

Washington State Judicial Branch

2024 Supplemental Budget

Fund Water Rights Adjudication

Agency: Administrative Office of the Courts

Decision Package Code/Title: 1S – Fund Water Rights Adjudication

Agency Recommendation Summary Text:

The Administrative Office of the Courts requests 0.3 FTE and \$1.5 million in ongoing funding to support Whatcom County Superior Court activities related to adjudications filed by the Department of Ecology to resolve water rights in the Nooksack Basin Water Resource Inventory Area (WRIA) I. (General Fund-State)

Fiscal Summary:

	FY 2024	FY 2025	Biennial	FY 2026	FY 2027	Biennial
Staffing						
FTEs	0.00	0.5	0.30	0.5	0.5	0.5
Operating Expenditures						
Fund 001-1	\$0	\$1,479,000	\$1,479,000	\$654,000	\$654,000	\$1,308,000
Total Expenditures						
	\$0	\$1,479,000	\$1,479,000	\$654,000	\$654,000	\$1,308,000

Package Description:

The Department of Ecology (Ecology) has committed to filing a petition to adjudicate water rights in the Nooksack Basin Water Resource Inventory Area (WRIA) I in Spring 2024. The general adjudication will include individual determinations of ground and surface water rights, including water volume allocations, for the entire basin.

Ecology anticipates filing a water adjudication petition in Whatcom County Superior Court in Spring 2024. Ecology will serve notice by certified mail and legal publication on approximately 30,000 claimants. [RCW 90.03.110\(2\)\(a\)](#) requires Ecology to “consult with the Administrative Office of the Courts to determine whether sufficient judicial resources are available to commence and prosecute the adjudication in a timely manner.” In the 2023-25 biennial budget, the Legislature funded the initial staffing component to prepare for the Nooksack adjudication. This request for funding builds on last year’s funding to fulfill the state’s financial obligation under [RCW 90.03.243](#) based on the timeline of events proposed by Ecology.

This package includes funding for a judicial officer and staff attorney, dedicated IT support staff, facilities, and technology infrastructure necessary to efficiently process the water adjudication in Whatcom County Superior Court. It also includes funding for a subscription to the new National Judicial College Dividing the Waters on-demand education program for water law.

The Judicial Needs Estimate of 2020 projected an estimated need of 8.46 judges in Whatcom County Superior Court. The court currently employs four judges and three commissioners. New funding dedicated to a water adjudication commissioner (or, referee) position was appropriated in the 2023-25 biennial budget. This position will assist with the review of claims, review of preliminary investigations under [RCW 90.03.640](#), and early settlements [under RCW 90.03.645](#). However, under [RCW 90.03.160](#), the Legislature encourages the superior court to create special rules of procedure, simplified procedures for claimants of small uses of water, and to consider entering appropriate pretrial orders. An additional judge is needed to implement these procedures at the initiation of the case or shortly thereafter.

Whatcom County Superior Court is currently at maximum capacity for physical space for courtrooms, chambers, and offices. Significant reconfiguration of building space will be required to accommodate additional staff. Additionally, the county's information technology support is at capacity and the court will need a dedicated partial position to ensure that the court's technology infrastructure is adequately supported for the eFiling system, remote appearances, and other emerging technologies as encouraged by the Legislature under [RCW 90.03.120](#).

AOC and Whatcom County Superior Court have always anticipated a long-term staffing strategy that would span multiple biennial and supplemental budgets based on Ecology's actions and decisions to file an adjudication petition. Staying flexible but adaptive has allowed the requests of resources as they are needed instead of asking too far in anticipation of the case. Initially, Ecology signaled its intent to file in June 2023, now Ecology projects a spring 2024 filing date.

Fully describe and quantify expected impacts on state residents.

Of the 30,000 served notice, Ecology estimates that there will be anywhere from 5,000-25,000 defendant claim filings. To illustrate the magnitude of impact, a total of 6,168 cases in total were filed in Whatcom County Superior Court in 2022. Without adequate funding of judicial staff and facilities changes, other litigants may suffer delays if the court is required to process the adjudication while maintaining general service to the public.

Explain what alternatives were explored by the agency and why this was the best option chosen.

No alternatives were explored. Ecology and claimants have a right to access the courts and the Legislature has emphasized the need for efficiency in the proceedings in [Chapter 90.03 RCW](#).

What are the consequences of not funding this request?

