

# Focus on: Potential Adjudication in Lake Roosevelt and Middle Tributaries



As the state agency responsible for managing water resources for Washington, we strive to ensure that there is enough water for people, farms, and fish. It's easy to say this, but the problem is more complicated. Washington has a history of water laws that dates back more than 100 years.

One tool in our water management toolbox is a process called adjudication. In a September 2020 report to the state Legislature, we identified two locations that our evaluation shows would benefit from the adjudication process: the Nooksack watershed in Northwest Washington, and an area around Lake Roosevelt in the northeastern part of the state.

## What is an adjudication?

Adjudication is one tool in our water management toolbox. It is a process that brings all water users in a watershed into one court process that permanently **determines everyone's legal water rights in that area**. The court process leads to full and fair water management by confirming legal rights to use water.

*That's just the first question. Read on for other frequently asked questions.*

Contact and accommodation information on page 4.

## Why is a court process necessary?

Washington follows the doctrine of prior appropriation, meaning the first users have rights senior to those issued later. When there are water shortages, senior users are served first and the most junior users may get less or none. There are some places where changes in the law and water use have led to confusion about who can legally use water and who may be using water without the lawful right to do so. An adjudication is the legal process to address the need for all water users to have certainty about their water rights.

Ecology, on our own, cannot apply prior appropriation throughout a watershed. Only state or federal courts have the authority to issue final determinations.



## Who is affected by an adjudication?

The adjudication covers all water uses within a watershed or basin. This includes uses identified in permits issued by Ecology, as well as claims to water that were made before the state adopted its water code.

However, water users who do not hold their own water rights – such as irrigation districts contracting with the U.S. Bureau of Reclamation (USBR) and their customers – do not need to come to court to prove their water use, because it is included under the USBR right. Ecology is available to discuss concerns with these users, and they should consider talking with USBR about their contracted water rights. Additionally, users with previously-adjudicated certificates, permit-exempt stockwater or small domestic users will have a simplified process to verify their water right. Parties who are not included at the beginning of an adjudication may ask the court for permission to join later under certain legal circumstances.



### What area is included in the proposed adjudication?

Ecology's proposal includes Lake Roosevelt itself, along with the middle segment of tributaries which are in Water Resource Inventory Area (WRIA) 58. WRIA 58 is in Stevens and Ferry counties and is a rural area comprised of public forest lands, farms, and homes. Adjudication would include all water diversions, wells and instream rights on Lake Roosevelt and WRIA 58 tributaries. Ecology does not expect to include water diversions or instream rights downstream of the Grand Coulee Dam, because water flow to those areas is controlled by federal dam operations.

### How is an adjudication different?

Instead of addressing individual challenges to each Ecology permit and rule decision over the years, the court takes all of the past decisions and all the water uses not yet decided, and issues a comprehensive decree and final determination. Until water uses are adjudicated, uncertainty about the future will continue to grow.



### How would an adjudication help the Lake Roosevelt and Upper Columbia basin?

Lake Roosevelt lies amidst the largest area of Indian reservation land in Washington. Water in this area is used by tribes, federal agencies, and state users with no consistent law between them. USBR holds early state water rights for waters distributed through the [Columbia Basin Project](#), which serves about 671,000 acres of farmland in eastern Washington through a large system of pumps, canals, and reservoirs. The U.S. Forest Service, National Park Service, and other federal agencies may also hold reserved water rights. Tribes in the area claim even earlier rights to water. Even though everyone uses the same water, it is not clear which uses have priority when there is a shortage or who is "next in line" for future water rights.

This lack of clarity has potential to affect current and future water users. There might be confusion about water used or leased by the tribes and Ecology's regulation of tributary users.

An adjudication lets everyone know who has the right to water. It also would provide security to valuable, large-scale water projects. After adjudication, legal water users hold an asset with their land. Adjudication makes it easier for farms and others to buy, sell, or trade water through water banks.

### What about areas already adjudicated?

A new adjudication would not re-litigate an old one. Past adjudications in WRIA 58 include Alder Creek (1924), Cheweka Creek (1924), Corus Creek (1926), Stranger Creek (1926), Quilisascut Creek (1929), Orapahan Creek (1931), Jennings Creek (1933), Harvey Creek (1972), and Magee Creek (1973). A new adjudication would not change the priority dates established previously, but would integrate them into the new decree.

