



AWB Board

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Whatcom Ag Water Board Position Paper on Water Right Adjudication in the Nooksack Basin

The Whatcom Ag Water Board (AWB) is a coalition of the six Watershed Improvement Districts (WIDs) established in Whatcom County. Farmers created the WIDs to enable agriculture to address a variety of issues facing our community: drainage, water quality, habitat restoration, and water resources. Over the past few years, the Department of Ecology (“Ecology”) has expressed interest in initiating a new water rights adjudication somewhere in Washington State, as the adjudication in Yakima is completed. Ecology received funding from the Legislature to review where a water rights adjudication could be conducted, and the Nooksack Basin is one of the potential locations. Over the past few months, we have carefully reviewed the question of whether Ecology should initiate a water rights adjudication in the Nooksack Basin.

Our conclusion is that a water rights adjudication in the Nooksack Basin would be harmful, and potentially disastrous, to agriculture and our entire Whatcom County community.

We have reached this decision after considerable review. Our review has involved a significant amount of research into the adjudication process, its time and cost, potential impacts on irrigated agriculture and other water right holders, and the existence of other mechanisms to address water resource issues in Whatcom County. The AWB appreciates the candor and professionalism of Ecology’s staff to explain the agency’s review process, educate us on how an adjudication would be conducted, and discuss potential outcomes. We have also talked with all other major non-tribal water resource stakeholders to answer a fundamental question: **Will a water rights adjudication in the Nooksack Basin serve the interests of agricultural families and communities in Whatcom County? The answer is clearly no. A water rights adjudication would ultimately result in a significant loss of irrigated agriculture, and other types of water rights would also be eliminated or reduced.** Whatcom County has approximately 40,000 acres of irrigated agriculture, thousands of acres and likely at least 50% of agricultural water use would be negatively impacted by an adjudication.

Our opposition to a water rights adjudication is also based on our conclusion that processes other than water rights litigation would result in greater environmental benefits for the Nooksack Basin. The agricultural community respects and understands the significant legal status of tribal reserved water rights – but water supply is neither the sole nor primary cause of decreased fish populations. Expensive and prolonged water rights litigation will be divisive, rather than uniting stakeholders in efforts to address a wide range of issues to improve fish populations and the environment of Whatcom County: habitat restoration, water quality, instream flows, protection of agricultural and natural resource lands, and improved water resource infrastructure.

Further, the circumstances of an adjudication would likely result in pro-active salmon recovery efforts ending, or being indefinitely suspended. Over the past few years, the AWB, WIDs, and individual farmers have engaged in a number of proactive efforts to address both instream and out-of-stream water resource issues in Whatcom County, as well as related habitat and water quality issues. We fully recognize the importance of addressing the needs of all water resource interests, and a number of efforts are underway to do so. These efforts include:

- Implementing instream flow projects through SB 6091, Surface to Ground conversions and stream augmentation
- Ecology's amendment of the Nooksack Instream Flow Rule Chapter 173-501 WAC and the AWB's Foster Pilot Project for tributary flow enhancement
- Drainage-Based Management (DBM) planning process
- Habitat enhancement projects by individual farmers and our WIDs
- Water quality protection programs leading to improved conditions in shellfish beds

There is more proactive water resource and related habitat restoration work underway in the Nooksack Basin than in perhaps any other basin in Western Washington, and a water rights adjudication lawsuit would jeopardize these proactive efforts. Farmers do not want our citizens, businesses, and local governments to spend our community's limited time and money litigating against each other in court. Instead, we are committed to continuing the processes underway, improving them, and establishing negotiated agreements and funding that advances all our interests. We are implementing a number of ideas to improve water resource management in Whatcom County, and we welcome new ideas from other interests. But adjudications result in harsh and inflexible outcomes – and the loss of water rights. We believe the state should invest in multiple benefit solutions instead.

We are distributing this position paper, Ecology's focus sheet on water right adjudications, and our attachment addressing questions about the adjudication process for the entire Whatcom County community to review. We welcome further questions and discussion on this critical issue. Ultimately, we request your support of our position and ask that you join us in opposing a water rights adjudication in the Nooksack Basin.