Ecology predicts the WRIA I adjudication will take 20 years to complete even with adequate resources provided to the courts. While the parties have a right to access the courts, Whatcom County Superior Court would not be able to proceed with the adjudication in a timely manner and the adjudication would easily stretch by decades as evidenced by the staffing model in the Acquavella adjudication. Superior courts are required to prioritize criminal matters where personal liberty interests are at stake. Without this funding the court would not have adequate judicial officer and facility resources to efficiently process the adjudication.

Delaying resolution of water rights has several impacts including resolving conflicts that are deemed necessary to preserve Native fishing rights, protect fish species, and allocate rights and responsibilities for water usage. Both the Lummi Nation and Nooksack Tribe have requested this adjudication, a delay in its resolution further delays the ability for tribes to manage their resources.

State and local government ability to successfully manage water needs in this watershed would continue to be limited by a lack of water right certainty. The resolution of water rights ensures that water is available, which is critical for fish, wildlife, business owners, and tribes. It also safeguards against overuse and allows planning for drought contingencies.

Is this an expansion or alteration of a current program or service?

No.

Decision Package expenditure, FTE and revenue assumptions:

Staffing Assumptions

The AOC pays 50 percent of the salary and 100 percent of the benefits for a superior court judge position. The county pays the other 50 percent of the salary cost. This request will pay the state share of the judge position beginning July 1, 2024 at a salary set by the Washington Citizen's Commission on Salaries for Elected Officials.

Other Non-Standard Costs

Goods and Services (Object E)

Ongoing costs of \$30,000 per year are included for the National Judicial College on-demand water law education platform.

Grants (Object N)

This request also includes pass through funding to Whatcom County for its costs, including staffing and equipment.

- 50 percent of a superior court judge
- 1 judicial assistant
- 1 staff attorney
- New courtroom construction
- Audio / visual recording equipment

Expenditures by Object	<u>FY 2024</u>	<u>FY 2025</u>	<u>FY 2026</u>	<u>FY 2027</u>	<u>FY 2028</u>	<u>FY 2029</u>
A Salaries and Wages		114,100	114,100	114,100	114,100	114,100
B Employee Benefits		59,400	59,400	59,400	59,400	59,400
E Goods and Services		30,000	30,000	30,000	30,000	30,000
N Grants, Benefits, and Client Services		1,230,600	405,600	405,600	405,600	405,600
T Intra-Agency Reimbursements		44,900	44,900	44,900	44,900	44,900
Total Objects		1,479,000	654,000	654,000	654,000	654,000

How does the package relate to the Judicial Branch principal policy objectives?

Fair and Effective Administration of Justice. This package is necessary for Ecology to efficiently pursue a water adjudication and for the court to resolve water rights for individuals, governments, and tribal governments.

Accessibility. Washington courts, court facilities, and court systems will be open and accessible to all participants regardless of cultural, linguistic, ability-based or other characteristics that serve as access barriers. The Legislature made changes in 2009 to use innovative technologies in water adjudications which will provide improved accessibility once the case is initiated.

Access to Necessary Representation. Constitutional and statutory guarantees of the right to counsel shall be effectively implemented. Litigants with water rights at stake should have meaningful access to counsel and guardian ad litem when appropriate.

Commitment to Effective Court Management. Implementing eFiling and other technical improvements will assist litigants and the general public in filing and accessing documents and help implement the Legislature's encouragement for efficient water adjudications.

Sufficient Staffing and Support. In order to efficiently manage a complex water adjudication in a timely manner, additional court staffing and facilities costs are required. Current staffing is not sufficient for current caseloads.

Are there impacts to other governmental entities?

Yes, there are impacts to Ecology, local governments, the Lummi Nation and Nooksack Tribe.

Stakeholder response:

Ecology reports that adjudication has widespread support from fisheries, development and real estate, and environmental groups, but is opposed by agricultural interests, and some parties have taken a neutral position. The Lummi Nation and Nooksack Tribe have petitioned for adjudication. While not everyone is unanimously in favor of the filing of the adjudication by Ecology, it is not expected there would be opposition to providing adequate resources for the judiciary to fairly and efficiently resolve the claims. Ecology has been adequately funded to file the petition and they would support adequately funding the courts to hear the case.

Are there legal or administrative mandates that require this package to be funded?

[RCW 90.03.243](#) reads as follows, “Subject to 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 is held must be provided the extraordinary costs imposed on the superior court of that county due to the adjudication.”

Does current law need to be changed to successfully implement this package?

Yes. To implement this decision package, a judge will need to be added to Whatcom County Superior Court via [RCW 2.08.063](#).

