source(s), both with a "Sinking Creek fix" and without such a fix. A proposed budget must be included in the work plan. The work plan would be submitted to the 2011 Legislature, and consultation with fiscal and policy committees of the Legislature would be required prior to initiating an adjudication proceeding.

Why it is needed: The Supreme Court's Rettkowski v. Dept of Ecology decision has severely restricted the authority to regulate among water right holders to protect senior rights, unless a court-issued adjudication decree covering the rights has been issued. Legislation to override this decision and provide administrative regulatory authority has been introduced in nearly every session since, but has not been passed. And most of these proposals would only provide a "partial fix", still requiring Ecology to pursue a court action to protect senior rights, where any of the rights involved (those to be protected or those to be regulated) do not derive from a Water Code permit or certificate. Thus even with a Sinking Creek "partial fix" it would be necessary to initiate court proceedings where any of the rights involved derive from permit-exempt well rights. Since these proceedings to be effective would probably eventually encompass all the rights to a shared ground water source, and perhaps surface water uses to which the ground water is connected, it may be more efficient in some cases to initiate a general stream adjudication to provide the baseline existence, quantity, and priority information to improve management of the ground water source and to resolve conflict use disputes. A workplan and budget will help inform the discussion about the areas in which this alternative would be preferable.

Related proposals: As noted above the "Sinking Creek fix" proposal may provide an additional tool for dispute resolution, but in some cases pursuing a general adjudication of water rights, including exempt well rights, may be a preferable pathway for better resource management and resolution of disputes among users.