BACKGROUND INFORMATION ON WATER RIGHTS ADJUDICATIONS

At the Ag Water Board's February 12, 2020 meeting with the Department of Ecology, we discussed a variety of issues regarding the agency's review and report on potential water right adjudication locations, and implications for irrigation and other water rights. Farmers raised a number of questions at that meeting, and additional questions have been raised by farmers and community members in recent weeks. This question and answer document, prepared by AWB Attorney Bill Clarke, addresses those questions.

Question 1: Why is Ecology conducting this review of potential locations for a water rights adjudication?

A: Ecology sought funding from the Legislature in 2019 to review locations around the state for a future adjudication. The 2019 Operating Budget provided Ecology with funding "to assess and explore opportunities to resolve water rights uncertainties and disputes through adjudications in selected basins where tribal senior water rights, unquantified claims, and similar uncertainties about the seniority, quantity, and validity of water rights exist." 2019 ESHB 1109 Sec. 302(6). Over the past few years, Ecology has expressed interest in initiating new adjudications, as the *Acquavella* adjudication in the Yakima Basin nears completion.

Question 2: Will Ecology recommend to the Legislature where a water rights adjudication should occur?

A: Ecology's review will conclude with a report to the Legislature by September 1, 2020, analyzing water resource issues in a number of basins, and describing those conditions. The report will likely detail whether those conditions would support or hinder an adjudication, the existence of other alternatives to an adjudication, the extent of local support, and other factors. More information is in the attached Ecology Focus Sheet.

Question 3: Does Ecology need authorization from the State Legislature to initiate an adjudication?

A: There is no statute requiring legislative approval prior to Ecology filing an adjudication. RCW 90.03.110(2)(b) requires that prior to filing an adjudication, Ecology must "[r]eport to the appropriate committees of the legislature on the estimated budget needs for the court and the department to conduct the adjudication." The law also requires Ecology to consult with the court system regarding the adequacy of funding. While the extent of legislative

support for an adjudication will be a factor in whether and where Ecology files an adjudication, the Legislature's main role is to provide funding (or not), as Ecology and Office of the Attorney General have underlying authority to decide whether to file a lawsuit or not.

Question 4: Who conducts the water right adjudication?

A: The water right adjudication is conducted by the Superior Court in the basin where the water rights exist. For example, the Yakima County Superior Court conducted the *Acquavella* adjudication, and had a specific judge assigned to preside over the adjudication process.

Question 5: Are all types of water rights included in a water rights adjudication?

A: The Yakima adjudication and many other older adjudications only addressed surface water rights. There has not been an adjudication initiated since Ecology changed its position on groundwater/surface water interactions, or since Ecology started imposing limits on exempt wells by rulemaking. It is likely that a future water rights adjudication would include both surface and groundwater rights, including exempt groundwater uses. Permits, certificates, and claims would be included for all purposes of use.

Question 6: Does state law govern how a Superior Court conducts an adjudication?

A: Yes, RCW 90.03.110-.245 governs water right adjudications. These statutes are provided at the end of this memo. In addition, as a civil court case, the Superior Court Civil Rules, and on appeal, the Rules of Appellate Procedure govern the adjudication. The adjudication statutes also allow the Pre-Trial Orders developed in the Yakima Adjudication to be used in other county water right adjudications, as determined by the Superior Court.

Question 7: Who provides legal representation for water right holders involved in the adjudication?

A: Holders of water right permits, certificates, claims, or exempt uses would be responsible for hiring legal counsel to represent them in this court case. Water rights of a similar type or location may be joined together in sub-proceedings, and water right holders may be able to obtain joint representation. Just as in other types of litigation, the Superior Court has the discretion to organize how the adjudication process would be conducted to increase efficiency and minimize the cost and burdens on the parties.

The State is represented by the Ecology Division of the Office of the Attorney General, and federal interests are represented by the U.S. Department of Justice and individual attorneys for tribal governments or other federal parties. The State is the Plaintiff in the lawsuit, and all state water right holders, the federal government, and tribes are Defendants in a water rights adjudication.

Question 8: What are the initial steps in an adjudication?

