

February 27, 2024

SUBMITTED VIA ECOLOGY ONLINE COMMENT PORTAL

Washington State Department of Ecology
Water Resources Program – Adjudication Unit
PO Box 47600
Olympia, WA 98504-7600

Re: PUD No. 1 of Whatcom County Comments on Nooksack Basin Adjudication Claim Forms

To whom it may concern:

On behalf of Public Utility District No. 1 of Whatcom County ("Whatcom PUD") I am submitting the following comments and recommendations on the draft Nooksack Basin adjudication claim forms and related instructions that Ecology published for review and comment on January 3, 2024.

Whatcom PUD appreciates Ecology's efforts to develop a claim form that is comprehensive while still being approachable by both pro se litigants as well as water law experts. Given the large number of claimants expected in the Nooksack adjudication, effective claim forms are critical for increasing the likelihood that necessary information is made available to the Court, Ecology, and the parties without the need for significant follow up or replacement filings. We believe the recommendations below would clarify and improve the forms for the benefit of all involved.

PUD No. 1 of Whatcom County Comments and Recommendations on Ecology Claim Forms

Wherever possible, claim form(s) should use the language of the statute, not shorthand or substitute language; e.g., the question on quantities under RCW 90.03.140(1)(b) should request Qi/Qa "put to beneficial use," not "currently used for ___ purpose" (from full-length claim form Question 9 tables).

The instructions and/or claim form(s) should include direct language from RCW 90.03.140(1), not just links.

Claim forms should require all information called out in RCW 90.03.140(1)(a) through (l), as required by subsection (1) ("The adjudication claim must contain substantially the following . . .").

The full-length claim form should be designed to work for all claimants, including those claiming federally reserved rights, instream flow rights, municipal rights, etc.

Accordingly:

- Suggest eliminating the prescriptive and overly narrow "purpose of use" check boxes in Question 9.
 - Replace with a "purpose of use" field in which claimants can insert their claimed "purpose or purposes of use" as provided in RCW 90.03.140(1)(b).
- Suggest eliminating the repetitive Qi/Qa tables in Question 9 which mix information on quantities with other information such as area irrigated and season of use.
 - Replace with a single table for Qi/Qa put to beneficial use (RCW 90.03.140(1)(b)); maximum Qi/Qa ever used prior to the claim (subsection (1)(e)); and Qi/Qa claimed as a present right (subsection (1)(l)).
 - Include separate questions for specific information required under subsection (1), e.g., if for irrigation, include the maximum amount of land ever under irrigation (subsection (1)(e)).
 - Request identification of season of use (subsection (1)(f)) as a separate question applicable to all water rights, not limited to specific types of rights.
 - Request information on the additive/non-additive nature of water rights through a separate question applicable to all water rights, not just municipal rights.

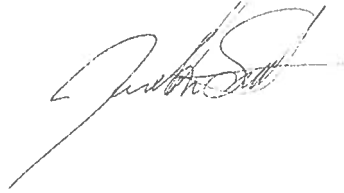
Revising the form as suggested above would allow parties to accurately reflect what is in their water right documents, which may include multiple purposes of use for the same right, rather than having to check boxes that may or may not apply; and allow parties to obtain necessary information, such as season of use and additive/non-additive nature, from all claimants. It would also shorten and simplify the form.

If the full-length claim form remains specific to each individual water right (as opposed to being specific to each claimant or each place of use), the form should request identifying information on other water rights held by the same claimant or appurtenant to the same place of use. For claimants with multiple water rights, Ecology, the parties, and the Court will need to understand the full scope of the rights being claimed as well as their potential relationships (e.g., as additive or non-additive rights).

We appreciate the opportunity to comment and would be happy to discuss the above recommendations.

Sincerely,

CSD ATTORNEYS AT LAW P.S.

A handwritten signature in black ink, appearing to read "Jon Sitkin", with a long, sweeping underline that extends to the left.

Jon Sitkin
General Counsel for PUD No. 1 of Whatcom County

Cc: Client
Cc: Tupper Mack Wells, Special Water Right Counsel for PUD No. 1 of Whatcom County