



DEPARTMENT OF
ECOLOGY
State of Washington

Process for Conducting a Water Rights Adjudication

**Under Chapter 90.03 RCW, as Amended
by ESHB 1571—Effective July 26, 2009**

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Under Chapter 90.03 RCW, as Amended by ESHB
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Water Resources Program
Washington State Department of Ecology
Olympia, Washington

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Introduction

This document was developed with the Washington State Office of the Attorney General, at the request of the Department of Ecology, Water Resources Program. It is intended to provide an overview of the process for conducting an adjudication under Chapter 90.03 RCW as amend by ESHB 1571, effective July 26, 2009.

For more information on water rights adjudication, visit our website at:
<http://www.ecy.wa.gov/programs/wr/rights/adjhome.html>

Step 1: Petitioning for Adjudication

There are three different ways to start a water rights adjudication:

Option #1: Planning Unit Petition

A planning unit petitions Ecology to conduct a general adjudication

90.03.105: "...such planning units may petition the department to conduct such a general adjudication and the department shall give high priority to such a request in initiating any such general adjudications under this chapter."

Option #2: Claimant Petition

One or more persons claiming the right to any waters within the state file a petition with Ecology to conduct an adjudication.

90.03.110 (amended 2009): "Upon the filing of a petition with the department by a planning unit or one or more persons claiming the right to any waters within the state..."

Option #3: Ecology decides to start an adjudication

Ecology investigates and decides public interest will be served by determination of water rights.

90.03.110 (amended 2009): "...or when, after investigation, in the judgment of the department, the public interest will be served by a determination of the rights thereto..."

Specific Ecology Action:

If option #1:

Ecology must give high priority to petitions made by watershed and other planning units.

If option #3:

Ecology may start an adjudication process on its own if, after investigation, it determines the public interest will be served by water rights adjudication.

Ecology may gauge the level of public interest by consulting adjudication petitions, regulation and enforcement history, tribal and federal reserved rights, ESA listings, local support, or any other pertinent information.

Step 2: Ecology consults with the courts and the legislature

- “a. Ecology must consult with the Administrative Office of the Courts (AOC) to determine whether sufficient judicial resources are available to commence and to prosecute the adjudication in a timely manner;
- b. Ecology must 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) (as amended by ESHB 1571 Sec. 1 July 2009)

Step 3: Ecology must prepare a statement of the facts and a plan or map of the locality under investigation

What type of information must Ecology prepare?

- a. **Identity of persons:** The Fact statement shall identify either:
- Each person or entity owning real property situated within the area to be adjudicated but outside the boundaries of a city, town, or special purpose district that provides water to property within its service area;
 - All known persons claiming a right to the water sought to be determined;
 - Or identify both;
- b. **Fact statement:** The statement shall also include a brief statement of the facts in relation to such water, and the necessity for a determination of the rights thereto.
- c. **Plan or map of the locality under investigation:** Together with the statement of facts, Ecology shall prepare a plan or map of the locality under investigation.

RCW 90.03.110(1) (as amended by ESHB 1571 Sec. 1 July 2009)

Specific Ecology Action:

Ecology must consult with the AOC and report budgetary needs.

Ecology must prepare a statement of the facts that lists the identity of people who might have a claim to the adjudicated water and includes a brief summary of the water at issue and necessity for determining its rights.

Persons to identify might include:

Property owners, contract purchasers, mortgage holders, lean holders, and other parties with proprietary interest.

Documents needed for adj.:- Defendant names, summary of existing rights, historic land use, and basin management.

*In addition to preparing the fact statement, Ecology must prepare a plan **OR** map that describes the area of water under investigation.*

-Such information might include: drainage basin and aquifer boundaries, basin hydrology, geology and drainage characteristics, topography and vegetation, climate, stream flow and precipitation.

A GIS map of the basin might contain the following information:

-Surface water drainage basin and underlying aquifer, boundary roads, railroads, hydrology, cities and towns, and federal land.

Step 4: Ecology must prepare and file a petition with the court

RCW 90.03.110(1) (as amended by ESHB 1571 Sec. 1 July 2009)

After the filing of an adjudication petition or Ecology’s determination that adjudication will serve the public interest, Ecology must prepare and file a petition for adjudication with the superior court.