## What is the role of tribes?

Both the Spokane Tribe and Colville Confederated Tribes' reservation lands border Lake Roosevelt. The Colville Confederated Tribes are comprised of twelve indigenous tribes: Chelan, Chief Joseph Band of Nez Perce, Colville, Entiat, Lakes, Methow, Moses-Columbia, Nespalem, Okanogan, Palus, San Poil, and Wenatchi. Tribal lands include water that feeds the lake system. The adjudication would involve all water users, including the Colville Confederated Tribes and the Spokane Tribe. These tribes, which own the majority of land in the area, support adjudication. Other tribes may claim water for treaty or other rights throughout the Columbia River system.

For many years, the Colville Confederated Tribes and Spokane Tribe have worked with federal and state agencies to manage Lake Roosevelt and the Columbia River. They have the earliest claims to water in Lake Roosevelt and its middle tributaries, dating back at least to their land reservations of 1872 and 1881. However, there is uncertainty and disagreement as to whether the state can protect or regulate these rights.

The Colville Confederated Tribes petitioned for adjudication in 2019 and the Spokane Tribe indicated they do not object to state court jurisdiction. For tribes to ask for state court jurisdiction over their reservation water rights is unprecedented and provides a once-in-a-century opportunity for solutions.

## Why does the report say that the tribes use an unquantified amount of water?

All tribes control the land and water within their reservations. They regulate their own planning, building, and infrastructure and water right permitting. Ecology's permit system does not include most reservation water, so it is difficult to know how much water is being used and include that information in state water planning.

We have one watershed, but many laws, and adjudication is the best way to connect them in a single legal framework.

## Can federal rights be adjudicated in state court?

Yes. The McCarran Amendment waives U.S. sovereign immunity in general stream adjudications. That means the state can bring federal rights—including those held by Department of Interior as trustee for Indian tribes—into state court. USBR also holds state water rights for Lake Roosevelt power and irrigation. This is one reason that an adjudication is an important tool—it's the only way to ensure that every water user is included in a final agreement.

## How does Ecology evaluate water rights and make recommendations to the court?

Ecology will look at each water right on its own merits. We gather facts on usage history and then describe the priority date, quantity, place, and purpose of use. Ecology provides this information to the court. Water users can then object to Ecology's decisions on their (or each other's) rights, which the court can later approve, modify, or reject.



## How much will this cost and who pays?

The Governor's 2021 budget proposal to the Legislature includes a request for approximately \$1 million over two years to prepare for the two recommended adjudications. This would not immediately initiate a court action; rather, it would fund costs for the superior courts, Attorney General's Office, and Ecology to compile information and prepare for efficient court actions in a subsequent biennium.

Ecology plans to keep its current small team of adjudication experts to work with water users and prepare information needed for the case.

While each water user may choose to hire lawyers and consultants, parties are not required to incur large legal bills in order to take part in the process. Ecology understands the budget impacts of this work and we are committed to a streamlined and efficient process to keep every party's expenses as low as possible.



### How long will this take?

Ecology's recommendation proposes a deliberate and moderate pace that would include pre-adjudication work in 2021-22, leading to the filing of a court action in the first part of 2023. This would provide about two years for preparation and possible discussion of water solutions. Ecology estimates 10-20 years for final resolution of all rights. Many rights would be resolved along the way.

### Didn't the last adjudication take 40 years to complete?

Yes, however, we do not anticipate it will take that long in this instance. While the *Acquavella* case took a long time, it provided valuable lessons on how to streamline the process which ultimately led to legislative changes in 2009. Technology has also

improved—digital court filings will replace pre-internet paper filings and copying, and electronic notifications have replaced mailing, allowing more efficient processing of water rights. All of these steps will simplify the next adjudication we undertake.

### Why is Ecology proposing to start this process now?

In 2019, the Legislature directed Ecology to assess where an adjudication process is needed to help resolve water rights disputes. We completed that assessment and identified two locations that would benefit from the adjudication process: the Nooksack watershed in northwest Washington, and an area around Lake Roosevelt in the northeastern part of the state.

By starting this process sooner rather than later, we can resolve questions about old pre-code claims, incorporate tribal water rights in the state court process, and provide legal certainty to support public and private investments in regional water supply solutions.

#### [Water right adjudications](#)

Find the report and other information online at [www.ecology.wa.gov/WaterRightAdjudications](http://www.ecology.wa.gov/WaterRightAdjudications)

#### ADA accommodations

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