

**For more information:**

Visit Ecology's Water Resources Program's website at:  
<http://www.ecy.wa.gov/programs/wr/wrhome.html>.

Or our Adjudications website at:

<http://www.ecy.wa.gov/programs/wr/rights/adjhome.html>.

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# Washington State Water Right Adjudication Process

## A Primer



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This publication, and others about water rights, is available to view, download and/or order on-line at: <http://www.ecy.wa.gov/programs/wr/wrhome.html>

**For more information:**

This publication does not cover every possible element of water rights adjudication, or provide legal advice. If you have questions about the adjudication process, you can contact the Department of Ecology's Water Resources Program at (360) 407-6600. If you have questions requiring a legal opinion, you may need to consult an attorney

- development;
- Books about the area;
- Tax statements or receipts for materials that show property and water use;
- County and state records; or
- Chain of ownership records (deeds that mention water rights).

Regardless of whether an adjudication is occurring in your area, you are encouraged to gather evidence NOW, as each year memories fade and historical documents are lost. Claimants may need to consult an attorney for advice regarding what evidence is necessary to prove their water right claims.

#### **Where do I look for historical evidence?**

The following locations may prove useful when searching for historical evidence:

- The attic or basement;
- Family scrapbooks or bibles;
- Local museums or historical societies;
- State archives;
- County engineer's office for maps of early roads that may show ditches and streams, etc.;
- County auditor's office to track property ownership and records of pre-water code rights and claims;
- United States Bureau of Reclamation for old maps and surveys;
- Ecology's regional offices for copies of existing water right certificates or water right claims (contact information below); and
- Local courthouse for copies of

civil suits dealing with water and/or property use.

#### **Will the evidence I submit be returned?**

Documents submitted into evidence become part of the case and will not be returned. In some cases, original documents may be required, but in others, a copy may be submitted. A claimant may need to consult an attorney for advice regarding submittal of evidence.

#### **What is the status of general adjudications in Washington?**

Eighty-two basins in the state have been adjudicated since 1918. For a map of adjudicated areas of the state, see the following web site: <http://www.ecy.wa.gov/programs/wr/rights/Images/pdf/adjinstatemap.pdf>

One general adjudication, the Yakima River Basin Surface Water Adjudication, is currently underway. Eighty petitions are currently on file requesting general adjudications.

More than 165,000 Statements of Water Right Claims were filed during the four statewide claims registry periods. Only a small portion of these have been adjudicated. There is no current timeframe for adjudicating the remaining claims.

#### **Water Rights Adjudication**

An adjudication can settle the rights of two water right holders with respect to one another or it can settle all the rights to water within a particular water system. An adjudication that settles all the rights within a particular water system is called a general adjudication.

A general adjudication is a legal process conducted through a superior court to determine the extent and validity of existing water rights. An adjudication can determine rights to surface water, ground water, or both. An adjudication does not create new water rights, it only confirms existing rights.

#### **Why are general adjudications necessary?**

Adjudications are necessary to provide legal clarity and surety for water right holders, the Department of Ecology, and others interested in water rights. Currently, water rights can only be given legal certainty through an adjudication. When the court confirms a water right, that right becomes enforceable against other water users and can be protected from impairment by illegal users. Adjudicated rights can be regulated in favor of senior water right holders during times of limited water availability. Adjudications also provide Ecology with information necessary for decision-making regarding the impact of granting new rights and proposed changes to existing rights.

#### **How does a general adjudication work?**

Although a general adjudication can be fairly complex, the steps generally include:

1. **The area to be adjudicated is defined.** A general adjudication covers all the water rights within a particular water system. For a surface water system, the adjudication area could be a stream drainage basin (all the land drained by the stream), a lake or other surface water body. For a ground water system, the adjudication area could be the area served by a specific underground water body called an aquifer. If the adjudication is covering both surface and ground water, the area could be a combination of a watershed and its related aquifers.
2. **The case is filed.** Holders of water rights or watershed planning units may petition Ecology to start an adjudication, however, Ecology may also do so at its own discretion. The case is filed by Ecology in the superior court of a county in which the water source is at least partially located. For purposes of the court case, Ecology is the plaintiff. As the plaintiff, Ecology must prepare a report naming all known persons claiming the right to divert water, their claimed rights, a brief statement of facts, and a map of the adjudication area.