Upon the filing of a petition with the department by a planning unit or by one or more persons claiming a right to any waters within the state or when, after investigation, in the judgment of the department, the public interest will be served by a determination of the rights thereto, the department shall file a petition to conduct an adjudication with the superior court of the county for the determination of the rights of appropriators of any particular groundwater body and all the provisions of RCW 90.03.110 through 90.03.240 and sections 3 through 5, 8, 9, and 11 of this act, shall govern and apply to the adjudication and determination of such groundwater body and to the ownership thereof. Hereafter, in any proceedings for the adjudication and determination of water rights – either rights to the use of surface water or to the use of groundwater, or both – pursuant to chapter 90.03 RCW, all appropriators of groundwater or of surface water in the particular basin or area may be included as parties to such adjudication, as set forth in chapter 90.03 RCW.

Ecology will file this information with the appropriate superior court, using statutory criteria of RCW 90.03.110(1).

Specific Ecology Action:

After, consulting with the AOC to ensure necessary judicial resources are available, and providing a report to the legislature with estimated budget needs, Ecology must file a petition with the court.

Where does Ecology file the information?

RCW 90.03.110(1) (as amended by ESHB 1571 Sec. 1 July 2009)

- If the water is situated in only ONE county, Ecology must file the fact statement and plan or map **in the superior court of the county in which said water is situated.**
- If the water flows or is situated in **more than one** county, Ecology must file the fact statement and plan or map **in the county which Ecology shall determine to be the most convenient to the parties interested therein.**

Step 5: Ecology files a lis pendens

When and where does Ecology file the lis pendens?

A lis pendens may be filed at any time after Ecology's filing of the adjudication petition with the court.

RCW 4.28.320: Lis pendens in actions affecting title to real estate.

Ecology, the claimants, or defendants may file with the auditor of each county in which the property is situated a notice of the pendency of the action.

What should the notice contain?

The notice should contain:

- The names of the parties,
- The object of the action, and
- A description of the real property in that county affected thereby.

Immediately following filing the lis pendens, Ecology must deliver notice and summons to the court and parties involved

Specific Ecology Action:

After filing an adjudication with the court, Ecology should file notice of the pendency of the adjudication with the auditor of each county in which the property is situated.

The lis pendens must include the names of the parties, the object of the action, and a description of the real property in that county affected by the adjudication.

IMMEDIATELY AFTER filing the lis pendens, Ecology MUST deliver notice and summons to the defendants. Ecology only has 60 days after filing the lis pendens to deliver summons.

For the purpose of RCW 4.28.320, an action shall be deemed to be pending from the time of filing such notice: **PROVIDED, HOWEVER,** That such notice shall be of no avail unless it shall be followed by the first publication of the summons, or by the personal service thereof on a defendant within sixty days after such filing.

The court has the power to order cancellation, in whole or in part, of the lis pendens.

Step 6: Court issues notice of adjudication, Ecology requests return date

RCW 90.03.120 (as amended by ESHB 1571, July 2009)

Superior Court judge orders summons

Upon the filing of the fact statement and plan or map of the locality under investigation, the judge of the superior court in which the adjudication information was filed shall make an order directing summons to be issued.

Timing of Return day – 100-130 days

The return day of the summons shall not be less than **one hundred**, nor more than **one hundred thirty** days after the making of such order. **PROVIDED, that for good cause, the court, at the request of Ecology, may modify said time period.**

Content of the summons

The summons shall:

- Be issued out of said superior court,
- Signed and attested by the clerk thereof, in the name of the state of Washington, as plaintiff against all known persons identified by the department under RCW 90.03.110.
- Contain a brief statement of the objects and purpose of the proceedings
- Require the defendants to appear on the return day thereof and make and file an adjudication claim to, or interest in, the water involved and a statement that unless they appear

(See Step 7 for instructions on delivering summons.)

Specific Ecology Action:

Ecology should prepare resources, file the lis pendens, and get ready to serve the summons.

Ecology shall go to the court and request a return date, which will set the deadline for filing Adjudication Claims with the court.

If Ecology shows good cause, the court may modify the time period.

Ecology must serve the summons with a copy of the petition for adjudication.

