

SENATE BILL REPORT

SB 5966

As of January 31, 2022

Title: An act relating to cost and water right data provided by the department of ecology prior to a water rights adjudication.

Brief Description: Concerning cost and water right data provided by the department of ecology prior to a water rights adjudication.

Sponsors: Senator Sefzik.

Brief History:

Committee Activity: Agriculture, Water, Natural Resources & Parks: 2/01/22.

Brief Summary of Bill

- Requires the Department of Ecology (Ecology) to identify the number of water rights, claims, or exempt uses of water, within specified purposes or categories of water use, that would be included in the water right adjudication prior to the filing of an adjudication.
- Requires Ecology to include the total cost to the state on an annual basis when submitting its estimated budget needs for a water right adjudication.

SENATE COMMITTEE ON AGRICULTURE, WATER, NATURAL RESOURCES & PARKS

Staff: Karen Epps (786-7424)

Background: Water Right Adjudication Process. The Water Code has established a means by which the various existing rights to surface water or ground water from a water body may be adjudicated in court to determine the validity of claims to water rights and to identify the amounts of water to which each person with a right is entitled, the order of

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priority—seniority—of those rights, and other aspects of the rights. General stream adjudications do not create new water rights, but only confirm existing rights.

Prior to filing an adjudication, the Department of Ecology (Ecology) must consult with the Administrative Office of the Courts to determine whether sufficient judicial resources are available to commence and to prosecute the adjudication in a timely manner. Ecology must report to the appropriate legislative committees on the estimated budget needs for the court and Ecology to conduct the adjudication.

Ecology must prepare a statement of facts, together with a plan or map of the area to be adjudicated and file the statement and plan or map in the superior court. The statement must identify each person or entity owning real property within the area to be adjudicated who are not within the service area of an entity that provides water to the properties, identify all known persons claiming a right to water, or both. The statement must also describe the facts in relation to the water and why a determination of rights is needed for the area. Upon the filing of the statement and map, the superior court begins the adjudication with Ecology as the plaintiff.

Each person filing a statement of claim in the proceeding must pay a filing fee to the court. An evidentiary hearing is conducted by a duly authorized designee of Ecology, known as a referee. At the evidentiary hearing, those claiming the right to use water, or their representatives, appear to present factual information through testimony and documents supporting their claims. After the evidentiary hearing, the referee issues a report of findings and recommendations to the court. The superior court judge then reviews the recommendations and issues a final decree. The court then directs Ecology to issue a certificate of adjudicated water right for each confirmed right.

Adjudications. Between the 1920s and 1970s, Ecology completed hundreds of small individual stream adjudications to resolve local water disputes. The general stream adjudication of surface water in the Yakima River Basin addressed the water rights of the Yakama Nation, federal interests such as the Bureau of Reclamation, municipal suppliers, irrigation districts, and thousands of individual water users. The Yakima River Basin Surface Water Adjudication took over 40 years from filing to the entry of a final decree. In 2020, Ecology submitted the Water Resources Adjudication Assessment Legislative Report to the Legislature and recommended two watersheds for immediate adjudication, the Nooksack Watershed and Lake Roosevelt and its Middle Tributaries.

Summary of Bill: Prior to filing an adjudication, Ecology must identify the number of water rights, claims, or exempt uses of water that would be included in the water right adjudication, within the following specified purposes or categories of water use:

- municipal water rights;
- irrigation water rights;
- tribal and other federal water rights;
- industrial and commercial water rights;

- any other purposes of use for permitted or claimed water rights; and
- permit-exempt groundwater uses, with data on the number of domestic uses, non-commercial lawn and garden, stockwatering, and industrial uses.

When Ecology submits estimated budget needs for the court and Ecology to conduct the adjudication, the cost estimate must include the total cost to the state on an annual basis until the completion of the adjudication. Ecology must report its estimated budget needs to conduct or participate in the adjudication and the estimated budget needs for the court to conduct the adjudication to the Office of the Attorney General, and other state agencies, as well as appropriate legislative committees.

Information about consultation with the Administrative Office of the Court about resources, estimated budget needs, and the identification of the number of water rights, claims or exempt uses must also be provided to the Legislature as part of Ecology's biennial budget submission to the Office of Financial Management.

Appropriation: None.

Fiscal Note: Requested on January 28, 2022.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.