A: Ecology, as Plaintiff in the lawsuit, would file a Summons and Complaint in Superior Court. Ecology would then serve the Summons and Complaint on the known Defendants, which would be the known water right holders of record. Because of the inaccuracy of water right records, Ecology would also publish the Summons in a local newspaper, directing holders of water rights to file a Notice of Appearance in the Superior Court action. The adjudication statute also provides for the filing of an “adjudication claim,” which is a document that provides details from the water right holder as to his or her claimed water right.

Question 9: How does an adjudication relate to an adopted Ecology minimum instream flow level?

A: There has never been a water rights adjudication in a basin with an Ecology-adopted instream flow rule. Under RCW 90.03.345, a minimum flow adopted by rule is an appropriation of water, with a priority date as of the effective date of the rule. In the Nooksack Basin and many other basins with rules adopted in the 1970s and 80s, the instream flow rule adopted by Ecology was adopted as a surface water rule – meaning junior groundwater rights and exempt uses would not be impacted by the instream flow rule. However, Ecology has since changed its interpretation of its own rules and prevailed in the *Postema* Supreme Court decision. This decision affirmed permit denials by Ecology based on connectivity between groundwater and surface waters closed by Ecology rule. So, it is likely that after a water right adjudication, Ecology would curtail or regulate both surface and groundwater rights and exempt uses that are junior to (a priority date later in time) than the Ecology instream flow level.

Question 10: Could a water right adjudication result in curtailment or limitations on domestic wells or water rights for domestic human consumption?

A: If the prior appropriation were strictly applied by Ecology after an adjudication, then domestic wells could be subject to curtailment. This is because many of Ecology’s adopted instream flow levels will not be met at some point during the year, and so junior water rights subject to interruption include junior exempt uses like single domestic wells. Practically speaking, it is unlikely that Ecology would, in fact, order curtailment of indoor domestic uses to occur because of the obvious negative impacts to human health, the economy, and other factors. It is possible that Ecology would enforce an adjudication decree to limit outdoor domestic uses, limit indoor uses to a certain level, limit junior municipal or domestic water rights, or require mitigation for out-of-priority domestic uses to avoid curtailment.

Question 11: If Ecology Curtailed All Water Rights Junior to its 1985 Instream Flow, Would Ecology's Instream Flow Level Be Met?

A: No, in years with low snowpack and/or less rainfall in the spring or summer, actual flow levels are much less than Ecology's adopted flow level. In these types of low flow years, Ecology's flow level would still not be met even if junior, and most senior water rights were eliminated.

Question 12: If water rights are relinquished as a result of a water rights adjudication, will those quantities of water be available to others as new water rights?

A: No. While the original purpose of water rights forfeiture laws was to ensure that water was allocated to water users that would put water to beneficial use, that is no longer the case. In recent decades, water rights relinquishment does not create new water supplies that can be reallocated to water right permit applicants. This is because of Ecology's position that many basins are over-appropriated, or because of Ecology instream flow rules that have closed basins to issuance of new water rights. Relinquishment of water rights through an adjudication would benefit instream flows and/or senior water rights.

Question 13: Could an adjudication impact water rights that have previously been reviewed by Ecology through a water right change or transfer?

A: Yes. When a water right is changed or transferred, it is subject to a "tentative determination of validity and extent" by Ecology. This review by Ecology evaluates whether the applicant has a valid water right, and what quantity is valid based on the history of beneficial use. This Ecology review is only a "tentative" administrative review, as under the water code, only a Superior Court in a water right adjudication can issue a final determination as to the validity and extent of a water right. So, it is possible that based on different evidence or law applied by the adjudication court, that the Court's determination of a water right could differ from Ecology's earlier administrative review. In addition, during the period of time since an Ecology change or transfer decision, the beneficial use of water could have changed. Thus, the valid quantity at the time of adjudication could be less than the quantity previously approved for change or transfer by Ecology because of reduced beneficial use since the Ecology decision.

Question 14: Who in Whatcom County or the Nooksack Basin has expressed interest in or support for a water rights adjudication in the Nooksack Basin?

A: To our knowledge, only the Lummi Nation and Nooksack Tribe have requested a water rights adjudication. Part of Ecology's process of reviewing water right adjudication locations will include outreach to water resource interests to evaluate the existence of local support for an adjudication in different parts of the state.

