



2002 Report to the Legislature

Streamlining the Water Rights General Adjudication
Procedures

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STREAMLINING ADJUDICATIONS

A Report To The Washington State Legislature December 2002

Pursuant to Chapter 371, Laws of 2002 (Engrossed Substitute Senate Bill 6387) the Department of Ecology and Office of the Attorney General provide this report to the Washington Legislature on ways to streamline the water rights general adjudication procedures. The report is presented in three main parts, and includes an Executive Summary and Introduction:

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Executive Summary

This report on streamlining the water rights general adjudication process was prepared by the Department of Ecology and the Office of the Attorney General, pursuant to Chapter 371, Laws of 2002 (Engrossed Substitute Senate Bill 6387).

Water is a limited resource with increasing demands on it. The need for reliable information on the extent, validity and relative priorities of existing water rights is essential for water resource management and planning. General adjudications are the only way to determine this information comprehensively and with certainty. Only some 20% of the state's surface area has been (or is in the process of being) adjudicated; most of the adjudications have dealt only with surface water. Ways to facilitate the overall adjudication process for the remaining 80% of the state's land area, and nearly all of its ground water, is crucial.

Four key goals were identified for streamlining the adjudication process, supported by five objectives determined to be the best ways to reach those goals (see page 10). This report offers the following nine recommendations to meet the goals and objectives of streamlining the adjudication process:

1. Within the adjudication process, have Ecology make the tentative determinations on water rights and have claimants present fully documented claims at the outset.
2. Independent of the adjudication process, create a new process for Ecology to validate registered water right claims.
3. Allow limited special adjudications.
4. Have Ecology provide comprehensive background information early in the adjudication proceedings.
5. Authorize pre-filed written testimony.
6. Utilize information technology more effectively.
7. Develop aerial photograph interpretation expertise.
8. Expand the use of mediation.
9. Develop guidance on how to maintain and document a water right.

The recommendations are both administrative and legislative in nature. Each will require legislative modification, additional funding or both. They focus primarily on the procedures and the resources associated with Ecology's role in an adjudication.

INTRODUCTION

General adjudications of water rights are an essential part of water management in Washington State. Adjudications are currently the only definitive way to determine the extent and validity of existing water rights from a particular source within a geographic area -- information that is at the foundation of all water resource planning and management.

Water is a limited resource in high demand. Access to adequate supplies of water is required to meet the growing needs of communities, businesses, agriculture and others, while still protecting the environment. Changes and transfers of existing water rights continue to be one of the main ways by which water is acquired to meet these various needs. But it is difficult to make change and transfer decisions in locations where water rights have not been judicially confirmed.

Water markets are expected to become a means of meeting future water demands. Successful water markets rely on changes and transfers of existing water rights. Certainty regarding the extent and validity of existing water rights resulting from adjudications will support successful water markets.

Of increasing concern for water resources planning and management is the need to clarify water rights established under federal law, namely, federal and Indian reserved water rights. Federal and Indian reserved water rights are among the water rights that place current and future demands on many Washington watersheds. Many of these rights have not yet been judicially confirmed, quantified, or prioritized. (For more information, see Federal and Indian Reserved Water Rights, A Report to the Washington State Legislature by the Office of the Attorney General, October 2002.) The uncertainty surrounding the existence, quantity, and priority of these rights in a particular watershed gives rise to an overall uncertainty among all water users in the watershed. A general adjudication is the primary means for determining these federal and Indian reserved water rights.

Delaying the adjudication of existing water rights will only lead to further complexities, as the individuals with personal knowledge of historic water uses in a case become increasingly less available. Additionally, as the land on which the water right is used is subdivided, there will be a larger number of claimants. Historic, aging paper records that provide evidence become more fragile and may disappear as they are lost, misplaced, or destroyed.

With all these demands on the adjudication process, determining effective ways to streamline it is essential. This report begins, in Part One, with a description of Washington State's current adjudication procedures, the different types of water rights that may be adjudicated, the state's adjudication history, and the perceived strengths and weaknesses of the current system.

Part Two presents the goals and objectives established for streamlining the current adjudication process, and then identifies nine specific streamlining recommendations. The recommendations are both administrative and legislative in nature, focusing primarily on the procedures and the resources associated with Ecology's role in an adjudication. In Part Three, the appendices include several lists of all current and historic adjudications in Washington, responses to a survey

from those involved in adjudications in five western states, an overview of adjudication procedures in other western states, and a bibliography.

Putting this study in its broader context

Chapter 371 also calls for the creation of a task force and the completion of three other studies, in conjunction with this Streamlining the Water Rights General Adjudication Procedures report.

The Water Right Dispute Resolution Task Force is a task force led by the Attorney General and comprised of legislators, judicial officers and agency officials. The Task Force was directed to study judicial and administrative alternatives for resolving water disputes. They are expected to review the findings presented by all four studies, as well as other information, to develop recommendations for water disputes resolution. The recommendations will be submitted to the Legislature at the end of 2003.

The three other reports look at specific components of water dispute resolution and water resources management:

- Federal and Indian Reserved Rights. This study focuses on issues associated with federal and Indian reserved water rights, the approaches taken by other states to such issues and their results. The study also explores the methods for addressing such issues including, but not limited to, administrative, judicial, or other methods, and implementation and funding requirements. (Submitted to Legislature October 2002.)
- Improving the Administration of Ecology's Water Right Records. This study focuses on recommendations for improving the administration of water rights ownership information and integrating this information with real property ownership records. Real property ownership information is critical in the adjudication process so that notifications and summons are properly served. (Submitted to Legislature October 2002.)
- Trans-boundary Report. This study focuses on the feasibility of conducting negotiations with other states and Canada regarding use of shared water bodies. (Expected to be submitted to Legislature January 2003.)

Recommendations from these studies and this streamlining adjudications report may overlap and complement each other. It is expected that the results of the studies will be considered by the Water Disputes Task Force as well as the Legislature.

PART 1

OVERVIEW OF WATER RIGHTS GENERAL ADJUDICATIONS IN WASHINGTON STATE

A. Current Adjudication Process

Washington has an administrative permitting and regulatory water management system; however, the adjudication procedure is judicial in nature. A general adjudication of water rights in Washington State is conducted according to the procedures provided in the Water Code, codified at RCW 90.03.105 through RCW 90.03.245 and RCW 90.44.220. It is a court case that determines the validity, extent, and relative priorities of existing water rights, for a specific basin, surface water body, or ground water body. A general adjudication serves only to confirm existing rights; it may not be used to lessen, enlarge, or modify existing water rights.

