CERTIFICATION OF ENROLLMENT

**HOUSE BILL 1792**

68th Legislature

2023 Regular Session

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| Passed by the House February 28, 2023  Yeas 97 Nays 0  **Speaker of the House of Representatives**  Passed by the Senate April 6, 2023  Yeas 46 Nays 0  **President of the Senate** | CERTIFICATE  I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **HOUSE BILL 1792** as passed by the House of Representatives and the Senate on the dates hereon set forth.  Chief Clerk |
| Approved |  |
| **Governor of the State of Washington** | **Secretary of State**  **State of Washington** |

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**HOUSE BILL 1792**

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Passed Legislature - 2023 Regular Session

**State of Washington 68th Legislature 2023 Regular Session**

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

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

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

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

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

(2) A summons issued under this section shall be issued out of said superior court, signed and attested by the clerk thereof, in the name of the state of Washington, as plaintiff, against all known persons identified by the department under RCW 90.03.110. The summons shall contain a brief statement of the objects and purpose of the proceedings and shall require the defendants to appear on the return day thereof, and make and file an adjudication claim to, or interest in, the water involved and a statement that unless they appear at the time and place fixed and assert such right, judgment will be entered determining their rights according to the evidence: PROVIDED, HOWEVER, That any persons claiming the right to water by virtue of a contract with a claimant to the right to divert the same, shall not be necessary parties to the proceeding; PROVIDED FURTHER, That for an adjudication filed in water resource inventory area 1 after June 1, 2023, the latest day for a party to appear by filing a claim in response to such a summons shall be set by the court and listed within the summons as a date not less than one year after the service of said summons, unless special rules of procedure established by the court pursuant to RCW 90.03.160(3) provide for a later date.

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

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

(1) Service of said summons shall be made in the same manner and with the same force and effect as service of summons in civil actions commenced in the superior courts of the state: PROVIDED, That as an alternative to personal service, service may be made by certified mail, with return receipt signed and dated by defendant, a spouse of a defendant, or another person authorized to accept service. If the defendants, or either of them, cannot be found within the state of Washington, of which the return of the sheriff of the county in which the proceeding is pending or the failure to sign a receipt for certified mail shall be prima facie evidence, upon the filing of an affidavit by the department, or its attorney, in conformity with the statute relative to the service of summons by publication in civil actions, such service may be made by publication in a newspaper of general circulation in the county in which such proceeding is pending, and also publication of said summons in a newspaper of general circulation in each county in which any portion of the water is situated, once a week for six consecutive weeks (six publications). ((~~The~~)) Except as provided in subsection (3) of this section, the summons by publication shall state that adjudication claims must be filed within sixty days after the last publication or before the return date, whichever is later. In cases where personal service or service by certified mail is had, summons must be served at least ((~~sixty~~)) 60 days before the return day thereof. For summons by certified mail, completion of service occurs upon the date of receipt by the defendant.

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

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

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

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

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

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

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

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

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

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

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

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

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

(j) The legal basis for the claimed right;

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

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

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

(3) For an adjudication filed in water resource inventory area 1 after June 1, 2023, the department shall broadly distribute a draft version of the adjudication claim form to enable review and input by prospective claimants. The draft version must, at a minimum, be provided to Indian tribes, local governments, and special purpose districts and allow for at least 60 days of public comment on the draft adjudication claim form prior to the department finalizing the form.

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

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

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

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

(2) For an adjudication filed in water resource inventory area 1 after June 1, 2023, the latest date for filing evidence to support the claimant's adjudication claims shall be no less than three years after the date for the filing of adjudication claims by a party set by the court under RCW 90.03.120, unless special rules of procedure established by the court pursuant to RCW 90.03.160(3) provide for a later date. Simplified procedures for claimants of small uses of water under RCW 90.03.160(3) are not subject to this provision.

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

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

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

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

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