

SENATE BILL REPORT

HB 1792

As of March 16, 2023

Title: An act relating to modifying timelines and other initial procedural actions in a water rights adjudication.

Brief Description: Modifying timelines and other initial procedural actions in a water rights adjudication.

Sponsors: Representatives Timmons, Dent, Lekanoff, Fitzgibbon, Rule, Ramel, Springer and Eslick.

Brief History: Passed House: 2/28/23, 97-0.

Committee Activity: Agriculture, Water, Natural Resources & Parks: 3/16/23.

Brief Summary of Bill

- Establishes certain timelines in any general water rights adjudication filed in Water Resource Inventory Area 1 after June 1, 2023.

SENATE COMMITTEE ON AGRICULTURE, WATER, NATURAL RESOURCES & PARKS

Staff: Karen Epps (786-7424)

Background: Water Rights General Adjudications. 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 (Ecology) to start an adjudication, or Ecology may start an adjudication at its own discretion. A general stream adjudication is conducted in a superior court with Ecology as the plaintiff, and the defendants being the persons or entities owning real property situated within the area to be adjudicated that do not receive their water from municipal water providers, and all known persons claiming a right to the water sought to be determined.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Water Rights General Adjudications—Commencement. Ecology begins the adjudication process by preparing a statement of the facts, together with a plan or map of the locality under investigation. Ecology files that statement, along with the plan or map, in the superior court of the county in which the water is located. The statement includes information about the water rights to be adjudicated, such as the identification of persons or entities owning real property situated within the area to be adjudicated that do not receive their water from municipal water providers, the identification of all known persons claiming a right to the water sought to be determined, and a brief statement of the facts in relation to the water.

Once the statement and map have been filed, the judge of the superior court issues an order directing summons to be issued and identifies the date by which the summons must be returned. The summons must contain a brief statement of the objects and purpose of the proceedings and must require parties with water right claims to appear on the return day thereof, and to make and file an adjudication claim to the water involved. The summons must also state that unless parties appear at the stated time and place and assert their water right claim, a judgment will be entered determining their rights according to the evidence before the court.

Service of the summons in a water rights adjudication may either be by personal service or certified mail. The summons must be served at least 60 days before the required return date of the summons and the return date must be between 100 and 130 days after the order.

On or before the date specified in the summons, each defendant must file with the clerk of the superior court an adjudication claim on a form and in a manner provided by Ecology, and mail or email a copy to Ecology.

Within the date set by the court for filing evidence, each defendant must file with the court evidence to support the defendant'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. After that date, except for good cause, a defendant may not file additional evidence to support the claim.

Water Rights General Adjudications—Rules of Procedure. The rules of procedure for a superior court apply to a water rights adjudication, except that a superior court may choose to adopt simplified procedures for claimants of small uses of water.

Water Resources Inventory Areas. Ecology and other state natural resources agencies have divided Washington into 62 numbered Water Resource Inventory Areas (WRIAs) to delineate the state's major watersheds. The Nooksack watershed is WRIA 1.

Summary of Bill: For a water rights adjudication filed in WRIA 1 after June 1, 2023:

- the return day for the latest time to file claims pursuant to a court summons must be not less than one year after the date on which the court ordered the issuance of the

summons, unless special rules of procedure established by the court provide for a later date;

- the latest day for a party to appear by filing a claim in response to a court summons must be set by the court and listed within the summons as a date not less than one year after the service of the summons, unless special rules of procedure established by the court provide for a later date;
- any summons of the adjudication claim form must state that adjudication claims must be filed not less than one year after the date on which the court ordered the issuance of the summons, unless special rules of procedure established by the court provide for a later date;
- Ecology must broadly distribute a draft version of the adjudication claim form to enable review and input by prospective claimants, including, at a minimum, Indian tribes, local governments, and special purpose districts, and must allow for at least 60 days of public comment on the draft adjudication claim form prior to adoption; and
- the latest date for filing evidence to support the claimant's adjudication claims must be no less than three years after the date for the filing of adjudication claims by a party set by the court, unless special rules of procedure established by the court provide for a later date. Simplified procedures for claimants of small uses of water are not subject to this provision.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: Ecology is preparing to file a water rights adjudication in the Nooksack basin and, if it moves forward, this bill is important to provide as much transparency and clarity about that process so claimants can appropriately file their water rights claims. This bill is designed to provide a clear understanding of the timeline and what the obligations of the parties will be if an adjudication is filed in the basin. This bill has support from agriculture, local government, and tribal nations. This bill gives water right holders at least a year to file the claim form in court and then three years to file evidence of water use with the court. The bill will help claimants plan for the adjudication. The adjudication will include permit exempt wells, so Ecology will have additional work to do and the timelines in the bill will work much better to allow claimants to get prepared.

OTHER: Ecology is on track to file the adjudication in the Nooksack basin. The superior court has existing authority to meet and follow these timelines since the court can establish timelines. Additional clarification in statute is good for the community and water rights claimants. This bill provides assurances for water rights claimants and will help move the process forward.

Persons Testifying: PRO: Representative Joe Timmons, Prime Sponsor; Bill Clarke, Whatcom Ag Water Board.

OTHER: Dave Christensen, Washington Department of Ecology.

Persons Signed In To Testify But Not Testifying: No one.