The Washington water rights system is designed to have superior courts conduct general adjudications to determine all the water rights within the specific watersheds and geographic areas throughout the state. The Water Code (Chapter 90.03 RCW) and the Superior Court Civil Rules govern the adjudication process. The process begins when one or more members of the public or a watershed planning unit petitions Ecology to initiate an adjudication, or when Ecology initiates an adjudication based on its own investigation. RCW 90.03.105 - .110. To commence the adjudication, Ecology is required to file a statement of facts (including a list of all known persons claiming water rights in the basin), and map or plan related to the water source and associated water rights in the appropriate superior court. RCW 90.03.110. After the case is initiated through this filing, the court directs Ecology, in its capacity as plaintiff, to serve summons on all persons and entities who might want to assert water rights in the proceeding. RCW 90.03.120 - .130.

After summons are served, claimants must file statements with the court to assert their claims to water rights. RCW 90.03.140. After claims are filed by the water users, the court is required to refer the proceeding to a referee appointed by Ecology who will hold hearings to take testimony and consider evidence on the asserted water rights. As exemplified in the current Yakima River Basin adjudication, in a large case involving more than 1,000 defendants including the United States, the superior court judge may conduct evidentiary hearings. RCW 90.03.160 - .170. After the hearings are conducted, the referee or judge will prepare a report of recommended water rights that is subject to an exceptions process. RCW 90.03.190 - .200. This exceptions process allows both the department and claimants to ask the superior court to make changes to the rulings contained in a referee's or judge's report.

When an adjudication is completed, the court issues a decree including a schedule that sets forth the confirmed water rights and their attributes, including a date of priority that is the basis for any subsequent regulation. RCW 90.03.200. Based on the final decree, Ecology is directed to issue certificates to all those whose water rights are confirmed. RCW 90.03.240. The certificates may be recorded in the appropriate auditor's office.

B. Types of Water Rights Which May Be Adjudicated

Adjudications in Washington are complicated by the fact that there are so many different types of recognized water rights under state law. Two key state statutes require permitting of water rights: Chapter 90.03 RCW, the Water Code (enacted in 1917), and Chapter 90.44 RCW, Regulation of Public Ground Water (enacted in 1945). State law recognizes five different types of water rights:

- pre-1917 surface water rights
- post-1917 permitted or certificated surface water rights
- pre-1945 ground water rights
- post-1945 permitted or certificated ground water rights
- ground water withdrawals that are exempt from permitting requirements.

In addition to determining state-based water rights, a state general water rights adjudication can be used to determine the extent, validity and priority of federal and Indian reserved water rights. All of these different types of rights present varying problems in ascertaining their current extent and validity.

The water codes required administrative permits for most water uses starting after the effective dates of the codes. Water uses pre-dating the codes do not require a permit, but in 1967 the Legislature required (under Chapter 90.14 RCW) that administrative statement of claim forms be registered with Ecology to report and preserve these pre-code rights. There have been four open periods for filing claims into the registry:

- July 1, 1969 through June 30, 1974
- June 4, 1979 through December 31, 1979
- July 28, 1985 through September 1, 1985
- September 1, 1997 through June 30, 1998.

If a statement of claim was required for the water use and was not registered during one of the claims openings, the right is considered relinquished. There are an estimated 170,000 registered water rights claims statewide, with most remaining adjudicated.

C. Overview of Past and Current Water Rights Adjudications

Since the enactment of the Water Code in 1917, numerous petitions requesting adjudications have been filed, including those for large basins such as the Methow, Palouse, and Nooksack

watersheds. Also since that time, eighty-two general adjudications have been completed in Washington, encompassing about 10% of the state's land area.

All pre-1952 adjudications addressed only surface water rights, and most were completed in the 1920s and 1930s, shortly after the enactment of the 1917 Water Code. Although most completed adjudications have been in small tributary stream systems, there were some larger adjudications, notably in the Walla Walla and Dungeness River Basins, which were also conducted during the 1920s. Since 1952, 26 adjudications have been finalized. Eighteen covered both ground water and surface water rights, and eight covered just surface water rights.

While adjudications of a large watershed (such as the Yakima River Basin in Acquavella) take years, smaller adjudications can take much less time. It is important to note that during the duration of Acquavella, 13 other adjudications have been completed. See Appendix A for tables listing active, completed, incomplete and petitioned adjudications in Washington.

Yakima River Adjudication (Ecology v. James J. Acquavella, et. al.)

Presently, only one adjudication is underway in the state. Commonly referred to as the Acquavella adjudication, this case is determining the rights to surface water in the Yakima River Basin. This adjudication encompasses approximately 10% of the state's land area, and involves over 4,000 registered water rights claims and over 40,000 landowners.

The genesis of Acquavella was the drought of 1977, which generated major conflicts between water users in the Yakima Basin. These tensions spurred the Yakama Nation to file suit in federal court for the determination of their Indian reserved rights. In response, Ecology initiated a general adjudication in order to litigate the water rights disputes in state court. Although the state adjudication was started in 1977, legal challenges involving jurisdiction delayed the start of evidentiary hearings until 1987.

The large number of parties and the tensions over water rights in the overappropriated Yakima Basin make Acquavella a complex case. So far, the case has generated four appellate court decisions, including three by the Washington Supreme Court. Notwithstanding these challenges, considerable progress has been made towards completion of the case. The fact-finding hearing process has largely been completed and more than half the basin has water rights determinations in the form of conditional final orders.

D. Advantages and Disadvantages of the Current Process

This section describes some of the most commonly heard observations regarding the strengths and weaknesses of the current adjudication process.

1. Advantages

The current adjudication process:

- provides the determination needed regarding validity and extent of water rights, including a priority date;

- is a good balance that contributes agency expertise and provides a neutral court system;
- allows Ecology, serving as plaintiff, to test the evidence and testimony supporting the claimants' assertions to water rights;
- provides claimants and Ecology equal access to the court, thus making the current process equitable; and
- allows other administrative processes, such as water right change and transfer decisions, to continue while the adjudication is occurring.

The Yakima River adjudication demonstrates that very valuable and far-reaching decisions can be made by the court, resulting not only in a high degree of certainty for surface water right holders in the Yakima River Basin but also in a series of Superior and Supreme Court rulings that will provide guidance for future adjudications. Seminal court rulings in Acquavella include the holding that municipalities, irrigation districts and ditch companies can represent the interests of their patrons in an adjudication. This significantly reduces the number of parties to be served, and reduces the time and cost that would result if the patrons were required to present their own cases during an adjudication.

(Although the time involved in the Yakima River adjudication is often cited as a criticism of the current process, an adjudication of this length is an exception. It is important to remember that there were legal challenges involving jurisdiction and service of process that prevented the start of evidentiary hearings until 1987. These legal challenges ultimately resulted in rulings that now provide settled law, thus reducing the likelihood that similar challenges would cause such delays in future adjudications.)

