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**Agriculture & Natural Resources  
Committee**

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**HB 1571**

**Brief Description:** Regarding the adjudication of water rights.

**Sponsors:** Representatives Blake and Chandler; by request of Department of Ecology.

**Brief Summary of Bill**

- Authorizes the Department of Ecology to initiate a limited adjudication of water rights within a basin.
- Establishes the requirements for the adjudication claims.
- Requires the Department of Ecology to conduct a preliminary investigation after receiving adjudication claims.
- Authorizes the Department of Ecology to enter onto land appurtenant to the claim to conduct the preliminary investigation.
- Encourages the settlement of adjudication claims out of court.
- Provides criteria for the disqualification of judges.

**Hearing Date:** 1/30/09

**Staff:** Jaclyn Ford (786-7339)

**Background:**

The state's Surface Water Code establishes a general adjudication procedure. An adjudication can determine rights to surface water, ground water, or both. Holders of water rights or watershed planning units may petition the Department of Ecology (DOE) to start an adjudication. The DOE may also do so at its own discretion. Such a proceeding is conducted in the Superior Court with the DOE as the plaintiff. Each person filing a statement of claim in the proceeding must pay a filing fee to the court. The DOE, or the DOE's designee, takes testimony and files a

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report with the court of its findings regarding the water rights of all of the entities claiming water rights in the proceeding. The expenses incurred by the state in such a proceeding or upon an appeal are borne by the state.

### **Summary of Bill:**

#### **Commencement of Limited Adjudication**

To determine the rights of a potential claimant or claimants, a water user or planning unit may petition the DOE to start a limited adjudication of water rights, or the DOE may commence a limited adjudication on its own. The limited adjudication may be used in an area where the source of water under adjudication does not affect every water right holder in a basin. The DOE may not join as a party an Indian tribe or the United States in a limited adjudication. However, the DOE must consult with any federally recognized Indian tribe with an interest in the subject waters before filing a limited adjudication.

The adjudication may be on surface water rights, groundwater rights, or both.

After a petition by a water user or planning unit, the DOE will consult with the Administrative Office of the Courts in order to determine whether there are sufficient resources available to the DOE and the Superior Court to be able to conduct an adjudication in addition to executing their other duties.

The court is encouraged to conduct the water rights adjudication employing innovative practices and technologies, such as filing documents electronically, using teleconferencing for appearances, and pre-filing testimony.

#### **Summons**

Service of the summons may either be by personal service or certified mail. If a potential claimant can not be found within Washington or fails to sign a receipt for the certified mail summons, summons may be made in a publication of general circulation of the county where the subject water is found. Summons must be served at least 60 days before the required return date of the summons.

The return date of the summons will be between 100 and 130 days from the date the summons was issued. The summons will require the claimants to appear and file a claim to the subject water involved. If the claimant fails to file a claim, the court may issue a default judgment.

#### **Preliminary Investigation**

Upon the receipt of the adjudication claims and the filing of the claimants' evidence, the DOE must conduct a preliminary investigation in order to examine the uses of the subject waters. As part of the preliminary investigation, the DOE has the right to enter land appurtenant to a claim. The DOE must make a good faith effort to notify a landowner or the person with a right to possess the land prior to entering private land. After the preliminary investigation, the DOE must file with the court the findings of the investigation, and enter a motion for a partial decree in favor of all the stated claims, enter a motion seeking determination of contested claims, or both.

#### **Response to Motions**

A party has 90 days to file and serve a response to the DOE's motion(s). Out-of-court settlements are encouraged.

**Judgment**

The judgment is binding in a limited adjudication, but not in a general adjudication. However, the determination of a limited adjudication is admissible as prima facie evidence of the existence and conditions of the right in a general adjudication.

**Disqualification of Judge**

A judge may be partially or fully disqualified from either a limited adjudication or a general adjudication. Partial disqualification means disqualification from hearing specified claims. Full disqualification means disqualification from hearing any aspect of the adjudication. 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. A judge is fully disqualified when the judge's impartiality might reasonably be questioned and the apparent or actual partiality extends beyond limited claims so that the judge should not hear any part of the adjudication.

**Fees**

At the time of filing an adjudication claim, the claimant must pay the clerk of the Superior Court a fee of \$25. Within 90 days after the final decree, each party must pay the DOE \$50 for preparing and issuing a water right certificate.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.