Are there impacts to state facilities?

No.

Are there other supporting materials that strengthen the case for this request?

Yes.

- 2023-25 AOC Decision Package
- Whatcom County Superior Courtroom Construction Estimate

Are there information technology impacts?

Yes. The 2023-25 biennial budget decision package included funding for implementation of eFiling. AOC and Whatcom County are still assessing the impacts, but dedicated information technology support for Whatcom County will be needed to support eFiling, video conferencing, and other infrastructure issues. AOC has begun an assessment of digital evidence systems that will be necessary for this adjudication. The court will also need an allocation for an electronic recording system for the added courtroom and electronic evidence storage needs.

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Washington State Judicial Branch

2023-25 Biennial Budget

Fund Water Rights Adjudication

Agency: Administrative Office of the Courts

Decision Package Code/Title: S7 – Fund Water Rights Adjudication

Agency Recommendation Summary Text:

The Administrative Office of the Courts requests 2 FTEs and \$1.9 million in ongoing state funding to support court activities related to adjudications filed by the Department of Ecology to resolve water rights in Water Resources Inventory Areas 1 (Nooksack). A general adjudication of surface and groundwater rights will determine who has a legal right to use water and the volume of each right. (General Fund-State)

Fiscal Summary:

	FY 2024	FY 2025	Biennial	FY 2026	FY 2027	Biennial
Staffing						
FTEs	2.00	2.00	2.00	2.00	2.00	2.00
Operating Expenditures						
Fund 001-1	\$918,900	\$959,000	\$1,877,900	\$953,000	\$956,000	\$1,909,000
Total Expenditures						
	\$918,900	\$959,000	\$1,877,900	\$953,000	\$956,000	\$1,909,000

Package Description:

The Department of Ecology (DOE) is proposing an adjudication of water rights in the Nooksack (Water Resource Inventory Area 1) and also evaluating a similar but smaller scale adjudication for the Lake Roosevelt and Middle Tributaries (Water Resource Area 58) watersheds. A general adjudication of surface and groundwater rights will determine who has a legal right to use water and the volume of each right.

DOE anticipates filing a claim in Whatcom County Superior Court as early as June 2023 and serving notice by certified mail and by legal publication on approximately 30,000 claimants. A Lake Roosevelt adjudication may be filed in Spokane County. It would be significant litigation but involving approximately 120 parties as compared to the thousands in Whatcom. If filed, it is not anticipated the court would reach the question of water rights held by individual users before the 2025-2027 biennium.

RCW 90.03.110(2)(a) requires the Department to “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.”

This request begins to fulfill the state’s financial obligation under RCW 90.03.243: “Subject to 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 is held must be provided the extraordinary costs imposed on the superior court of that county due to the adjudication.”

Superior courts have “original jurisdiction in all cases at law which involve the title or possession of real property,” which includes water rights claims. Const. art. IV, §6.

The large-scale adjudication in Whatcom County is expected to take approximately twenty years to complete. The size and complexity far exceed the capacity of the County courts and will require sizeable appropriations over several biennia to support the timely and efficient processing of these

Fully describe and quantify expected impacts on state residents and specific populations served:

Department of Ecology estimates it will send approximately notices 30,000 and there will be 5,000 to 25,000 defendant claim filings. To illustrate the significance of this body of work, in 2019 (pre-COVID) a total of 6,760 cases were filed Whatcom County Superior Court.

According to the Department of Ecology: “Adjudication will directly impact water users in the adjudicated watersheds, particularly water rights holders and tribal populations. There are approximately 5,400 recorded water users in the Nooksack Basin, and approximately 843 within Lake Roosevelt and the Middle tributaries (WR1A 58). An additional estimated 15,000 rural landowners may have water rights based on their use of permit-exempt wells. Permit exempt users would be joined in the adjudication through a simplified process that would confirm their legal quantity and ensure they are not impairing senior rights. (Adjudication proceedings do not include water users who obtain water from a municipal purveyor or by contract with an irrigation district.)

An adjudication will give water users a formal determination of their rights to use water, with associated values, affirmed by a court and embodied in the court's decrees. Aligning water uses with legal rights to use water, through a superior court adjudication process, reduces uncertainty about legal availability of water for economic development. Clear legal protection of water rights through a court decree facilitates well-founded permitting and enforcement, benefiting streamflow and ecosystems and protecting endangered species.

While adjudication entails substantial time and expense, it ultimately resolves and reduces local and legislative conflict over water resources.”