Question 15: Can federal and tribal water rights be included in a water rights adjudication?

A: Yes. The adjudication of federal water rights is one of the few subject matters where state courts have jurisdiction over federal parties. This is because of the McCarran Amendment, which is a provision in federal law creating a waiver of federal sovereign immunity to enable federal rights to be adjudicated in state court. Federal water rights are most commonly established through federally-reserved water rights. Federal courts have ruled that when the federal government establishes a federal reservation of land, there is an implication that such reservation of land includes a reservation of water rights as necessary to accomplish the purpose of the federal reservation. This is the case for a variety of federal reservations of land – military bases, national parks, wilderness areas, or Indian reservations.

As to Indian reservations, courts have recognized federally-reserved water rights in two parts. The first part is the reserved water right for on-reservation uses. The extent of this water right turns on the language of the treaty creating the reservation. For example, if the purpose and language of the treaty evidences an intent to develop on-reservation irrigation, then the on-reservation water right would include a quantity of water for irrigation use. The on-reservation part of the water right has a priority date as of the date of the Indian treaty. The Lummi Nation and Nooksack Tribe are parties to the Treaty of Point Elliott, signed in 1855, which would be the priority date for on-reservation water rights.

The second part of reserved rights that tribes would assert is for off-reservation implied instream flow water rights. This type of water right is far less certain as to its existence, quantification, and location, and a full review of this issue is beyond the scope of this memo. The extent of this type of water right, for which tribe, at what level, at what location, at what time, etc. - would depend on a multitude of factors. This type of water right could have a priority date of “time immemorial” – because the usage predates the creation of the reservation by treaty.

Question 16: Is there a difference between the state instream flow level adopted by Ecology rule, and a tribal off-reservation implied instream flow?

A: It is unknown how the flow level in an Ecology instream flow rule compares to an adjudication-court established tribal implied instream flow water right. In some basins, the Ecology instream flow level comports with Ecology’s original interpretation of the state water code, that instream flows were a “minimum” flow level. Other, more recent Ecology instream flow levels (generally, those adopted after 2000) included a much higher flow level, not a hydrologic minimum, but at a higher flow level to benefit fish species throughout a variety of life stages. There has never been a water rights adjudication in Washington State involving both a treaty-based reserved instream flow water right and a state instream flow adopted by rule.

Question 17: Does having water rights adjudication filed by Ecology prevent a water rights negotiation or settlement process?

A: A water rights adjudication is a civil case, and so like other lawsuits could involve a settlement discussion. However, as a multi-party lawsuit with potentially thousands of defendants, the process of such a settlement effort would first involve considerable negotiation and likely briefing to the adjudication court as to how such a settlement discussion would be structured.

Question 18: Would a water rights adjudication in the Nooksack Basin take into consideration prior Ecology positions and representations as to agricultural water rights?

A: Ecology's regulation of water rights in the Nooksack Basin includes a number of unique circumstances that do not exist in other parts of the State. One of these is the so-called "Husseman Promise," referring to a former Ecology employee who worked with a number of agricultural water users to have groundwater permit applications filed in the 1980s and 1990s. Ecology represented that such applications on file would protect existing groundwater uses until they could be approved by Ecology.

However, even though Ecology's Nooksack Basin rule was originally adopted as a surface water rule (under which the pending groundwater applications could still be approved), Ecology later changed its interpretation of its own rules, so that groundwater applications cannot be approved. These types of equitable arguments could be raised in an adjudication, though it is unclear how a Superior Court would address these types of issues in the midst of an adjudication.

Question 19: Would a water right adjudication prevent other existing water resource management efforts from proceeding forward?

A: Strictly speaking, there is no legal prohibition to continuing forward with efforts such as the WRIA #1 Regional Water Supply Plan and Drainage Based Management processes while a water rights adjudication is underway. However, an adjudication would create significant practical, financial, and political barriers to continuing these efforts. If an adjudication were initiated, individual farmers and other water right holders should prioritize devoting time and financial resources to the litigation. Further, if an adjudication is filed in a basin, it would be a signal from Ecology that the agency views existing basin efforts and processes as insufficient to address water resource issues. Without support from Ecology, it is hard to envision those processes continuing.