2. Disadvantages

This section describes some of the identified inefficiencies of the current adjudication process. Proposed solutions for each of these disadvantages are described in Part 2 of this document, as part of the nine streamlining recommendations. The current adjudication process:

- allows water claimants too many opportunities (through the exceptions process) to provide evidence to support their claims, which results in the court holding more hearings than are truly necessary for a fair yet efficient resolution of the case;
- involves an inflated number of water right claims in a given adjudication, thus increasing the number of parties and the complexity of the case. This is due to the large number of spurious statements of claims filed in the water rights claims registry (such as claims involving long-relinquished water rights);
- requires that an entire water source or basin be adjudicated when it would be sufficient to address discrete issues or disputes by conducting a smaller adjudication that would cover a limited number of water users or a discrete area or river reach;

- does not effectively utilize state of the art information technology and aerial photograph interpretation, which would provide more complete and better evidence of historical water use and thus facilitate settlements and reduce factual disputes in litigation; and
- does not encourage the use of mediation or other alternative dispute resolution to resolve water claims without extensive litigation.

PART 2

RECOMMENDATIONS FOR STREAMLINING THE WASHINGTON STATE GENERAL WATER RIGHTS ADJUDICATION PROCESS

Part 2 of this report begins with the goals and objectives identified for streamlining the adjudication process. Five objectives were determined as the best ways to reach the four specific streamlining goals.

The Goals and Objectives are followed by nine specific recommendations.

A. Goals and Objectives

Goals

1. Provide adjudication of the water rights in the state in as timely a manner as possible.
2. Reduce the cost of an adjudication.
3. Provide equity and general public service through the adjudication process.
4. Provide information which may be updated and used for overall water management.

Objectives

1. Reduce the amount of time necessary to complete an adjudication.
2. Encourage full participation of water right holders in the adjudication process.
3. Fully contribute the expertise of the state during adjudication proceedings.
4. Facilitate the presentation of all arguments and information to the decision-maker so that he/she can make the decision as early in the process as possible.
5. Reduce the number of claims or issues reviewed through the exceptions process.

B. Recommendations

Nine recommendations are presented which best meet the following criteria for inclusion. Each of these recommendations:

- supports the established goals and objectives enumerated above,
- is constitutional, reasonable and practical, and
- is an efficient use of any required public funds.

The recommendations focus primarily on the procedures and the resources associated with Ecology's role in an adjudication. Each will require legislative modification, additional funding or both.

The recommendations are presented in order of impact: from greatest to least. Each is introduced with a brief description of the part of the current process that needs streamlining. The proposal itself follows, concluding with the goals and objectives that the recommendation satisfies.

1. Ecology to Make Tentative Determinations – Claimants to Present Fully Documented Claims at the Outset

Currently, an adjudication is officially initiated when Ecology files a statement of facts (including a list of all known persons claiming water rights in the basin), and map or plan related to the water source and associated water rights in the appropriate superior court. At this point, claimants must file statements with the court to assert their claims to water rights. Typically, the case is referred to a referee, who conducts fact-finding hearings and reviews the evidence and testimony to determine if there is adequate documentation to prove that a water right exists. The referee (or the judge, in the event he or she conducts the hearing) prepares a report that recommends confirmation or denial of claimed water rights. Frequently, claimants do not provide sufficient supporting exhibits, testimony and documentation, which results in the referee or judge recommending to the court that the claim be denied.

However, the claimant then has the opportunity to file additional supporting documentation through the exceptions process. The judge must hear the exceptions and approve or disapprove the request. If an exception is granted, the excepting party is generally provided the opportunity to present additional evidence and testimony supporting their exception at a supplemental evidentiary hearing before the referee or judge. The referee or judge then considers the additional testimony and evidence, and prepares a supplemental report. Exceptions can be filed to the supplemental report, and another evidentiary hearing may be conducted. The exceptions process consumes the time of the referee and the judge, time which often could be reduced or eliminated if the claimant provided complete information from the very start of an adjudication.

This two-part recommendation would dramatically curtail the amount of time spent around the exceptions process. First, Ecology would assume a greater role at the outset of an adjudication

by performing the initial determination of the validity of water rights. Ecology would review all the supporting documentation and make a recommendation on the validity of the water right. However, in order for Ecology to do this, a second change is necessary: claimants must present all necessary information at the very start of an adjudication.

A claimant would be required, at the time of filing a claim with the court, to meet with Ecology to document his or her claim. The meeting would involve an effort by the claimant and Ecology to ensure that the claim is properly identified, documented, and mapped. If additional information is required, a plan and timelines for its production would be established within guidelines established by the court.

After a specified period of time for claimants to fully document their claims, the record would be considered complete. Ecology would then submit its tentative determinations to the court, recommending confirmation or denial of claimed water rights. If Ecology's decisions are not contested, the court would accept them. If contested, the judge or referee would hear the claimant's or any other party's objections to the tentative determinations, and based on the evidence and argument presented at hearing, the court would then make its final determinations and rulings.

This strategy would reduce time and costs considerably by reducing the formal processes of the court and by making the claimants fully document their claims at the outset.

By meeting **Objectives #1** (reduce time needed to complete an adjudication), **#2** (encourage full participation of water right holders), and **#5** (reduce the number of claims or issues required to be reviewed through the exceptions process), implementing this recommendation fulfills **Goals #1** (timely adjudications), **#2** (reduce overall costs), and **#4** (provide updateable information for future use). This recommendation requires legislative action and additional funding for Ecology.

2. Create a New Process for Ecology to Validate Registered Water Right Claims

Currently, a general adjudication is the primary means for conclusively determining the extent and validity of water rights documented by registered water rights claims. Under current law, there are two processes during which Ecology addresses the validity of water rights claims: during a change or transfer of an existing water right and during a relinquishment proceeding. Ecology makes tentative determinations of the extent and validity of claimed water rights when it considers a request to change or transfer an existing water right. Ecology also considers the validity of a water right when it pursues relinquishment proceedings under RCW 90.14.130. However, apart from these processes, Ecology does not have the general authority to make final determinations of the extent and validity of water rights asserted in water right claims.

Under this recommendation, Ecology's administrative responsibilities would be expanded so that it can make determinations, outside of change and transfer or relinquishment processes, of the extent and validity of water rights that have conclusive legal standing. Ecology would be authorized to review existing registered water rights claims on a case-by-case basis to support water allocation and management initiatives. Any determination made by Ecology would be appealable to the Pollution Control Hearings Board, and if appealed would not be a final determination unless it is upheld by that Board, and by the courts in subsequent appeals.

The creation of an administrative procedure to review statements of water rights claims filed in the claims registry would result in a more accurate water right record, which in turn would assist an adjudication court in making timely determinations. Making administrative determinations would eliminate spurious registered water rights claims that involve, for example, water uses that began after the permit requirements came into effect, or water rights that have relinquished as a result of extended nonuse.

If an adjudication included claims that had been determined to be valid by Ecology, such claims would require only evidence of continued beneficial use from the date of Ecology's administrative determination (or from the date of any final decision by the PCHB, or a court that engages in judicial review).