Explain what alternatives were explored by the agency and why they were rejected as solutions:

No alternatives were explored. The Department and claimants have a right to access the courts.

What are the consequences of not funding this request?

Ecology predicts the WRIA-1 adjudication will take 20 years to complete even with adequate resources provided to the courts. Without the requested funding, superior courts would not be able to proceed with the adjudication in a timely manner and that 20 years would easily stretch by decades. Already busy superior courts that are required to prioritize criminal matters where personal liberty interests are at stake would not have adequate staff resources or judicial officer time to efficiently process the adjudication. This would significantly delay resolution of water rights conflicts that are deemed necessary to preserve Native fishing rights, protect fish species, and allocate rights and responsibilities for water usage.

State and local government ability to successfully manage water needs in these watersheds would continue to be limited by a lack of water right certainty. Considerable state, local, and tribal investments in watershed planning, water supply development, prior litigation, and other flow improvement efforts would continue with limited effectiveness.

Current challenges would only get worse with time and ultimately increase cost. The impacts of water use uncertainty would continue and be exacerbated by climate change. Ecology asserts that delays would threaten irrevocable change to stream habitat, threatened species of salmon, and the communities' ecosystems that depend on them.

Is this an expansion or alteration of a current program or service?

This is a new program.

Decision Package expenditure, FTE and revenue assumptions:

Staffing Assumptions

Legal Services Principal Analyst. Beginning July 1, 2023 and ongoing, AOC requires salary, benefits, and associated standard costs for 1.0 FTE to organize and direct the AOC internal support for adjudications and work directly with trial court judicial officers and administration to determine their need for additional funding and support in future budget cycles. This position will require a high level of legal and organizational skills.

Senior System Integrator. Beginning July 1, 2023 and ongoing, AOC requires salary, benefits, and associated standard costs for 1.0 FTE to provide technical support for case management and data management due to the volume of case participants. This position is expected to continue through the life of the adjudication and was strongly recommended by New Mexico AOC.

Other Non-Standard Costs

Contracts (Object C)

This package will require a contract or contract amendment with Tyler Technologies to provide electronic filing and service (eFile & Serve) for the case management system used by AOC and the Whatcom County Superior Court. This will be \$55,000 in the first year and is expected to increase by 5% per year thereafter. This would be an annual cost for each year of the adjudication. If the Legislature fully funds the 2023-2025 AOC request P2 – Implement eFiling for SC-CMS (superior court eFiling), this expenditure would not be required.

Goods and Services (Object E)

Ongoing training costs of \$25,000 per year are included to for judicial officers and key personnel to enroll in the National Judicial College programs and attend the Dividing the Waters conferences.

Grants (Object N)

This request also includes pass through funding to Whatcom County for its costs, including staffing and equipment. The estimates were based on consultant advice with large-scale water rights adjudication experience and include:

- 2 Court Clerks, one beginning in FY 2023 and one beginning in FY 2024
- High capacity printer
- 1 Court Commissioner
- 1 Secretary/Paralegal
- One-time facilities and equipment costs

	<u>FY 2024</u>	<u>FY 2025</u>	<u>FY 2026</u>	<u>FY 2027</u>	<u>FY 2028</u>	<u>FY 2029</u>
Expenditures by Object						
A Salaries and Wages	240,800	240,800	240,800	240,800	240,800	240,800
B Employee Benefits	76,800	76,800	76,800	76,800	76,800	76,800
C Personal Service Contract	55,000	58,000	61,000	64,000	67,000	70,000
E Goods and Services	32,600	32,600	32,600	32,600	32,600	32,600
G Travel	5,000	5,000	5,000	5,000	5,000	5,000
J Capital Outlays	12,800	3,200	3,200	3,200	3,200	3,200
N Grants, Benefits, and Client Services	417,300	464,000	455,000	455,000	455,000	455,000
T Intra-Agency Reimbursements	78,600	78,600	78,600	78,600	78,600	78,600
Total Objects	918,900	959,000	953,000	956,000	959,000	962,000

Staffing

Job Class	Salary	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
LEGAL SERVICES PRINCIPAL ANALYST	129,300	1.00	1.00	1.00	1.00	1.00	1.00
SENIOR SYSTEM INTEGRATOR	111,500	1.00	1.00	1.00	1.00	1.00	1.00
Total FTEs		2.00	2.00	2.00	2.00	2.00	2.00

Explanation of standard costs by object:

Salary estimates are current biennium actual rates at Step L.

