

Legislation modernizes water rights adjudication

Adjudication is the only legally binding way to determine who has a valid water right, how much water can be used, and who has priority during shortages.

Water rights adjudication is a lawsuit in state Superior Court in which the Department of Ecology is the plaintiff and all persons claiming a right to use water within a specified geographic area are defendants. Adjudication provides information that is fundamental to using, protecting, planning and selling water. It is key to resolving and preventing water conflicts in an era of increasing water demands and to mitigate the water supply impact of climate change.

Legislation to modernize the adjudication process to make it faster and less complicated for those involved was passed in the 2009 Legislative session. It is effective on July 26, 2009.

The problem

Unfortunately, for vast areas of the state we do not know who is legally entitled to use water or who has priority to use the water when there are shortages. These uses can include claims, certificates and federal and tribal reserved rights. The absence of such legally authorized information:

- Leads to disputes and individual lawsuits over water sources and priority of water rights.
- Limits protection of legal water users from impairment by those with no rights, those using water beyond their limits and those with junior rights.
- Limits water management and planning. We cannot plan and manage water use if we cannot define it.
- Slows down the transfer, change, and sale of water to meet emerging economic and environmental needs and hinders the development of water banks.
- Reduces Washington's effectiveness in negotiating use of interstate water sources with Idaho, which is conducting an adjudication of its northern water rights. This increases the state's legal risk in the use of interstate water.

WHY IT MATTERS

Adjudication defines how much water is legally available. It also:

- Settles old conflicts and reduces future conflicts.
- Protects confirmed rights.
- Increases value to water right holder.
- Provides information to manage and plan water use.
- Protects Washington's interest in use of interstate waters.

Modernizing the adjudication process will make it faster and less complicated for those involved.

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A general adjudication is the only legally authorized way to determine the extent, validity and priority of water rights. While general adjudications can prevent and resolve these issues, they can be costly and time consuming for the participants.

The solution

Ecology proposed legislation to modernize the water rights adjudication process has just been enacted. The legislation draws significantly from the recommendations of the *Water Disputes Task Force Report of 2003*. It updates the adjudication process to make it faster and less complicated for those involved. The legislation addresses both judicial and non-judicial aspects of the adjudication and related water law by:

- Encouraging courts to direct parties toward alternative dispute resolution, mediation and settlement during the adjudication process.
- Supporting use of innovative practices and technologies (electronic filing, teleconferencing, allowing pre-filing of testimony, etc.).
- Allowing the service of summons by certified mail vs. personal service. Notice can be given to all property owners vs. identifying specific property owners with associated water records. Water users served by purveyors like irrigation districts or public utility districts would not have to be parties to the case.
- Requiring advance work by Ecology before its court hearings on claims, resulting in quicker resolution of uncontested claims.
- Allowing the court to appoint a referee or other judicial officer to assist the court rather than having the referee be an Ecology employee.
- Requiring the court or its appointee to hear contested matters rather than Ecology, thus eliminating the potential for repeated referral back to Ecology from the court.
- Ensure that judges are not disqualified from a case without sufficient reason.
- Providing for consultations on funding by Ecology with the Administrative Office of the Courts and removing Ecology from the role of providing funding for the court.
- Requiring timely default of parties not responding to summons.

How a modernized adjudication process will benefit Washington

- Resolves conflict and clarifies legally authorized water use through a final decree issued by a superior court.
- Protects legal water users from impairment by those with no rights, those using water beyond their authorized limits and those with junior rights.
- Facilitates the ability to change, transfer, and market water to meet emerging economic and environmental needs, and supports water banking.
- Provides information to plan for future regional water needs by defining legally allocated quantities of water.
- Supports Washington's interest in negotiations and any necessary litigation in the use of shared interstate waters.