Washington State Superior Court Civil Rule 4(d)(1).

Ecology may also want to provide a copy of the Adjudication Claim form, or a notice of where the form is available.

at the time and place fixed and assert such right, judgment will be entered determining their rights according to the evidence:

- a. PROVIDED, HOWEVER, That any persons claiming the right to water by virtue of a contract with a claimant to the right to divert the same, shall not be necessary parties to the proceeding.

Step 7: Ecology serves the summons

RCW 90.03.130 (as amended by ESHB 1571 Sec. 6, July 2009)

Two ways to properly serve the summons

1. Service of said summon shall be made in the same manner and with the same force and effect as service of summons in civil actions commenced in the superior courts of the state:

PROVIDED, That as an alternative to personal service, service may be made by certified mail, with return receipt signed and dated by defendant, a spouse of a defendant, or another person authorized to accept service.

Who may serve the summons?

Personal service of summons may be made by department of ecology employees for actions pertaining to water rights.

Under Rule 4(c) of the Washington Rules of Civil Procedure:

Service of summons and process, except when service is by publication, shall be by the sheriff of the county wherein the service is made, or by his deputy, or by any person over 18 years of age who is competent to be a witness in the action, other than a party.

Specific Ecology Action:

Summons may be served either in accordance with Rule 4 of the Washington Rules of Civil Procedure OR by certified mail in accordance with RCW 90.03.130.

Summons may be served by Ecology staff or contractors; certified mail, or sheriff service.

If defendant cannot be found, Ecology may serve the summons by publication

If a defendant or other person authorized to accept service cannot be found within the state of Washington:

- a. And prima facie evidence exists, including either: return of the sheriff of the county in which the proceeding is pending, OR the certified mail receipt lacks signature,
- b. Upon filing of an affidavit by Ecology, or its attorney, in conformity with the statute relative to the service of summons by publication in civil actions,
- c. **Such service may be made by publication of said summons in a newspaper of general circulation in each county in which any portion of the water is situated, once a week for six consecutive weeks (six publications).**
- d. **Summons by publication shall state that:**
Adjudication claims must be filed within sixty days after the last publication or before the return date, whichever is later.

When service is had:

In cases where personal service or service by certified mail is had, summons must be served at least sixty days before the return date thereof. For summons by certified mail, completion of service occurs upon the date of receipt by the defendant.

Step 8: Each Defendant files an adjudication claim; Ecology may assist

RCW 90.03.140 (as amended by ESHB 1571 Sec. 7 July 2009)

When the claim must be filed

Each defendant shall file his or her adjudication claim on or before the date specified in the summons.

Specific Ecology Action:

Ecology may only serve the summons by publication if the claimant(s) cannot be found.

Where and how to file the claim

The claim shall be filed with the clerk of the superior court on a form and in a manner provided by Ecology. A copy of the claim shall be mailed or electronically mailed to Ecology.

The claimant may file an adjudication claim electronically if authorized under state and local court rules.

Ecology's assistance in completion of claim

Ecology shall provide information that will assist claimants of small uses of water in completing their adjudication claims.

Ecology may assist claimants in their effort by making the department's pertinent records and information accessible electronically or by other means and through conferring with claimants.

Ecology supplies the adjudication form

Ecology shall furnish the form for the adjudication claim.

Required content of each adjudication claim

The adjudication claim must contain substantially the following, except that when the legal basis for the claimed right is a federally reserved right the information must be filed only as applicable:

- (a) Name, mailing address, and telephone contact number of each defendant on the claim, and e-mail address, if available;
- (b) The purpose or purposes of use of the water and the annual and instantaneous quantities of water put to beneficial use;
- (c) For each use, the date the first steps were taken under the law to put the water to beneficial use;
- (d) The date of beginning and completion of the construction of wells, ditches, or other works to put the water to use;

Ecology should conduct public information meetings for defendants and potential claimants to discuss the adjudication process and adjudication claims.