By meeting **Objectives #1** (reduce time needed to complete an adjudication), **#3** (fully contribute the expertise of the state), **#4** (facilitate the presentation of arguments and information as early as possible) and **#5** (reduce the number of claims or issues required to be reviewed through the exceptions process), implementing this recommendation fulfills **Goals #1** (timely adjudications), **#2** (reduce overall costs) and **#4** (provide updateable information for future use). This recommendation requires legislative action and additional funding for Ecology.

3. Allow Limited Special Adjudications

Washington law currently only provides for adjudications to cover water rights for an entire water source or basin. While general adjudications are an effective means of determining the extent and validity of all such rights, they are not as useful a tool for resolving disputes among a limited number of claimants, or for stream reaches or limited ground water areas instead of entire basins.

Under this recommendation, Ecology would have the authority to initiate an adjudication to resolve only specific issues in circumstances where the issues to be resolved do not affect every water right holder in a given basin. Conducting a “limited” special adjudication, rather than a general adjudication, would serve water management purposes, save time and money and eliminate the disruption to water right holders not directly involved in the contested issue. This adjudication alternative would constitute a final determination of only the water rights involved. As a result of the federal McCarran Amendment that waives the United States’ sovereign immunity only in state general adjudications, a limited special adjudication could not be used if federal and Indian reserved water rights are an issue.

By meeting **Objective #1** (reduce time needed to complete an adjudication), implementing this recommendation fulfills **Goals #1** (timely adjudications) and **#2** (reduce overall costs). This recommendation requires legislative action and additional funding for Ecology.

4. Ecology to Provide Comprehensive Background Information Early in the Proceedings

Ecology currently does not provide comprehensive background information until the commencement of the hearing process, which can occur a significant period of time after filing for an adjudication.

Under this recommendation, Ecology would provide the foundation documents to the court at the earliest possible point in the adjudication process (either with the legal documents required to initiate an adjudication, or shortly thereafter). Background documents, depending on availability, may include current and historic maps and aerial photographs, water right documents (registered water right claims, certificates of water rights, certificates of change, miscellaneous decrees and past adjudications documents, and relinquishments) and metering and measuring data. Providing this information at the time an adjudication is initiated (or shortly after filing) would facilitate building an adequate record upon which determinations can be made. (The claimant would still ultimately be responsible for the full documentation of his or her own specific water right claims.)

By supporting *Objectives #1* (reduce time needed to complete an adjudication) and *#4* (facilitate the presentation of arguments and information as early as possible), implementing this recommendation fulfills *Goals #1* (timely adjudications), *#2* (reduce overall costs) and *#3* (provide general public service). This recommendation requires additional funding for Ecology.

5. Authorize Pre-filed Written Testimony

Although the current procedural authority, at times, allows specific claimants to pre-file testimony because of witness availability, there are no clear existing provisions authorizing this process other than the use of legal depositions. Depositions are expensive, requiring the attorneys for the claimant, Ecology and any other interested party or claimant to participate in the deposition should they choose to cross-examine the witness. Depositions also require a court reporter to prepare the deposition transcript.

Under this recommendation, there would be clear authorization for a judge or referee to accept pre-filed written testimony. Any party would have the right to schedule cross-examination of a witness regarding his or her pre-filed written testimony. The information regarding some water rights could be presented solely with pre-filed written testimony, thereby significantly reducing or eliminating the need to schedule oral direct testimony and cross-examination.

By supporting *Objectives #1* (reduce time needed to complete an adjudication) and *#4* (facilitate the presentation of arguments and information as early as possible), implementing this recommendation fulfills *Goals #1* (timely adjudications) and *#2* (reduce overall costs). This recommendation requires legislative action.

6. Utilize Information Technology More Effectively

There are four primary areas of information technology that support adjudications. These are the overall processing and tracking of water rights, tracking of claimants and claims filed in an adjudication, electronic imaging of documentation, and digital mapping. Currently the most

highly developed of the four is water rights processing and tracking capabilities: the development of the Water Rights Application Tracking System (WRATS), a comprehensive database of water rights in the state, is well underway. However, the other components need updating and/or have only been used on a limited basis.

The adjudication report writing and claim/claimant tracking system currently used in Acquavella was developed in the late 1980s. While useable, it is an antiquated and cumbersome mainframe system. Under this recommendation, the report writing and claim/claimant tracking system would be updated and have broader capabilities.

Currently, all court claims and supporting documents, maps, exhibits, declarations, depositions and transcripts of testimony are filed with the court as hard copy (paper). The hard copy information and exhibits are voluminous, difficult to research, and in an adjudication the size of Acquavella, for example, very difficult for the court to store and for parties to access. Paper records are at risk of becoming brittle and fragile. Under this recommendation, there would be increased availability of electronic images of water right documents, which would provide improved access to existing water right information for both the claimants and the court. Imaging of the water right documents also has the added benefit of providing document protection.

Currently, Geographic Information System (GIS) is used for preparing map exhibits on a limited basis. It is used to map the place of water use and point of diversion and/or withdrawal. Under this recommendation, GIS capabilities would be used more extensively. In addition to being used to provide complete digital mapping, GIS would also be used to identify, analyze and characterize the hydrologic basin and associated ground water aquifers, evaluate digital aerial photos or satellite images, and other analytical functions.

Complete and accurate data is also useful for post-adjudication administration. Water resource management requires an accurate and easily accessible information base to perform many water resource responsibilities including permitting, water right transfers, compliance, instream flow rule adoption, and watershed planning.

By supporting **Objectives #1** (reduce time needed to complete an adjudication) and **#3** (fully contribute the expertise of the state), implementing this recommendation fulfills **Goals #1** (timely adjudications), **#2** (reduce overall costs), **#3** (provide general public service) and **#4** (provide updateable information for future use). This recommendation requires additional funding for Ecology.

7. Develop Aerial Photograph Interpretation Expertise

Interpretation of historic aerial photographs is very useful for the determination of past water use. Currently Ecology uses aerial photographs in the investigation of the water use of claimants, but does not have adequate analytical tools or staff to provide interpretation. As a result, Ecology does not provide expert testimony of this type during an adjudication, and has only limited ability to evaluate the testimony provided on behalf of others. There is an increasing reliance upon aerial photograph interpretation for adjudications and for water management purposes. Aerial photographs exist for many areas, dating back to the 1930s.

Under this recommendation, Ecology would develop aerial photo interpretation expertise for determinations of irrigated areas, crop types, types of structures, diversion facilities, water conveyance and distribution systems, and so on. Aerial photography analysis provides valuable historic and current information concerning water use and reduces the time necessary for fieldwork during an adjudication, while increasing the accuracy of the information available to the process. The use of aerial photographs as evidence in an adjudication would reduce time-intensive factual disputes over historical water use practices, and facilitate settlement of claims.

