



To: Sheila Coughlan, Environmental Planner, Department of Ecology, WRadjudications@ecy.wa.gov

Date: March 1, 2024

Re: Washington Farm Bureau comments on Department of Ecology's Draft WRIA 1 Nooksack Area Adjudication Claim Forms

We are writing to provide comments regarding the Department of Ecology's Water Resources Program draft documents for the WRIA 1 Nooksack Basin adjudication that include the small use court claim form, full-length court claim form, and instructions.

The Washington Farm Bureau (WFB) is the state's largest voluntary grassroots agricultural advocacy organization representing the social and economic interests of farm and ranch families, at the local, state, and national levels.

The law is very clear that only the Superior Court judge who is presiding over the adjudication can establish the rules and procedures for the case. The Ecology instruction and claims forms raise concerns by creating requirements and categories, thus establishing criteria and procedures before parties are even named. Requiring criteria under two different categories, small and large claims, exceeds Ecology's authority.

Some of the language in the instruction and claims forms are narrow and ambiguous, raising questions that could possibly create confusion and unreasonable expectations among property owners.

To qualify for the small use claim form, the maximum amount of water a property owner can use is 500 gallons per day. This threshold seems arbitrary and could disqualify some larger, domestic households. The forms also preclude homeowners from using the short form if they use more than 500 gallons per day for animals, yet the overall threshold for a home is also 500 gallons per day. This is confusing and should be clarified.

Ecology estimates there could be up to 20,000 claimants who have exempt wells and the small use claim form allows up to a half-acre of outdoor water use for homeowners. This could translate up to 10,000 acre-feet of water use per year without requiring evidence of actual use. It's unclear if Ecology's intent with the Small Use Claims Form is to create a lesser standard of proof for homeowners compared to farmers and other water users, but this does raise some fairness concerns.

The phrase and short descriptions of what constitutes a "direct water user," is subjective and confusing and should be better defined.

The forms also create a narrow definition of domestic use, leaving out many other types of common examples that could qualify. This is important because the forms do not define industrial use and could drive some homeowners to use the long form unnecessarily.



The instruction form makes the claim that stock watering is limited to drinking water for livestock. The courts have ruled that stock watering purposes is broader than drinking water and includes “all reasonable uses of water normally associated with the sound husbandry of livestock.” This language should be clarified to include the broader uses of stock watering purposes.

The chart estimates for the daily water use of livestock in the instruction form is also outdated and understates the industry standards for water use in dairy cows.

We appreciate the opportunity to comment on the Department of Ecology's Water Resources Program draft documents for the WRIA 1 Nooksack Basin adjudication that include the small use court claim form, full-length court claim form, and instructions. As stated, we found many opportunities to clarify the forms.

Overall, we believe only the Superior Court Judge presiding over the adjudication can and should establish the rules and procedures of the adjudication and the current forms exceed Ecology's authority in this case.

Washington Farm Bureau represents many landowners and water users within the jurisdiction of the potential adjudication, and we are willing to work with stakeholders to ensure a meaningful and fair process going forward.

Sincerely,

A handwritten signature in black ink that reads 'Rosella Mosby'. The signature is written in a cursive, flowing style.

Rosella Mosby, president
Washington Farm Bureau Federation
rmosby@wsfb.com