- (e) The maximum amount of land ever under irrigation and the maximum annual and instantaneous quantities of water ever used thereon prior to the date of the statement and if for power, or other purposes, the maximum annual and instantaneous quantities of water ever used prior to the date of the adjudication claim;
- (f) The dates between which water is used annually;
- (g) If located outside the boundaries of a city, town, or special purpose district that provides water to property within its service area, the legal description and county tax parcel number of the land upon which the water as presently claimed has been, or may be, put to beneficial use;
- (h) The legal description and county tax parcel number of the subdivision of land on which the point of diversion or withdrawal is located as well as land survey and geographic positioning coordinates of the same if available;
- (i) 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;
- (j) The legal basis for the claimed right;
- (k) Whether a statement of claim relating to the water right was filed under chapter 90.14 RCW or whether a declaration relating to the water right was filed under chapter 90.44 RCW and, if so, the claim or declaration number, and whether the right is documented by a permit or certificate and, if so, the permit number or certificate number.
- (l) 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.

Verification by oath

The adjudication claim shall be verified on oath by the defendant.

Court fees for filing, exception for the U.S. and Indian tribes

At the time of filing the adjudication claim, each defendant, **except the United States or an Indian tribe under 43 U.S.C. Sec. 666**, shall pay to the clerk of the superior court a fee as set under RCW 36.18.016.

Step 9: Ecology moves the court to set a date for filing evidence

The Court is encouraged to set a date for filing evidence that is reasonable and fair for the timely processing of the adjudication.

Step 10: Court is encouraged to use innovative practices and technologies in administrative processes

RCW 90.03.120 (as amended by ESHB 1571 Sec. 2 July 2009)

To the extent consistent with court rules and subject to the availability of funds provided, the court is encouraged to conduct the water rights adjudication using technologies like: electronic filing of documents, including notice and claims; appearance via teleconferencing; prefilings of testimony; and other practices and technologies consistent with court rules and emerging technologies.

Disqualification and recusal of a judge in a water right adjudication

A judge is partially disqualified when the judge's impartiality might reasonably be questioned and the apparent or actual partiality is limited to specified claims.

A judge is fully disqualified when the judge's impartiality might reasonably be questioned and the apparent or actual partiality extends beyond limited claims such that the judge should not hear any part of the adjudication.

RCW 90.03.620 (New Section. Sec. 3 ESHB 1571 July 2009)

Specific Ecology Action:

Ecology will move the court to establish the deadline for claimants to file evidence.

Since the legislature is encouraging the court to use innovative technologies, Ecology should be prepared to handle electronic data, participate in teleconferencing, and incorporate other emerging technologies.

Disqualification of judges

RCW 4.12.040 (as amended by ESHB 1571 Sec. 19 July 2009) and RCW 4.12.050 (as amended by ESHB 1571 Sec. 20 July 2009)

Superior Court appointment of assistant

The superior court may appoint a judicial officer or referee to assist the court. The court may also adopt special rules of procedure for a water rights adjudication.

The court will also consider pretrial orders from Acquavella.

Step 11: Ecology should try to settle with claimants

RCW 90.03.645 (New Section. Sec. 11 ESHB 1571 July 2009)

The legislature found that early settlement of contested claims is needed for a fair and efficient adjudication of water rights.

Ecology and other parties should identify opportunities for settlement following the date set by the court for filing evidence for all parties

The court is encouraged to urge as many parties to the adjudication as possible to reach timely agreement on claimed water rights in a manner that limits costs to the public, claimants, counties, courts, and Ecology. In addition and as long as it is beneficial, the court is encouraged to direct parties to utilize alternative methods of dispute resolution, including informal meetings, negotiation, mediation, or other methods to reach agreement on disputed claims.

Specific Ecology Action:

Ecology should make a strong effort to settle with claimants in order to save time and money.

If settlement is an option, Ecology may move the court to allow parties to meet for settlement discussions, either with or without a mediator.

Ecology may ask the court to allow settlement discussions

Any time after the filing of all claims under RCW 90.03.140, Ecology or another party may move the superior court to allow parties to meet for settlement discussions for a set length of time, either before an appointed mediator or without a mediator.

If Ecology needs more time, it can ask for an extension

If good cause is shown, the court may extend the length of time for settlement discussions.

Ecology's monetary costs for settlement

The mediating parties must equally bear the costs of mediation.