By supporting **Objectives #3** (fully contribute the expertise of the state) and **#4** (facilitate the presentation of arguments and information as early as possible), implementing this recommendation fulfills **Goals #1** (timely adjudications), **#3** (provide general public service) and **#4** (provide updateable information for future use). This recommendation requires additional funding for Ecology.

8. Expand the Use of Mediation

Currently, mediation or other alternative dispute resolution is not formally encouraged in the adjudication process. However, mediation is being used successfully in Acquavella. In the Acquavella adjudication, several participants sought permission from the Court for mediation of large claims. The individual major claimants, Ecology, the United States and the Yakama Nation are participating in this mediation effort. So far, settlements have been reached for the claims of the Yakima-Tieton Irrigation District, the Kennewick Irrigation District and the City of Yakima. This has resulted in a significant reduction in the costs and court time which would have been required to finish litigation of these claims.

Under this recommendation, mediation would be encouraged for significant claims and for other parties that elect to participate. The judge or referee would decide on the appropriateness of using mediation in any given situation. A mediator would work toward, and assist in, reaching settlement of issues that arise between parties.

By supporting **Objectives #1** (reduce time needed to complete an adjudication), **#2** (encourage full participation of water right holders), **#3** (fully contribute the expertise of the state) and **#5** (reduce the number of claims or issues required to be reviewed through the exceptions process), implementing this recommendation fulfills **Goals #1** (timely adjudications), **#2** (reduce overall costs) and **#3** (provide general public service). This recommendation requires additional funding for Ecology.

9. Develop Guidance on How to Maintain and Document a Water Right

Currently, very little guidance is available to claimants on the preparation and presentation of their claims in an adjudication. A significant number of the claimants represent themselves, especially at the beginning of the evidentiary process. Most have very little knowledge of the process or the types of evidence and testimony that are necessary to successfully assert a claimed water right. Documentation that is adequate for an adjudication is not routinely maintained by water right holders.

Under this recommendation, Ecology's educational outreach program would be enhanced to provide public information on an ongoing basis on the maintenance and documentation of one's water right, the adjudication process, as well as a variety of other water resource issues. Information could include presentations and printed materials. If water right holders are better educated on their rights and responsibilities, they are more likely to keep accurate and complete records. This in turn would make information more readily available to the court once an adjudication is initiated, and reduce the duration and cost.

By supporting **Objectives #1** (reduce time needed to complete an adjudication), **#2** (encourage full participation of water right holders), **#4** (facilitate the presentation of arguments and information as early as possible), and **#5** (reduce the number of claims or issues required to be reviewed through the exceptions process), implementing the recommendation fulfills **Goals #1** (timely adjudications), **#2** (reduce overall costs), **#3** (provide general public service) and **#4** (provide updateable information for future use). This recommendation requires additional funding for Ecology.

Appendices

APPENDIX A – ACTIVE, COMPLETED, INCOMPLETE, AND PETITIONED ADJUDICATIONS

APPENDIX B – WESTERN STATES ADJUDICATION CONFERENCE QUESTIONNAIRE

APPENDIX C – DISTINGUISHING FEATURES OF ADJUDICATIONS IN OTHER WESTERN STATES

APPENDIX D – BIBLIOGRAPHY

**APPENDIX A – ACTIVE, COMPLETED, INCOMPLETE, AND PETITIONED
ADJUDICATIONS**

The following four tables contain listings of active, completed, incomplete, and petitioned adjudications. These tables were last updated by Ecology staff on September 3, 2002.

(Note: The “Region” column in each table identifies the Ecology regional office that has jurisdiction over the Watercourse indicated. The four regional offices are: Central Regional Office (CRO), Southwest (SWRO), Northwest (NWRO) and Eastern (ERO)).

TABLE 1: ACTIVE ADJUDICATIONS				
WATERCOURSE	COUNTY	REGION	DATE STATEMENT FILED	COURT
Yakima River	Benton, Kittitas, Klickitat, and Yakima	CRO	10/12/1977	Yakima County Superior Court

TABLE 2: COMPLETED ADJUDICATIONS			
WATERCOURSE	COUNTY	REGION	DATE DECREE FILED
Similkameen River	Okanogan	CRO	11/26/1918
Roaring Creek	Chelan	CRO	10/24/1919
Wenas Creek	Kittitas and Yakima	CRO	02/23/1921
Bird and Frazier Creeks	Klickitat and Yakima	CRO	03/14/1921
Teanaway River	Kittitas	CRO	06/16/1921
Cooke Creek	Kittitas	CRO	08/13/1921
Beaver Creek	Okanogan	CRO	09/20/1921

TABLE 2: COMPLETED ADJUDICATIONS

WATERCOURSE	COUNTY	REGION	DATE DECREE FILED
Libby Creek	Okanogan	CRO	11/18/1921
Cowiche Creek	Yakima	CRO	05/18/1922
Meadow Gulch Creek	Garfield	ERO	06/12/1922
McFarland Creek	Okanogan	CRO	11/16/1922
Alpowa Creek	Asotin, Garfield	ERO	03/23/1923
Upper Stone Creek	Walla Walla	ERO	07/10/1923
Doan Creek	Walla Walla	ERO	11/01/1923
Alder Creek	Stevens	ERO	02/19/1924
Cheweka Creek	Stevens	ERO	02/19/1924
Dungeness River	Clallam	SWRO	03/07/1924
Big Creek	Kittitas	CRO	03/27/1924
Crab Creek & Moses Lake	Adams, Grant	ERO	03/27/1924
Ahtanum Creek	Yakima	CRO	05/05/1924
Safety Harbor Creek	Chelan	CRO	06/20/1925
Stemilt Creek	Chelan	CRO	01/22/1926
Salmon Creek, North Fork	Okanogan	CRO	04/06/1926
Johnson Creek	Okanogan	CRO	05/20/1926
Squilchuck Creek	Chelan	CRO	06/14/1928
Lower Antoine Creek	Okanogan	CRO	07/09/1928
Bigelow Gulch Creek	Spokane	ERO	08/31/1928

TABLE 2: COMPLETED ADJUDICATIONS

WATERCOURSE	COUNTY	REGION	DATE DECREE FILED
Walla Walla River	Walla Walla	ERO	08/12/1928
Corus Creek	Stevens	ERO	10/03/1928
Deadman Creek	Garfield	ERO	01/04/1929
Quilisascut Creek	Stevens	ERO	01/19/1929
Gold Creek	Okanogan	CRO	05/07/1929
Black Canyon Creek	Okanogan	CRO	06/20/1929
Touchet River	Columbia and Walla Walla	ERO	09/19/1929
Icicle Creek	Chelan	CRO	10/28/1929
Bacon Creek	Klickitat, Yakima	CRO	02/20/1930
Bear Creek and Davis Lake	Okanogan	CRO	05/14/1930
Sinlahekin Creek	Okanogan	CRO	05/20/1930
Wawawai Creek	Whitman	ERO	03/03/1931
Crystal Springs	Spokane	ERO	03/05/1931
Johnson Creek	Chelan	CRO	05/23/1931
Sherwood Creek	Stevens	ERO	06/13/1931
O-Ra-Pak-En Creek	Stevens	ERO	10/31/1931
Deer Creek	Stevens	ERO	01/16/1932
Chewelah Creek	Stevens	ERO	10/15/1932
Joe Creek	Chelan	CRO	11/26/1932