Focus on: Future Adjudications



More information

Visit our [Adjudications page](https://ecology.wa.gov/Water-Shorelines/Water-supply/Water-rights/Adjudications):
ecology.wa.gov/Water-Shorelines/Water-supply/Water-rights/Adjudications

Contact information

Robin McPherson
Adjudication Assessment Manager
360-407-7244
robin.mcpherson@ecy.wa.gov

ADA accommodations

To request ADA accommodation including materials in a format for the visually impaired, call Ecology at 360-407-6872 or visit <https://ecology.wa.gov/accessibility>. People with impaired hearing may call Washington Relay Service at 711. People with speech disability may call TTY at 877-833-6341.

Adjudications Protect Water and Water Users

Adjudications are lawsuits that verify all water rights on a water source, including Tribal water rights and stream flows. All water users receive notice and have a chance to prove their right in court. The court rules on each water right's quantity and history, and ranks rights on a "first in time, first in right" schedule. In times of water scarcity, a water master manages the rights so that newer ("junior") rights are curtailed before the older ("senior") rights. This is the most fair and complete method of managing a source of water.

Following *Ecology v. Acquavella*, the adjudication recently completed in the Yakima Basin, the Legislature has asked Ecology to recommend whether and where the next adjudications should take place.

Where Will Adjudications Help the Most?

Adjudication are big undertakings, and the State needs to prioritize where they will make the most difference. Ecology is identifying basins where adjudication is the right tool to protect water and water users. In some watersheds, the history of water rights is unclear, making regulation difficult. Ecology cannot enforce one water user's claim against another – water users must sue each other to stop impairment by junior users. Water users face uncertainty from year to year because they are vulnerable to interruption. An adjudication brings certainty and protection to all water rights, including stream flows.

How Adjudications Begin

Ecology prepares for an adjudication by defining a water source and identifying all uses of that source, including streamflow. Water users, claimants, and the public all receive notice of the adjudication. Then Ecology files a lawsuit in state superior court naming all users and claimants as defendants. Ecology assists water users by providing available state documentation of their water rights. Water users may also present evidence of their historic water use. Any legal questions on the legal status of a water right are addressed by the court.

Tribal and Federal Reserved Water Rights

Federal law allows Ecology to join Tribes and the Federal Government in state court for general water adjudications.

Tribes may prove a number of claims to a water source including water for instream flow, agriculture, or other purposes. The court determines the quantity and priority date of Tribal rights along with all others. Depending on the history of the water right, the priority date might be “time immemorial,” the date of a federal land reservation, or the date water was acquired by the Tribe.

Before bringing any lawsuit against a Tribe, Ecology will comply with the Attorney General’s Tribal Consent and Consultation Policy.

Adjudicating Groundwater

A water source often includes both surface and ground waters that are connected. All water users, as well as stream flows, are entitled to the security and protection of an adjudication.

In a new adjudication, Ecology will describe the water source for the court, including maps and hydrology to show whether groundwater wells impact rivers and streams.

If they are connected to the water source, groundwater claimants may prove their history and legality of use, and the court will enter them on the final decree with a priority date.

Adjudications Get Results

An adjudication verifies valid water rights based on their past use and any legal exemptions. This keeps water uses fair and legal.

A final adjudication decree has the force of law. Verified rights receive adjudicated certificates stating their priority date, quantity, and use. Unlike state-issued permits and certificates, these are not “tentative” decisions. The adjudication is the final word on a water user’s relative priority. This includes many very old claims to water that the State cannot otherwise regulate.

Adjudications can take a number of years, depending on how many water users are involved. The adjudication of the Yakima River system in *Acquavella* included 33 subbasins and took over 40 years. Future adjudications will be more efficient due to changes in the law and advances in technology.

Collaboration and Settlement

The law encourages Ecology to settle water rights disputes. This includes adjudications. Adjudications can encourage settlement and partnership because all water users are joined together in a uniform process. Any final settlement in an adjudication is presented to the court for approval of the agreed water right quantities. This provides transparency and due process throughout the watershed.