Ecology will file a motion to approve the settlement

If Ecology and a claimant reach agreement on settlement, Ecology shall file a motion to approve the settlement pursuant to section 9(3)(a) of this act and shall disclose the terms of the settlement to other parties to the adjudication. The court shall conduct a hearing prior to approving a settlement and may object or offer modifications to the settlement.

Step 12: Ecology moves for default

Motion for entry of default judgment

Ecology files a motion for default - Upon expiration of the filing period established under RCW 90.03.130(2), Ecology shall file a motion for default against defendants who have been served but who have failed to file an adjudication claim under RCW 90.03.140.

Ecology may petition the court to extend the deadline for settlement discussions.

Ecology must share the monetary costs of mediation with other involved parties.

Specific Ecology Action:

If settlement is successful, Ecology must file a motion with the court to approve the settlement.

Ecology will move for default against defendants who have failed to file an adjudication claim within the established filing period.

Late claims - A party in default may file a late claim under the same circumstances the party could respond or defend under court rules on default judgments.

RCW 90.03.625 (New Section. Sec. 4 ESHB 1571 July 2009)

Step 13: Interim regulation of water

How the stream or other waters involved shall be regulated

If an adjudication is pending, prior to judgment or review by appellate court, the stream or other water involved shall be regulated or partially regulated according to the schedule of rights specified in the department's report upon an order of the court authorizing such regulation: **PROVIDED**, Any interested party may file a bond and obtain an order staying the regulation of said stream as to him, in which case the court shall make such order regarding the regulation of the stream or other water as he may deem just.

The bond shall be filed within five days following the service of notice of appeal in an amount to be fixed by the court and with sureties satisfactory to the court, conditioned to perform the judgment of the court.

Parties may appeal Ecology decisions for changing or transferring a water right through the following process

Any appeal of a decision of the department on an application to change or transfer a water right subject to an actively litigated adjudication shall be conducted as follows:

- (a) The appeal shall be filed with the court conducting the adjudication and served under RCW 34.04.542(3). The content of the notice of appeal shall conform to RCW 34.05.546. Standing to appeal shall be based on the requirements of RCW 34.05.530 and is not limited to parties to the adjudication.
- (b) If the appeal includes a challenge to the portion of the department's decision that pertains to tentative determinations of the validity and extent of the water right, review of those tentative determinations shall be conducted by the court consistent with the provisions of RCW 34.05.510 through 34.05.598, except that the review shall be de novo.
- (c) If the appeal includes a challenge to any portion of the department's decision other than the tentative determinations of the validity and extent of the right, the court must certify to the pollution control hearings board for review and decision those portions of the department's decisions. Review by the pollution control hearings board shall be conducted consistent with chapter 43.21B RCW and the board's implementing regulations, except that the requirements for filing, service, and content of the notice of appeal shall be governed by (a) of this subsection. Any party to an appeal may move the court to certify portions of the appeal to the pollution control hearings board, but the appellant must file a motion for certification no later than ninety days after the appeal is filed under this section.
- (d) Appeals shall be scheduled to afford all parties full opportunity to participate before the superior court and the pollution control hearings board.
- (e) Any person wishing to appeal the decision of the board made under (c) of this subsection shall seek review of the decision in accordance with chapter 34.05 RCW, except that the petition for review must be filed with the superior court conducting the adjudication.

Nothing in this section shall be construed to affect or modify any treaty or other federal rights of an Indian tribe, or the rights of any federal agency or other person or entity arising under federal law. Nothing in this section is intended or shall be construed as affecting or modifying any existing right of a federally recognized Indian tribe to protect from impairment its federally reserved water rights in federal court.

RCW 90.03.210 (as amended by ESHB 1571 Sec. 14 July 2009)

Step 14: Claimants shall file evidence to support adjudication claims

RCW 90.03.635 (New Section. Sec. 8. ESHB 1571 July 2009)

Each claimant shall file with the court evidence to support the claimant's adjudication claims within the date set by the court. Each claimant has the burden to prove his or her water rights.

Content of evidence

The claimant may include:

- Permits or certificates of water rights,
- Statements of claim made under chapter 90.14 RCW,
- Deeds,
- Documents related to issuance of a land patent,
- Aerial photographs,
- Decrees of previous water rights adjudications,
- Crop records,
- Records of livestock purchases and sales,
- Records of power use,
- Metering records,
- Declarations containing testimonial evidence,
- Records of diversion,
- Withdrawal or storage and delivery by irrigation districts or ditch companies,
- And any other evidence to support that a water right was obtained and was not thereafter abandoned or relinquished.