TABLE 2: COMPLETED ADJUDICATIONS

WATERCOURSE	COUNTY	REGION	DATE DECREE FILED
Myers Creek	Okanogan	CRO	11/26/1932
Jennings Creek	Stevens	ERO	06/26/1933
Hoffman Creek	Stevens	ERO	08/18/1934
Little Calispel Creek	Pend Oreille	ERO	06/12/1935
Twin Creek	Ferry	ERO	05/29/1936
Pingston Creek	Stevens	ERO	07/01/1936
Bull Dog Creek	Stevens	ERO	03/09/1938
Thomason Creek	Stevens	ERO	05/11/1938
Crab Creek, South Fork	Lincoln and Adams	ERO	07/06/1939
Crab Creek between Sylvan Lake & Odessa	Lincoln and Adams	ERO	06/21/1939
Dry Creek	Walla Walla	ERO	05/20/1952
Whitestone Lake	Okanogan	CRO	05/21/1956
Chiliwist Creek	Okanogan	CRO	05/16/1967
Cummings Canyon	Chelan	CRO	10/20/1970
Spring Creek	Skamania	SWRO	12/08/1970
Mountain Lake & Cascade Creek	San Juan	NWRO	02/28/1972
Narcisse Creek	Stevens	ERO	02/28/1972
Blockhouse Creek	Klickitat	CRO	06/01/1972
Black Lake – Tarlatt Slough	Pacific	SWRO	11/09/1973

TABLE 2: COMPLETED ADJUDICATIONS

WATERCOURSE	COUNTY	REGION	DATE DECREE FILED
Harvey Creek	Stevens	ERO	01/04/1974
Magee Creek	Stevens	ERO	01/04/1974
Grouse Creek, Jumpoff Joe Creek, and Jumpoff Joe Lake	Stevens	ERO	07/25/1975
Mill Creek	Klickitat	CRO	10/19/1976
Stranger Creek	Stevens	ERO	07/14/1978
Cascade Lake	San Juan	NWRO	08/31/1978
Bonaparte Creek and Lake	Okanogan	CRO	12/14/1979
Chumstick Creek	Chelan	CRO	04/12/1983
Wolf Creek	Okanogan	CRO	03/13/1984
Antoine Creek	Chelan and Okanogan	CRO	04/16/1984
Nahahum Canyon	Chelan	CRO	05/10/1985
Deadman Creek	Spokane	ERO	11/26/1986
Cow Creek and Sprague Lake	Adams, Lincoln, Spokane, and Whitman	ERO	12/22/1986
Little Klickitat River	Klickitat	CRO	02/17/1987
Renshaw Creek	Pend Oreille	ERO	02/09/1989
Duck Lake Ground Water Subarea	Okanogan	CRO	12/01/1989
Marshall Lake and Marshall Creek	Pend Oreille	ERO	06/05/1990

TABLE 3: INCOMPLETE ADJUDICATIONS				
WATERCOURSE	COUNTY	REGION	DATE STATEMENT FILED	COUNTY SUPERIOR COURT
Hunters Creek	Stevens	ERO	08/11/1921	Stevens
Thompson Creek	Okanogan	CRO	11/30/1925	Okanogan
Hawks Creek	Lincoln	ERO	12/04/1930	Lincoln
Clugston Creek	Stevens	ERO	07/09/1945	Stevens
Wilson-Naneum Creek	Kittitas	CRO	11/05/1971	Kittitas
Omak Creek	Okanogan	CRO	06/05/1980	Okanogan

TABLE 4: PETITIONED ADJUDICATIONS			
WATERCOURSE	COUNTY	REGION	DATE PETITION FILED
Pataha Creek	Garfield	ERO	12/21/1912
Mosquito Creek, Tributary to Okanogan River	Okanogan	CRO	8/26/1918
Mosquito Creek, Tributary to Okanogan River	Okanogan	CRO	5/8/1919
Mills Canyon Creek	Chelan	CRO	3/19/1920
Jewitt Creek, Tributary to Similkameen River	Okanogan	CRO	7/1/1920
French Creek, Tributary to Methow	Okanogan	CRO	10/26/1920
Gold Creek, Tributary to Naches River	Yakima	CRO	4/6/1921

TABLE 4: PETITIONED ADJUDICATIONS			
WATERCOURSE	COUNTY	REGION	DATE PETITION FILED
White Salmon River and Tributaries	Klickitat and Skamania	CRO and NWRO	5/16/1922
LaFleur Creek, Tributary of Columbia River	Ferry	ERO	7/23/1922
Five Mile Lake	King	NWRO	11/9/1923
Methow River	Okanogan	CRO	2/4/1924
Methow River	Okanogan	CRO	2/8/1924
White Salmon River	Klickitat and Skamania	CRO and NWRO	5/29/1924
North Pine Creek	Okanogan	CRO	8/7/1924
Douglas Creek	Douglas	CRO	9/22/1924
O'Brian Creek	Ferry	ERO	4/22/1925
DeSautel Creek	Stevens	ERO	8/10/1925
Upper Antoine Creek	Okanogan	CRO	9/21/1925
Duck Lake Creek, Tributary to Crab Creek	Lincoln	ERO	11/16/1925
Colville River and Tributaries, Including Deer and Loon Lakes	Stevens	ERO	1/5/1926
Entiat River and Tributaries	Chelan	CRO	5/8/1926
Wilmont Creek	Ferry	ERO	6/28/1926
Tucannon River and Tributaries	Columbia	ERO	8/20/1926
Schneider Creek	Thurston	SWRO	10/21/1926