Ecology’s Next Steps

Ecology is looking statewide to assess watersheds that might benefit from adjudication. We are considering basins with senior Tribal water rights, streamflow needs, and challenges caused by water user uncertainty and conflict.

Ecology will incorporate its assessment and recommendations into an in-depth report to the Legislature. The report will describe the challenges and benefits of adjudicating certain watersheds.

Before filing an adjudication, Ecology must consult with the courts and legislature about budget and resources. Ecology is consulting with the courts in preparation for its Adjudication Assessment Legislative Report, required by September 1, 2020.

provided solely for the department of ecology to assess the need, costs, and barriers to initiating the adjudication process in selected watersheds to reduce and resolve uncertainty about water rights. The department shall evaluate multiple watersheds to identify stakeholder and local government interest and concerns about the process, and to determine the cost of conducting an adjudication in each watershed identified in the evaluation. The department shall submit an evaluation report and recommendations to the governor and appropriate legislative committees by September 1, 2020.

Adjudications Assessment 2020

Robin McPherson

March 27, 2020

What is an Adjudication?

- Superior Court prioritizes rights from oldest to newest
- A single process for all facts, history, and law of water use
- Final Court Decree lists priority, quantity, and purpose of all valid water rights



How do Adjudications Work?

1. Ecology defines a water source and identifies users
2. Superior Court sets deadlines and process
3. All water users respond with a claim and supporting evidence
4. Ecology provides a Report of Findings applying existing state law (municipal exemptions, pumps & pipes, etc.)
5. Water users may object to Ecology or each other
6. Court rules on rights and issues a schedule. Partially-perfected rights might have special certificates or be “split” into perfected/inchoate portions



Form – Statement of Claim



ADJUDICATION STATEMENT OF CLAIM

1. Name of Claimant (Last, First MI)		2. Phone Number (day)						
		Phone Number (evening)						
3. Street Address:		4. Email Address:						
5. Mailing Address (if different from above)								
6. Name, Address, and Phone number of Legal Owner of Property if different from claimant								
7. Driving directions to property on which water is claimed								
8. Legal Doctrine of the right or use on which claim is based (appropriation, riparian)								
9. Permit, certificate or claim number (attach copy)								
10. Documentation of Claimed Right (if any)								
WATER RIGHT OR CLAIM NUMBER		RECORDED NAME(S)						
IS THE DOCUMENTATION RECORDED IN YOUR NAME? <input type="checkbox"/> YES <input type="checkbox"/> NO								
IF NO, PROVIDE NAME AS SHOWN ON DOCUMENTATION:								
IS THIS CLAIM ASSERTING A RIGHT UNDER THE EXEMPTION FROM PERMIT PROVIDED WITHIN 90.44.050 RCW? <input type="checkbox"/> YES <input type="checkbox"/> NO								
IF SO, IS A WATER WELL REPORT AVAILABLE FOR THE SOURCE WELL? <input type="checkbox"/> YES <input type="checkbox"/> NO								
11. Name of the water source (stream name, "a groundwater well", etc.)								
12. Date of initiation of the water use project (This is from 90.03.140(3))		13. Date the water was put to first use (commencement of use) by the original appropriator						
14. Does the claimed right use a diversion or withdrawal of water from the water source?								
15. Legal description of the location of the point of diversion								
SOURCE	NO.	¼	¼	SEC.	TWP.	RGE.	PARCEL #	WELL TAG #
DO YOU OWN THE CLAIMED POINT(S) OF DIVERSION/WITHDRAWAL? <input type="checkbox"/> YES <input type="checkbox"/> NO								
IF NO, PROVIDE OWNER(S) NAME:								
16. Asserted date of priority of claimed right				17. Date of the completion of diversion works				