The evidence may include matters that are outside the original adjudication claim filed, and within the date set by the court for filing evidence, the claimant may amend the adjudication claim to conform to the evidence filed. Thereafter, except for good cause shown, **a claimant may not file additional evidence to support the claim after the date set by the court for filing evidence.**

Step 15: Ecology conducts a preliminary investigation

RCW 90.03.640 (New Section. Sec. 9 ESHB 1571 July 2009)

Upon the receipt of adjudication claims and the filing of claimants' evidence, the department shall conduct a preliminary investigation to examine:

- (a) The uses of the subject waters by and any physical works in connection with the persons to whom the adjudication applies; and
- (b) The uses for which a statement of claim has been filed under chapter 90.14 RCW or for which Ecology has a permit or certificate of water right on record.

Specific Ecology Action:

While claimants are preparing claims and filing information, Ecology should prepare its claimant case files.

Specific Ecology Action:

Copies of all statements of claim, notices of appearance, and supporting documents are transmitted to Ecology.

Ecology must prepare master case files.

-Each file should include the name and location of the claimant and claimed water right, the claim filed with the court, Ecology's preliminary investigation, and the claimant's supporting evidence.

The examination may include, as Ecology deems appropriate:

- (i) An estimation of the amount of water that is reasonably necessary to accomplish various beneficial uses within the area;
- (ii) The measurement of stream flows;
- (iii) The measurement of any diversion or withdrawal rates;
- (iv) An estimation of storage capacity and the amount of water stored;
- (v) The types and numbers of stock watered;
- (vi) The number of residences served;
- (vii) The location and size of any irrigated land areas; and
- (viii) Any other information pertinent to the determination of water rights in an adjudication under this chapter.

Ecology may work with claimants during investigation

Ecology and claimants are encouraged to communicate and discuss factual and legal bases for water rights claims.

The court may also encourage claimants and the department to work together to reach agreement on a claimed water right in order to:

- Have a timely settlement of water rights.
- Reduce costs for the parties.
- Build greater equity and general public service.
- Supply better information that may be used for overall water management.

Ecology may also gather additional data

If it will help Ecology better understand water uses and associated water rights, Ecology may take other necessary steps and gather other data and information and review each claimant's adjudication claim and evidence the claimant filed to support the claim. Ecology may access the land to inspect evidence regarding the water right.

The following information may also be prepared:

-Mapping of Statements of claim: Starting with the map submitted to the court at filing, key elements of claimed water rights are mapped (Points of diversion/withdrawal and POU's).

-Field Investigation of Claims: Site inspections scheduled, claimants interviewed, current and historic water uses inspected, observed water uses mapped and investigation reports prepared.

Specific Ecology Action:

...cont. information Ecology may prepare:

- *-Stream Flow Measurements: Historic stream gauging data collected (if available), stream flow measuring sites established and periodic measurements taken and recorded.*
- *-Ditch Flow Measurements: Ditch diversions identified and periodically measured to determine diversion rates and ditch/canal gains and losses.*

Step 16: Ecology moves to deny because of lack of RCW 90.14 statement of claim

If an adjudication claim is for a use for which a statement of claim was required to be filed under RCW 90.14 and no such claim was filed, **Ecology may move that the adjudication claim be denied**. The court shall grant Ecology's motion unless the claimant shows good cause for why the motion should not be granted.

RCW 90.03.630 (New Section. Sec. 5 ESHB 1571 July 2009)

Step 17: Ecology will file a report of findings and motions with the court

How to file Ecology's adjudication findings

Ecology must file its report of findings as to each adjudication claim that was filed timely under RCW 90.03.140.

Ecology may divide its report of findings into two or more segments, covering particular drainages, uses, or other appropriate bases for dividing the report.

Ecology will file motion(s) with the superior court

Based on the evidence filed by the claimants and Ecology's report of findings, the department shall file with the superior court **either or both** of the following motions:

- (a) A motion for a partial decree in favor of all stated claims under RCW 90.03.140 that the department finds to be substantiated with factual evidence; or
- (b) A motion seeking determination of contested claims before the court.