TABLE 4: PETITIONED ADJUDICATIONS			
WATERCOURSE	COUNTY	REGION	DATE PETITION FILED
Unnamed Spring, Tributary to Collin Creek	Skamania	SWRO	4/13/1927
Williams Creek and Swauk Creek	Kittitas	CRO	7/24/1929
Okanogan River and Tributaries	Okanogan	CRO	1/7/1930
Unnamed Stream and Spring	Clark	SWRO	2/13/1931
Lake Creek, Tributary to Methow River	Okanogan	CRO	2/25/1931
Unnamed Stream and Springs	Clark	SWRO	6/1/1931
Dulab or Huckleberry Creek and Browns Lake	Stevens	ERO	6/18/1931
Twisp River and Tributaries	Okanogan	CRO	11/27/1931
Salmon Creek and Tributaries	Okanogan	CRO	2/29/1932
Wilson Creek	Kittitas	CRO	6/20/1932
Little Deer Creek	Spokane	ERO	3/23/1938
Tucannon River	Columbia	ERO	9/13/1939
Little Creek, Tributary to Yakima	Kittitas	CRO	12/9/1939
Purple Creek, Tributary of Lake Chelan	Chelan	CRO	8/11/1941
Texas Creek, Tributary of Methow River	Okanogan	CRO	5/12/1945
Wilson Creek	Grant and Lincoln	ERO	10/13/1960

TABLE 4: PETITIONED ADJUDICATIONS			
WATERCOURSE	COUNTY	REGION	DATE PETITION FILED
Tenmile Creek	Whatcom	NWRO	08/03/1962
Crab Creek	Adams, Grant, Lincoln, and Spokane	ERO	1962
Marshall Creek	Spokane	ERO	03/17/1964
Unnamed Spring	Pierce	SWRO	12/14/1964
China Creek	Stevens	ERO	09/07/1966
Snow Creek	Clallam and Jefferson	SWRO	12/07/1967
Palouse River	Adams, Franklin, Lincoln, Spokane, and Whitman	ERO	07/08/1969
Eagle Creek	Clallam and Jefferson	SWRO	08/10/1970
Minter Creek	Kitsap and Pierce	NWRO and SWRO	09/11/1970
Clover Creek	Pierce	SWRO	10/06/1970
Naches	Kittitas and Yakima	CRO	10/13/1970
Moses Coulee Groundwater	Douglas and Grant	CRO and ERO	10/14/1970
Moses Coulee Groundwater	Douglas	ERO	10/28/1970
Unnamed Stream	Pierce	SWRO	1970
Unnamed Spring, Tributary to the Little Spokane River	Spokane	ERO	6/11/1971
Ohop Creek and Lake	Pierce	SWRO	10/04/1976
South Prairie Creek	Pierce	SWRO	07/11/1977

TABLE 4: PETITIONED ADJUDICATIONS

WATERCOURSE	COUNTY	REGION	DATE PETITION FILED
Matson Creek	Ferry	ERO	08/16/1977
Mission Creek	Chelan	CRO	08/16/1977
Brender Creek, Tributary Mission Creek	Chelan	CRO	9/12/1977
Aeneas Creek	Okanogan	CRO	10/11/1977
Little Spokane River	Pend Oreille, Spokane, and Stevens	ERO	11/02/1979
Patterson Lake, Lake Creek and Tributaries	Okanogan	CRO	10/26/1986
Patterson Lake, Lake Creek and Tributaries	Okanogan	CRO	05/27/1987
Clear Lake	Spokane	ERO	04/04/1988
Samish Lake	Skagit and Whatcom	NWRO	10/02/1990
Hunters Creek	Stevens	ERO	1990
Patterson Lake, Lake Creek and Tributaries	Okanogan	CRO	11/11/1992
Nooksack River Basin	Whatcom and Skagit	NWRO	12/30/1992
Swamp Creek	Okanogan	CRO	06/03/1994
Sinking Creek	Lincoln	ERO	1994
Methow River Basin	Okanogan	CRO	08/1994
Chehalis River and Tributaries	Grays Harbor	SWRO	06/26/1996
Unnamed Creek	Pacific	SWRO	09/21/2000

APPENDIX B – WESTERN STATES ADJUDICATION CONFERENCE QUESTIONNAIRE

In early October of 2002, representatives of the Department of Ecology attended the Western States Adjudication Conference in Nebraska. A questionnaire was prepared and distributed to conference participants. Responses were received from representatives of five states. This summary of responses is organized by the questions contained in the questionnaire.

What State do you represent?

Replies were received from California, Idaho, Nevada, New Mexico, and Wyoming.

Are procedures in your State administrative, judicial, or hybrid (judicial and administrative)?

California: Hybrid

Idaho: Hybrid, conducted under Court authority with investigation by Idaho Department of Water Resources (IDWR).

Nevada: Judicial and Administrative

New Mexico: Judicial through Federal and State District Courts with appointment of a Special Master in most cases.

Wyoming: Administrative

Briefly describe adjudication procedures in your State.

California: Statutory Adjudications are administrative procedures that lead to judicial decrees. In Judicial Adjudications (with or without a reference to the state), the administrative agency acts as Referee or Special Master.

Idaho: The court authorizes an adjudication. IDWR serves notice to claimants, receives claims, investigates water rights, prepares recommendations, and files the Director's Report of Recommendations with the Court. The court then resolves protests and issues decrees. (See Chapter 14, Title 42 of the Idaho Code.)

Nevada: The adjudication process verifies and quantifies pre-statutory water rights and Native American Indian and federal reserved water rights. The State Engineer initiates an adjudication. Claimants pay a fee for filing their proofs of claims. Claimants must also pay for surveys, map preparation, reporting, transcribing of testimony, and court hearings on exceptions. The State Engineer conducts field investigations and prepares surveys and maps. The State Engineer prepares a Preliminary Order of Determination, Abstract of Claims and notifies claimants that inspections will be conducted. Objections to the Preliminary Order of Determination may be filed with the State Engineer. The State Engineer arranges for hearing of objections to the Preliminary Order of Determination. The State Engineer may require

periodic statements of water elevations, diversions, amounts of water used for the purposes claimed, and acreage irrigated from all claimants. Following hearing on objections to Preliminary Order of Determination, the State Engineer enters an Order of Determination. The Order of Determination is filed with the county clerk and clerk of the district Court where the adjudication is located. Exceptions to the Order of Determination are filed with the court clerk. A hearing is held and the court makes findings on each exception and enters a decree affirming or modifying the Order of Determination.

New Mexico: The State Engineer conducts a hydrographic survey of all water use within the stream system and identifies and joins all users to the proceedings. The State serves offers of judgment or proposed consent orders on defendants which may be accepted or rejected. Once all individual claims have been resolved with the state, all determinations are subject to protest in a global *inter se* proceeding.

Wyoming: When the final notice of completion of beneficial use of water or completion of construction of a reservoir is filed by the water user, a proof of appropriation is forwarded from the Cheyenne Office of the State Board of Control to the Superintendent of the Water Division in which the water right is located. The Superintendent or a designee will make an on-the-ground inspection of the facility to determine if it has been completed within the terms of the permit. If completed, the proof of appropriation is advertised in a newspaper of general circulation in the area of the water right. If the proof of appropriation is uncontested and all else is in order, the Board will approve the appropriation and accept the proof. A certificate of appropriation or construction is issued by the State Board of Control.

What is your State's role in an adjudication?