18. Description of diversion or withdrawal and conveyance works							
19. The dimensions and capacity of all existing dams, ditches, pipelines, storage tanks or reservoirs							
20. Amount of land under irrigation (current and historical maximum and year of maximum)							
21. PURPOSES OF USE AND MAXIMUM WATER QUANTITIES CLAIMED FOR THOSE USES							
PURPOSE OF USE		GPM or CFS		ACRE-FT/YR		PERIOD OF USE	
22. Amount of land under irrigation (if applicable)							
23. Current and Historical maximum quantity of water used for irrigation							
24. Year of Maximum use		25. Number of residences and population served			26. Type and numbers of stock watered		
27. Legal description of the land where the water is used, including parcel numbers							
LEGAL DESCRIPTION OF LANDS WHERE CLAIMED WATER RIGHT IS USED:							
¼	¼	SEC.	TWP.	RGE.	COUNTY	PARCEL #	# OF ACRES
DO YOU OWN ALL THE LANDS IN THE CLAIMED PLACE OF USE? <input type="checkbox"/> YES <input type="checkbox"/> NO - IF NO, PROVIDE OWNER(S) NAME:							
28.							
<input type="checkbox"/> Water still in use							
<input type="checkbox"/> Water is no longer in use and claimant does not intend to use water in the future							
29. I hereby declare under oath that all statements made herein are true to the best of my knowledge.							
Signature of Claimant							



IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF KITTITAS

IN THE MATTER OF THE DETERMINATION
OF THE RIGHTS TO THE USE OF THE
WATERS OF COOKE CREEK AND ITS
TRIBUTARIES IN KITTITAS COUNTY,
WASHINGTON, IN ACCORDANCE WITH
THE PROVISIONS OF CHAPTER 117 OF
THE SESSION LAWS OF 1917 OF THE
STATE OF WASHINGTON.

No. 5222

D E C R E E

Court rules on rights and issues a schedule

DATE OF SETTLE- MENT	DATE OF INITIA- TION OF WATER RIGHTS	NUMBER OF ACRES	AMOUNT OF WATER Cubic Feet Per Second	Miners' Inches 4-inch Pressure	DESCRIPTION OF LAND IN WHICH TRACT IS LOCATED
					Sec. Twp. N. R. E.W.M.

DATE OF SETTLEMENT	DATE OF INITIATION OF WATER RIGHTS	NUMBER OF ACRES	AMOUNT OF WATER Cubic Feet Per Second	Miners' Inches 4-inch Pressure	DESCRIPTION OF LAND IN WHICH TRACT IS LOCATED
					Sec. Twp. N. R. E.W.M.
CLASS 14.					
Rufus Cook, Executor of the April 1870	1870	156.0			
CLASS 15.					
Cecil Johnson June 1870	1870	115.0			
Milwaukee Land Company					
1889	1893	90.0	1.80	90.0	SE $\frac{1}{4}$ 2 - 17 - 19
CLASS 16.					
M. D. Cook					
1871	1871	85.0	3.20	160.0	SW $\frac{1}{4}$ 36 - 17 - 19
CLASS 17.					
point 17 chains and NE $\frac{1}{4}$ of SW $\frac{1}{4}$ of Sec. 1 running thence E. 1 chains and 7 links and 95 links; thence place of beginning at the NW corner of T. 18 N., R. 20 E. chains to a stone face for NE corner; 12x10x6 inches, SE stake; thence N. 18 Also the following the NE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of W. M. bounded by a of SE $\frac{1}{4}$ of Section 7 quarter section line thence E. 88.5 rods said section 36.25					
R. I. Scammon					
1886	1905	70.0	1.40	70.0	SE $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$ Lots 1 & 2, 1 - 17 - 19
CLASS 18.					
R. I. Scammon					
1915	1915	200.0	4.00	200.0	E $\frac{1}{2}$ 36 - 18 - 19
John Edwards					
1915	1915	160.0	3.20	160.0	NW $\frac{1}{4}$ 36 - 18 - 19
CLASS 19.					
Henry Kleinberg					
1871	1871	12.0	6.40	320.0	35 - 18 - 19

Adjudication Assessment 2020

- Report to the appropriate committees of the legislature on the estimated budget needs for the court and the department to conduct the adjudication. *RCW 90.03.110(2)(b)*
- Need, costs and barriers
- Reduce and resolve uncertainty about water rights
- Evaluate multiple watersheds
- Local interests and concerns