3. **Water right holders are notified.** The superior court issues a summons which notifies water right holders and known water users within the defined area of the adjudication. The summons requires the water right holders and water users to file a court claim (Statement of Claim) with the superior court. (Note: The Statement of Claim should not be confused with the Statement of Water Right Claim form. The Statement of Water Right Claim is an administrative form used for registering water rights claims with Ecology during the claims registration periods.) By filing a court claim (Statement of Claim), the water right holder or water user becomes a claimant, or defendant, in the proceeding and may appear on their own behalf (pro se) or may be represented by an attorney. Claimants may need to contact an attorney to determine what types of factual information are necessary to support their claims.

4. **Evidentiary hearing held.** An evidentiary hearing is conducted by a referee, who is a duly authorized designee of Ecology. At the evidentiary hearing, those claiming the right to use water (or their representatives) appear to present factual information through testimony and documents supporting their claims (see examples of evidence below).

5. **Report of the Referee issued.** After the evidentiary hearing,

the referee issues a report of findings and recommendations to the court. The report recommends which claims should be confirmed or denied and the priority date and quantity of water associated with each. A claimant who disagrees with the referee's findings and recommendations may file an exception with the superior court. The court may then take additional evidence or send the matter back to the referee to gather additional evidence.

6. **Decree issued.** Once all the exceptions to the Report of the Referee are decided, the superior court judge reviews the recommendations and issues a final decree. The court then directs Ecology to issue a Certificate of Adjudicated Water Right for each confirmed right. The holder of an adjudicated water right then has a legally valid water right that is enforceable against other water users.

7. **Certificate of Adjudicated Water Right.** Each certificate includes:

- **Priority date** – The priority date refers to the date when the water right was established. The priority date establishes the priority of the water right relative to other water rights during a time of limited water availability.
- **Purpose of use** – The “purpose of use” means the purpose for which the water is being used. Examples in-

clude, but are not limited to domestic use, irrigation, power generation, mining, and stockwatering.

- **Quantity** – The quantity of a water right is based on the actual amount of water put to beneficial use. Quantity can be expressed as the maximum instantaneous flow and/or the maximum annual volume of water a person or entity can divert or withdraw. The certificate also includes the time of year the water right can be used, and in the case of irrigation, the maximum number of acres that can be irrigated.
- **Point of diversion** – The point of diversion refers to the location where the water is taken from its natural source. Thus, an accurate and precise description of the point of diversion is required.
- **Place of use** – The place of use refers to the land on which the water is used and to which the right is appurtenant. Thus, an accurate and precise description is required.
- **Limitations** – Any limitations on use specific to the confirmed water right are included in the adjudicated certificate. Limitations could include requirements to measure and report the amount diverted.

**How do I protect my water right?** During an adjudication, the two most important actions you can take to protect a water right are:

1. Filing a Statement of Claim (court claim) with the court, and
2. Supporting that claim at the evidentiary hearing.

Failing to file a claim waives further interest in the right and it will be forfeited. If a claimant does not appear at the hearing to support his or her claim, the claim will be denied.

**Claimants may need to consult an attorney regarding evidence to prove their water right claims.**

**Where can I find evidence to support my water right claim?**

Evidence to support the claimed water right can come in many forms. Evidence used to document how, when, or where water was first used has typically included:

- Records of metered water use past and present. See: Measuring Water Use
- Affidavits from individuals attesting to personal knowledge of the historic water system and water uses (commonly referred to as “Old Timer Affidavits”);
- Direct testimony by “Old Timers” with personal knowledge of development of water use in the vicinity;
- Newspaper clippings referring to the property or water system;
- Photographs that can establish a date and water use;
- Maps;
- Historical documents describing the property and/or water system (homestead documents, notices of appropriations, easement for ditches, etc.);
- Letters indicating water use or