

How Do I Prepare for A Nooksack Water Rights Adjudication?

The Washington Department of Ecology (“Ecology”) has stated that it intends to file a lawsuit in Whatcom County Superior Court sometime after April 2024 that will require all water users to prove that they have a legal water use (permit, certificate, claim, or exempt well), and demonstrate the quantity of water that has been consistently used. In this type of lawsuit, called a water right adjudication, Ecology is the Plaintiff and all water users are the Defendants.

Water users should prepare for an adjudication by gathering two types of information:

- (1) Information required to be filed in Superior Court to become a Defendant in Ecology’s lawsuit; and
- (2) Evidence and information that can be used during the lawsuit to demonstrate historic use of water. Since 1967, any quantity of water not used for 5 consecutive years is subject to relinquishment to the State, unless a statutory exception applies (and many exceptions rarely apply to protect irrigation water rights)

Information Required to Be Filed in Superior Court to Become A Defendant in Adjudication

State law requires that a water user file in an “adjudication claim” in Superior Court to become a Defendant in the lawsuit – otherwise, the water user will lose any right to use water. Washington’s water code (RCW 90.03.140) requires that a water user provide the following information, under oath, to the Superior Court to become a Defendant in the lawsuit, on a form prepared by Ecology:

- (1) The name, mailing address, and telephone contact number of each defendant on the claim, and email address, if available;
- (2) The purpose or purposes of use of the water and the annual and instantaneous quantities of water put to beneficial use;
- (3) For each use, the date the first steps were taken under the law to put the water to beneficial use;
- (4) The date of beginning and completion of the construction of wells, ditches, or other works to put the water to use;
- (5) The maximum amount of land irrigated and maximum quantities of water used;
- (6) The dates when water is used during the year;
- (7) The legal description and county tax parcel number of the land upon which the water has been used;
- (8) The legal description, county tax parcel number, survey, or GPS coordinates of the subdivision of land on which the point of diversion or withdrawal is located;
- (9) 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;
- (10) The legal basis for the claimed right;

(11) Whether a water right statement of claim for surface or groundwater was previously filed, and the claim 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;

(12) 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.

Obtaining Information on Your Water Rights

If you don't have a complete record of your water rights, water right documents can be obtained from Ecology. Ecology has a searchable database that can be found through an internet search for "Ecology Water Resource Explorer." Or, the public can submit a "Request for Existing Water Right Information," which can be found at the link here:

<https://apps.ecology.wa.gov/publications/summarypages/ecy04067.html>

Types of Water Right Documents Available from Department of Ecology

Water right documents available from Ecology can include the following types of documents:

- Water Right Application
- Report of Examination
- Water Right Permit
- Proof of Appropriation
- Water Right Certificate
- Water Right Claim
- Water right change or transfer decisions
- Letters, memos, or other documents to or from Ecology
- Well logs
- Metering or other water use information

Sources of Evidence and Information to Demonstrate Consistent Use of Water

A water rights adjudication involves presentation of evidence by the water right holder that the water right has been consistently used, and to show the quantity of use. This information can be presented through a number of forms of evidence:

- Metering records
- Landowner photographs of irrigated areas
- Crop and production records
- Declarations of current and former landowners
- Aerial photographs available from the State or private photo services
- Electric pump records

Get Assistance to Be Prepared

The State's roster of Certified Water Right Examiners includes a number of consultants who can access water right documents. Please review that list for obtain assistance in obtaining all of your water right documentation.