California: The state's role varies. The state may conduct statutory adjudications or procedures as Referee or Special Master. Or, the state may not be involved at all.

Idaho: See comments under adjudication procedures above.

Nevada: See comments under adjudication procedures above.

New Mexico: See comments under adjudication procedures above.

Wyoming: The State Board of Control adjudicates all water rights within the state, and acts as Special Master for the District Court in Washakie County in the adjudication of water rights within the Big Horn River system pursuant to the Board of Control's statutory authority.

What are the strengths of your adjudication procedures?

California: Ability to integrate environmental (endangered species, instream flow, water quality) requirements into adjudication.

Idaho: Uses strengths of both institutions, the court resolves disputes and IDWR makes recommendations. IDWR is not a party (IDWR serves as technical assistant to the court and independent advisor). There has been consistent funding since 1985 (very important).

Deferral of *de minimus* rights (not required to litigate right until necessary at a later date). High leverage of technology (state of the art computer system with fully integrated Geographic Information System spatial data). Good relationship with the public. Permanently assigned deputy attorneys general to adjudication duties.

Nevada: Both surface and ground water claims are included.

New Mexico: Recent adoption of Arc-View / Arc-Map Geographic Information System mapping and associated Access Database system.

Wyoming: Adjudications have been a constant process since 1890 by the State Board of Control.

What are the weaknesses of your adjudication procedures?

California: No effective way to adjudicate ground water; and lack of reporting requirements and enforcement tools.

Idaho: Stock water has caused an inordinate effort (recommend looking at Utah's new procedure). Spend too much time on generic "basin-wide" issues.

Nevada: We do not address statutory water rights unless they are supplemental to vested claims.

New Mexico: Reliance upon the State making the initial determination of water use, or water rights, rather than a procedure that incorporates a submission of claims by the water users.

Wyoming: A fairly sound statutory system.

Have there been any recent Legislative or administrative changes to your adjudication procedures?

California: No.

Idaho: Major revisions in 1994 to remove IDWR as a party. Since then only minor changes. A change this year was to allow digital boundaries to define the place of use of irrigation districts and canal companies, the court actually decrees the digital file.

Nevada: No.

New Mexico: No.

Wyoming: No.

Do you have any suggestions for streamlining the adjudication process?

California: Expedited procedures or exemptions for small water users. Limit scope of judicial review of administrative procedures (for non-federal claims).

Idaho: We are pleased with the process at this point. See comments under weaknesses for items that may be addressed in the future. Good communication between the Court / the Legislature / and IDWR is vital. Also, IDWR needs to establish and maintain good communication with the federal government and the water users.

Nevada: Cut down on federal filings.

New Mexico: Geographic Information System mapping, a procedure (followed in most states but not in New Mexico) that requires water users to submit their claims, then follow-up by agency staff. Use of a specialized judicial proceeding, "Water Court" rather than simple District Court action and appointment of a Special Master.

Wyoming: No.

Who should we contact if follow-up information is needed?

California: Andy Sawyer
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814
Phone: (916) 341-5191
Email: asawyer@swrcb.ca.gov

Idaho: Dave Tuthill, Adjudication Bureau Chief
Idaho Department of Water Resources
1301 N. Orchard
Boise, ID 83704
Phone: (208) 327-7929
Email: dtuthill@idwr.state.id.us

Nevada: Kelvin Hickenbottom
123 West Nye Lane
Carson City, NV 89703
Email: kwhicken@ndwr.state.nv.us

New Mexico: Ed Newville
Office of the State Engineer
PO Box 25102
Santa Fe, NM 87504-5102
Email: enewville@seo.state.nm.us

Wyoming: Allan Cunningham, Administrator
Wyoming State Board of Control
4E, Herscheler Building
Cheyenne, WY 82002
Phone: (307) 777-6177
Email: mailto:acunni@state.wy.us

APPENDIX C – DISTINGUISHING FEATURES OF ADJUDICATIONS IN OTHER WESTERN STATES

Other Western States’ Adjudications Models

Although the focus of this report is on streamlining adjudications in Washington, it may be useful for the Legislature to have an understanding of other adjudication models used throughout the West. Three models are described here: a judicial model, an administrative model, and lastly a hybrid model, which blends portions of the other two. A table of information on adjudications in six western states is also included.

1. Exclusively Judicial Model

Under the judicial model, an adjudication commences with the filing of a petition by a water user. Following the filing, district judges appoint a water referee who gathers evidence and submits a report of priorities and recommendations to the judge. This model, used by Colorado and Montana, relies upon water courts and can be used either on a right-by-right basis or within a geographic area.

2. Exclusively Administrative Model

Under the administrative model, the state engineer initiates an adjudication by measuring the flow of a stream and gauging the capacities of ditches. A divisional superintendent conducts hearings and compiles evidence on existing uses. These reports are submitted to a board of control that makes the final quantification and determination of priorities. Wyoming (outside Big Horn River adjudication), Nebraska, and Kansas have adopted this model.

3. Administrative – Judicial Hybrid Model

An administrative agency completes investigations then files its order of determination (similar to a report of referee) with the court that hears any exceptions to the order. Once the exceptions are resolved, the court enters a decree affirming the order. Oregon uses this model.

The following table summarizes some of the highlights of the adjudication process in six western states:

HIGHLIGHTS OF THE ADJUDICATION PROCESS IN SELECTED WESTERN STATES	
STATE	HIGHLIGHTS
California	To date, proceedings completed or pending for 93 river systems or ground water basins. Proceedings may be brought in superior court or before the State Water Resources Control Board.
Nebraska	Statewide 1895 adjudications of surface water completed between 1895 & 1904.

HIGHLIGHTS OF THE ADJUDICATION PROCESS IN SELECTED WESTERN STATES	
STATE	HIGHLIGHTS
Oregon	Ongoing statewide adjudication. Three-fourths of watersheds have been adjudicated. Klamath River Basin adjudication pending. Hybrid system with significant administrative authority. State Water Resources Dept. receives claims, holds hearings & prepares proposed order of determination for circuit court.
Wyoming	Ongoing statewide, administrative adjudication of state-law water rights. Last of three phases of adjudication underway. Rights of Wind River Reservation adjudicated after U.S. Supreme Court affirmed lower court. Allottee water rights & state-law water rights now being adjudicated.
Idaho	All surface & ground water in major river basin covering 90% of state. District Court judge, with masters, assigned long-term to preside over case. Extensive federal claims (65,000).
Colorado	Statewide, 1879. Cumulatively, all surface & ground water users who seek legal recognition of their rights. Ongoing adjudication in 7 districts. Court issues monthly supplements. Difficult issues remain re: federal reserved rights for federal lands.

APPENDIX D – BIBLIOGRAPHY

Thorson, John E., *Clarifying State Water Rights and Adjudications*, Natural Resources Law Center, University of Colorado, Boulder, Colorado, 2001.