RCW 90.03.640 (New Section. Sec. 9 ESHB 15721 July 2009)

If the claimant failed to file an RCW 90.14 statement of claim, Ecology may move to deny said adjudication claim.

Specific Ecology Action:

Ecology must file its report of findings. This may be divided into segments per pretrial orders or otherwise (if the pretrial orders don't specify division).

Ecology must also file either or both motions for a partial decree or determination of contested claims before the court.

Step 18: Claimants may respond to Ecology's motions

RCW 90.03.160 (as amended by ESHB 1571 Sec. 10 July 2009)

Claimants may respond to Ecology's motion or motions

After Ecology files the report of findings with the court, any party with a claim filed under RCW 90.03.140 for the appropriation of water or waters of the subject adjudication may file and serve a response to Ecology's motion or motions within the time set by the court for such a response.

Parties may submit objections

Objections must include specific information in regard to the particular disposition against which the objection is being made. Objections must also state the underlying basis of the objection being made, including general information about the forms of evidence that support the objection.

Step 19: Parties may file petitions to cross-examine

Cross examination petition

RCW 90.03.160 (as amended by ESHB 1571 Sec. 10 July 2009)

Any party may file testimony with the court and serve it on other parties. If a party intends to cross-examine a claimant or witness based on another party's prefiled testimony, the party intending to cross-examine shall file a notice of intent to cross examine no later than fifteen days in advance of the hearing. If no notice of intent to cross-examine based on the prefiled testimony is given, then the claimant or witness is not required to appear at the hearing. Any party may present evidence in support of or in response to an objection.

Specific Ecology Action:

After Ecology moves the court to hear a particular claim, Ecology shall prepare for evidentiary hearings.

If Ecology wishes to cross examine a claimant or claimant's witness, Ecology must file a notice of intent to cross examine.

Step 20: Court will issue final decree

RCW 90.03.180 (as amended by ESHB 1571 Sec. 12 July 2009)

Requirements for final decree and notice

Upon the court's determination of all issues, and completion of all appeals, the court shall issue a final decree and provide notice of the decree to all parties.

The final decree must order each party whose rights have been confirmed, **except the United States or an Indian tribe under 43 U.S.C. Sec. 666**, to pay Ecology the fees required by RCW 90.03.470(10) and any other applicable fee schedule within ninety days after Ecology sends notice to the party under RCW 90.03.240.

Step 21: Appellate review of court's decree

RCW 90.03.200 (as amended by ESHB 1571 Sec. 13 July 2009)

Appellate review of the decree shall be in the same manner as in other cases in equity, except that review must be sought **within sixty days** from the entry of the decree.

Step 22: Ecology shall withdraw the lis pendens

Specific Ecology Action:

The court will order Ecology to issue Certificates of Adjudicated Water Right.

Ecology will prepare the certificates, bill claimants for the certificate fee, and issue the certificates after all appeals are completed.

Specific Ecology Action:

Ecology should determine whether it wishes to appeal, and prepare for claimants' potential appeals.

Upon termination of all appeals, Ecology will withdraw the lis pendens.

Step 23: Ecology shall issue water rights certificates.

RCW 90.03.240 (as amended by ESHB 1571 Sec. 15 July 2009)

Nature and contents of the certificate of adjudicated water right

After the court makes a final decision of the rights to water, Ecology shall issue to each person entitled to a water right by such a determination, a certificate of adjudicated water right.

The certificate shall include:

- The name and mailing address of record with the court of such person.
- The priority and purpose of the right.
- The period during which said right may be exercised, the point of diversion or withdrawal, and the place of use.
- The land to which said water right is appurtenant.
- The maximum annual and instantaneous quantities of water allowed.
- Specific provisions or limitations or both under which the water right has been confirmed.

Ecology shall notify the water right holder of the certificate

Ecology shall provide notice to the water right holder that the certificate has been prepared for issuance and that fees for the issuance of the certificate are due in accordance with RCW 90.03.470 and any other applicable fee schedule.

