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HOUSE BILL 1792

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State of Washington

68th Legislature

2023 Regular Session

By Representatives Timmons, Dent, Lekanoff, Fitzgibbon, Rule, Ramel, Springer, and Eslick

Read first time 02/08/23. Referred to Committee on Agriculture and Natural Resources.

1 AN ACT Relating to modifying timelines and other initial  
2 procedural actions in a water rights adjudication; and amending RCW  
3 90.03.120, 90.03.130, 90.03.140, 90.03.625, 90.03.635, and 90.03.645.

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

5 **Sec. 1.** RCW 90.03.120 and 2009 c 332 s 2 are each amended to  
6 read as follows:

7 (1) Upon the filing of the statement and map as provided in RCW  
8 90.03.110 the judge of such superior court shall make an order  
9 directing summons to be issued, and fixing the return day thereof,  
10 which shall be not less than (~~one hundred~~) 100 nor more than (~~one~~  
11 ~~hundred thirty~~) 130 days, after the making of such order: PROVIDED,  
12 That for good cause, the court, at the request of the department, may  
13 modify said time period; PROVIDED FURTHER, That for an adjudication  
14 filed in water resource inventory area 1 after June 1, 2023, the  
15 return day for the latest time to file claims pursuant to such a  
16 summons shall be not less than one year after the making of such an  
17 order, unless special rules of procedure established by the court  
18 pursuant to RCW 90.03.160(3) provide for a later date.

19 (2) A summons issued under this section shall be issued out of  
20 said superior court, signed and attested by the clerk thereof, in the  
21 name of the state of Washington, as plaintiff, against all known

1 persons identified by the department under RCW 90.03.110. The summons  
2 shall contain a brief statement of the objects and purpose of the  
3 proceedings and shall require the defendants to appear on the return  
4 day thereof, and make and file an adjudication claim to, or interest  
5 in, the water involved and a statement that unless they appear at the  
6 time and place fixed and assert such right, judgment will be entered  
7 determining their rights according to the evidence: PROVIDED,  
8 HOWEVER, That any persons claiming the right to water by virtue of a  
9 contract with a claimant to the right to divert the same, shall not  
10 be necessary parties to the proceeding; PROVIDED FURTHER, That for an  
11 adjudication filed in water resource inventory area 1 after June 1,  
12 2023, the latest day for a party to appear by filing a claim in  
13 response to such a summons shall be set by the court and listed  
14 within the summons as a date not less than one year after the service  
15 of said summons, unless special rules of procedure established by the  
16 court pursuant to RCW 90.03.160(3) provide for a later date.

17 (3) To the extent consistent with court rules and subject to the  
18 availability of funds provided either by direct appropriation or  
19 funded through the administrative office of the courts for this  
20 specific adjudicative proceeding, the court is encouraged to conduct  
21 the water rights adjudication employing innovative practices and  
22 technologies appropriate to large scale and complex cases, such as:  
23 (a) Electronic filing of documents, including notice and claims; (b)  
24 appearance via teleconferencing; (c) prefiling of testimony; and (d)  
25 other practices and technologies consistent with court rules and  
26 emerging technologies.

27 **Sec. 2.** RCW 90.03.130 and 2009 c 332 s 6 are each amended to  
28 read as follows:

29 (1) Service of said summons shall be made in the same manner and  
30 with the same force and effect as service of summons in civil actions  
31 commenced in the superior courts of the state: PROVIDED, That as an  
32 alternative to personal service, service may be made by certified  
33 mail, with return receipt signed and dated by defendant, a spouse of  
34 a defendant, or another person authorized to accept service. If the  
35 defendants, or either of them, cannot be found within the state of  
36 Washington, of which the return of the sheriff of the county in which  
37 the proceeding is pending or the failure to sign a receipt for  
38 certified mail shall be prima facie evidence, upon the filing of an  
39 affidavit by the department, or its attorney, in conformity with the

1 statute relative to the service of summons by publication in civil  
2 actions, such service may be made by publication in a newspaper of  
3 general circulation in the county in which such proceeding is  
4 pending, and also publication of said summons in a newspaper of  
5 general circulation in each county in which any portion of the water  
6 is situated, once a week for six consecutive weeks (six  
7 publications). ((The)) Except as provided in subsection (3) of this  
8 section, the summons by publication shall state that adjudication  
9 claims must be filed within sixty days after the last publication or  
10 before the return date, whichever is later. In cases where personal  
11 service or service by certified mail is had, summons must be served  
12 at least ((sixty)) 60 days before the return day thereof. For summons  
13 by certified mail, completion of service occurs upon the date of  
14 receipt by the defendant.

15 (2) Personal service of summons may be made by department of  
16 ecology employees for actions pertaining to water rights.

17 (3) For an adjudication filed in water resource inventory area 1  
18 after June 1, 2023, any summons shall state that adjudication claims  
19 must be within the time frame set pursuant to RCW 90.03.120, unless  
20 special rules of procedure established by the court pursuant to RCW  
21 90.03.160(3) provide for a later date.