Watershed Evaluations

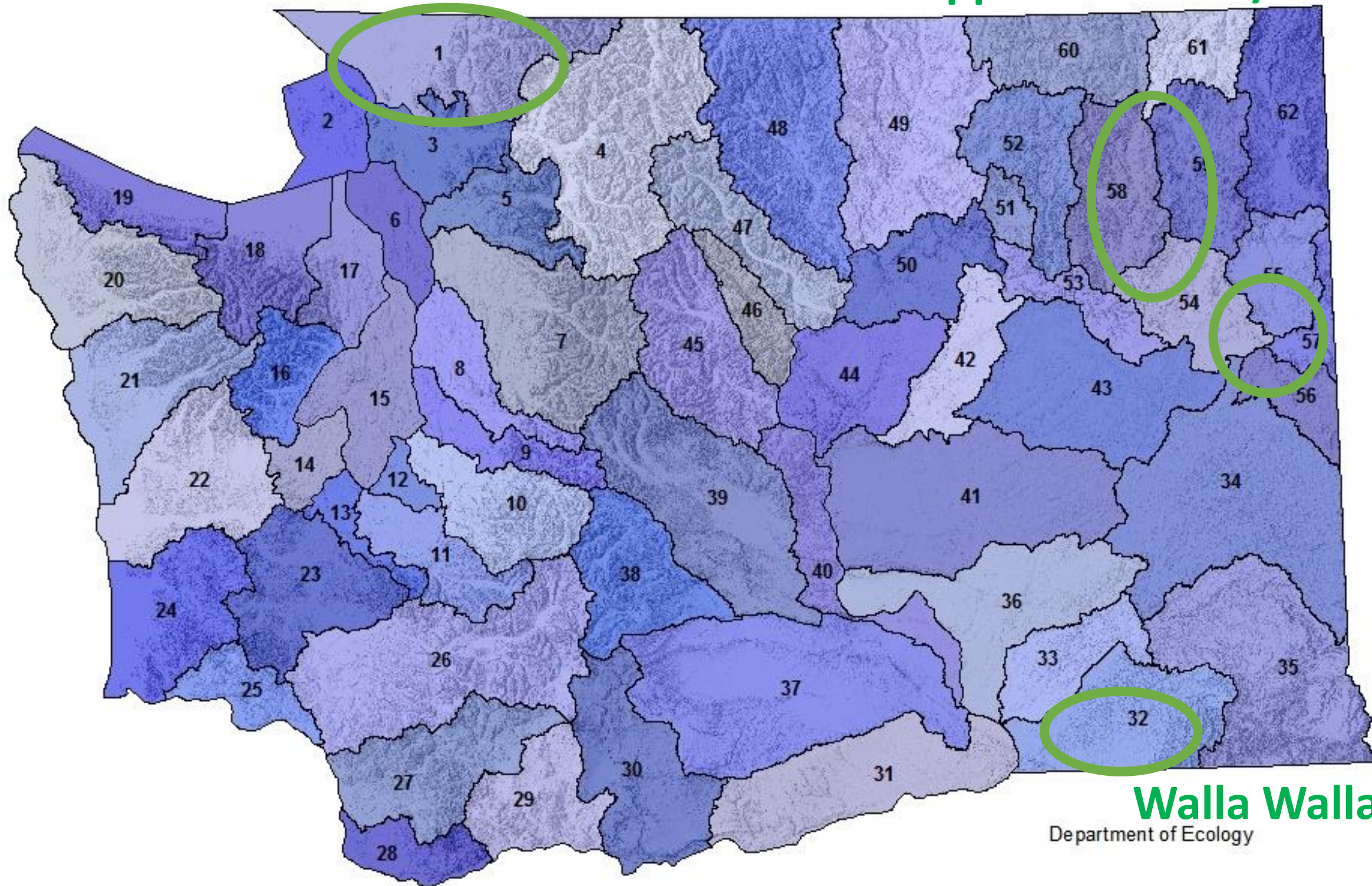
- How thorough and fair are current regulations?
- How certain are paper rights?
- How complete is the hydrology?
- How effective is stream protection?
- What other solutions have been attempted?
- How vulnerable to future risk?
- What would it cost and how long would it take?



Watersheds Evaluated

Nooksack

Upper Columbia/ Lake Roosevelt



Spokane

Walla Walla

Department of Ecology





Robin McPherson

360-407-7244

Robin.McPherson@ecy.wa.gov

Adjudications Assessment 2020