Ecology may move the court for sanctions if the certificate holder does not pay required fees

If the water right holder fails to submit the required fees within one year from the date Ecology issued the notice, Ecology may move the court for sanctions for violations of the court's order in the final decree requiring payment.

Specific Ecology Action:

Ecology needs to draft and issue water rights certificates.

Certificates must include all required information listed in Sec. 15. RCW 90.03.240 (amended 2009).

Ecology must notify the water right holder that the water right certificate is prepared.

If the certificate holder does not pay required fees, Ecology will move the court to issue sanctions against the certificate holder.

Step 24: Ecology should update the water right database

After the Court issues the final decree confirming adjudicated water rights, Ecology should prepare a map of the decreed water rights and update water right databases.

Ecology will also transfer adjudication documents, data, and maps to the Regional and/or Field Office.

Specific Ecology Action:

The court will order Ecology to issue Certificates of Adjudicated Water Right.

Ecology will prepare the certificates, bill claimants for the certificate fee, and issue the certificates after all appeals are completed.

Ecology should determine whether it wishes to appeal, and prepare for claimants' potential appeals.

Upon termination of all appeals, Ecology will withdraw the lis pendens.

Ecology's water right databases will be updated. Relevant documents and exhibits will be linked to the database.

Ecology will transfer adjudication information to the Regional or appropriate Field office.

Additional Adjudication Information:

The state shall incur adjudication expenses

The expenses incurred by the state in a proceeding to determine rights to water initiated under RCW 90.03.110 or 90.44.220 or upon appeal of such a determination shall be borne by the state.

Subject to the availability of state funding provided either by direct appropriation or funded through the administrative office of the courts for this specific purpose, the county in which an adjudication or a suit to administer an adjudication is being held must be provided the extraordinary costs imposed on the superior court of that county due to the adjudication.

Jurisdiction and proceedings of the hearings board

RCW 43.21B.110 (as amended by ESHB 1571 Sec. 18 July 2009)

The hearings board may hear the following:

The hearings board shall only have jurisdiction to hear and decide appeals from the following decisions of the department, the director, local conservation districts, and the air pollution control boards or authorities as established pursuant to chapter 70.94 RCW, or local health departments:

- (a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431, 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.48.144, 90.56.310, and 90.56.330.
- (b) Orders issued pursuant to RCW 18.104.043, 18.104.060, 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070, 90.14.130, 90.48.120, and 90.56.330.
- (c) Except as provided in RCW 90.03.210(2), the issuance, modification, or termination of any permit, certificate, or license by the department or any air authority in the exercise of its jurisdiction, including the issuance or termination of a waste disposal permit, the denial of an application for a waste disposal permit, or a decision to approve or deny an application for a solid waste permit exemption under RCW 70.95.300.

- (d) Decisions of local health departments regarding the grant or denial of solid waste permits pursuant to chapter 70.95 RCW.
- (e) Decisions of local health departments regarding the issuance and enforcement of permits to use or dispose of biosolids under RCW 70.95J.080.
- (f) Decisions of the department regarding waste-derived fertilizer or micronutrient fertilizer under RCW 15.54.820, and decisions of the department regarding waste-derived soil amendments under RCW 70.95.205.
- (g) Decisions of local conservation districts related to the denial of approval or denial of certification of a dairy nutrient management plan; conditions contained in a plan; application of any dairy nutrient management practices, standards, methods, and technologies to a particular dairy farm; and failure to adhere to the plan review and approval timelines in RCW 90.64.026.
- (h) Any other decision by the department or an air authority which pursuant to law must be decided as an adjudicative proceeding under chapter 34.05 RCW.

The hearings board may NOT hear:

The following hearings shall not be conducted by the hearings board:

- (a) Hearings required by law to be conducted by the shorelines hearings board pursuant to chapter 90.58 RCW.
- (b) Hearings conducted by the department pursuant to RCW 70.94.332, 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.95.410, and 90.44.180.
- (c) Appeals or decisions by the department under RCW 90.03.110 and 90.44.220.
- (d) Hearings conducted by the department as provided in chapter 43.21L RCW.

Review of rules and regulations adopted by the hearings board shall be subject to review in accordance with the provisions of the Administrative Procedure Act, chapter 34.05 RCW.

All steps listed above apply to adjudications initiated after July 26, 2009.