22 **Sec. 3.** RCW 90.03.140 and 2009 c 332 s 7 are each amended to  
23 read as follows:

24 (1) On or before the date specified in the summons, each  
25 defendant shall file with the clerk of the superior court an  
26 adjudication claim on a form and in a manner provided by the  
27 department, and mail or electronically mail a copy to the department.  
28 The department shall provide information that will assist claimants  
29 of small uses of water in completing their adjudication claims. The  
30 adjudication claim must contain substantially the following, except  
31 that when the legal basis for the claimed right is a federally  
32 reserved right, the information must be filed only as applicable:

33 (a) The name, mailing address, and telephone contact number of  
34 each defendant on the claim, and email address, if available;

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

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

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

3 (e) The maximum amount of land ever under irrigation and the  
4 maximum annual and instantaneous quantities of water ever used  
5 thereon prior to the date of the statement and if for power, or other  
6 purposes, the maximum annual and instantaneous quantities of water  
7 ever used prior to the date of the adjudication claim;

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

9 (g) If located outside the boundaries of a city, town, or special  
10 purpose district that provides water to property within its service  
11 area, the legal description and county tax parcel number of the land  
12 upon which the water as presently claimed has been, or may be, put to  
13 beneficial use;

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

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

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

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

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

32 (2) The adjudication claim shall be verified on oath by the  
33 defendant. The department shall furnish the form for the adjudication  
34 claim. A claimant may file an adjudication claim electronically if  
35 authorized under state and local court rules. The department may  
36 assist claimants in their effort by making the department's pertinent  
37 records and information accessible electronically or by other means  
38 and through conferring with claimants.

39 (3) For an adjudication filed in water resource inventory area 1  
40 after June 1, 2023, the department shall broadly distribute a draft

1 version of the adjudication claim form to enable review and input by  
2 prospective claimants. The draft version must, at a minimum, be  
3 provided to Indian tribes, local governments, and special purpose  
4 districts and allow for at least 60 days of public comment on the  
5 draft adjudication claim form prior to the department finalizing the  
6 form.

7 **Sec. 4.** RCW 90.03.625 and 2009 c 332 s 4 are each amended to  
8 read as follows:

9 Upon expiration of the filing period established under RCW  
10 90.03.120(~~(+2)~~), the department shall file a motion for default  
11 against defendants who have been served but who have failed to timely  
12 file an adjudication claim under RCW 90.03.140. A party in default  
13 may file a late claim under the same circumstances the party could  
14 respond or defend under court rules on default judgments.

15 **Sec. 5.** RCW 90.03.635 and 2009 c 332 s 8 are each amended to  
16 read as follows:

17 (1) Within the date set by the court for filing evidence, each  
18 claimant shall file with the court evidence to support the claimant's  
19 adjudication claims. The court is encouraged to set a date for filing  
20 evidence that is reasonable and fair for the timely processing of the  
21 adjudication. The evidence may include, without limitation, permits  
22 or certificates of water right, statements of claim made under  
23 chapter 90.14 RCW, deeds, documents related to issuance of a land  
24 patent, aerial photographs, decrees of previous water rights  
25 adjudications, crop records, records of livestock purchases and  
26 sales, records of power use, metering records, declarations  
27 containing testimonial evidence, records of diversion, withdrawal or  
28 storage and delivery by irrigation districts or ditch companies, and  
29 any other evidence to support that a water right was obtained and was  
30 not thereafter abandoned or relinquished. The evidence filed may  
31 include matters that are outside the original adjudication claim  
32 filed, and within the date set by the court for filing evidence, the  
33 claimant may amend the adjudication claim to conform to the evidence  
34 filed. Thereafter, except for good cause shown, a claimant may not  
35 file additional evidence to support the claim.

36 (2) For an adjudication filed in water resource inventory area 1  
37 after June 1, 2023, the latest date for filing evidence to support  
38 the claimant's adjudication claims shall be no less than three years

1 after the date for the filing of adjudication claims by a party set  
2 by the court under RCW 90.03.120, unless special rules of procedure  
3 established by the court pursuant to RCW 90.03.160(3) provide for a  
4 later date. Simplified procedures for claimants of small uses of  
5 water under RCW 90.03.160(3) are not subject to this provision.

6 **Sec. 6.** RCW 90.03.645 and 2009 c 332 s 11 are each amended to  
7 read as follows:

8 (1) The legislature finds that early settlement of contested  
9 claims is needed for a fair and efficient adjudication of water  
10 rights. Therefore, the department and other parties should identify  
11 opportunities for settlement following the date set by the court for  
12 filing (~~evidence for all parties~~) of claims. To the extent  
13 consistent with court rules, the court as it deems beneficial is  
14 encouraged to urge as many parties to the adjudication as possible to  
15 reach timely agreement on claimed water rights in a manner that  
16 limits costs to the public, claimants, counties, courts, and the  
17 department. Further, at appropriate times throughout the process the  
18 court as it deems beneficial is encouraged to direct parties to  
19 utilize alternative methods of dispute resolution, including informal  
20 meetings, negotiation, mediation, or other methods to reach agreement  
21 on disputed claims.

22 (2) Any time after the filing of all claims under RCW 90.03.140,  
23 the department or another party may move the superior court to allow  
24 parties to meet for settlement discussions for a set length of time,  
25 either before an appointed mediator or without a mediator. For good  
26 cause shown, the court may extend the length of time for settlement  
27 discussions. The costs of mediation must be equitably borne by the  
28 parties to the mediation.

29 (3) If the department and a claimant reach agreement on  
30 settlement, the department shall file a motion to approve the  
31 settlement pursuant to RCW 90.03.640(3)(a) and shall disclose the  
32 terms of the settlement to other parties to the adjudication. The  
33 court shall conduct a hearing prior to approving a settlement and any  
34 party to the adjudication may object or offer modifications to the  
35 settlement.

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