Benefits are the agency average of 31.89% of salaries.

Goods and Services are the agency average of \$3,800 per direct program FTE.

Travel is the agency average of \$2,500 per direct program FTE.

One-time IT Equipment is \$4,800 for the first fiscal year per direct program FTE. Ongoing Equipment is the agency average of \$1,600 per direct program FTE.

Agency Indirect is calculated at a rate of 24.73% of direct program salaries and benefits.

How does the package relate to the Judicial Branch principal policy objectives?

This package will provide resources necessary for the superior courts to fairly and effectively administer justice through timely adjudication of water rights claims. It will ensure that the courts have sufficient staffing and support to fulfill their constitutional and statutory roles.

Are there impacts to other governmental entities?

This package is necessary for Ecology to efficiently pursue an adjudication. It is expected that Ecology, local government, and tribes will support this request.

Stakeholder response:

While the decision by Ecology to file an adjudication may be controversial, it is not expected there would be opposition to providing adequate resources for the judiciary to fairly and efficiently resolve the claims.

Are there legal or administrative mandates that require this package to be funded?

RCW 90.03.243: "Subject to 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 is held must be provided the extraordinary costs imposed on the superior court of that county due to the adjudication."

Does current law need to be changed to successfully implement this package?

No

Are there impacts to state facilities?

No

Are there other supporting materials that strengthen the case for this request?

See attached decision packages from the Department of Ecology.

- PX – Nooksack Adjudication
- PY – Lake Roosevelt Adjudication

Are there information technology impacts?

Yes. AOC is still assessing the impacts but information technology solutions will be needed in two areas: 1) electronic filing and service, and 2) supporting the Court's electronic evidence storage needs.

Administrative Office of the Courts
Policy Level – S7 – Fund Water Rights Adjudication

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Agency Recommendation Summary

Ecology is proposing an adjudication of water rights in the Nooksack watershed (throughout Water Resource Inventory Area [WRIA] 1). Water is critical for fish, wildlife, recreation and all economies in the Nooksack watershed, but uncertainties about Tribal senior water rights, unquantified claims, and the validity of water uses pose ongoing impediments to effective water management to support the state's environment and economy. Adjudication of WRIA 1 will provide urgently needed resolution of water rights disputes (Adjudication of Lake Roosevelt and Middle Tributaries is addressed in a separate decision package). Ecology is requesting \$2.74 million to conduct a general adjudication of surface and groundwater rights that will determine who has a legal right to use water, including the federal government and Indian Tribes (Lummi Nation and Nooksack Tribe), and the priority and quantity of each right. (General Fund-State)

Fiscal Summary

Fiscal Summary <i>Dollars in Thousands</i>	Fiscal Years		Biennial	Fiscal Years		Biennial
	2024	2025	2023-25	2026	2027	2025-27
Staffing						
FTEs	6.3	9.8	8.05	9.8	9.8	9.8
Operating Expenditures						
Fund 001 - 1	\$1,363	\$1,375	\$2,738	\$1,375	\$1,375	\$2,750
Total Expenditures	\$1,363	\$1,375	\$2,738	\$1,375	\$1,375	\$2,750

Decision Package Description

Background/Context

The uncertainty of legally available water is a challenge statewide, and some watersheds face particularly significant uncertainty in this area. "Uncertainty" here means that Ecology cannot definitively determine how much water is legally available for use; how much water is legally required for habitat; who is entitled to its use; whether the rights, certificates, and claims to water are valid; or the legal priority of water rights during water shortages. Lack of clarity about who has the legal right to use water creates obstacles to current and future water management in the face of increasing competition for in- and out-of-stream needs. The Nooksack Tribe and Lummi Nation have requested this adjudication through a petition to Ecology. Many local stakeholders support adjudication, although others oppose it.

Adjudication applies state law of "prior appropriation" to all existing water rights in an area identified by Ecology. This is a comprehensive and meticulous process where Ecology files a petition in court and sends notice to all water users. The court sets deadlines and establishes a process for users to submit claims for Ecology review. Ecology submits reports of findings to the court with a recommendation as to the legal quantity, priority date, purpose and place of use of each water right. The court then hears objections, issues final rulings, and lists the final water rights on a decree. The decree is an inventory of all water rights by priority date, location, and quantity. For more information about the adjudication process, refer to Ecology's legislative report and publication, *Process for Conducting a Water Rights Adjudication* (<https://apps.ecology.wa.gov/publications/SummaryPages/1011013.html>).

To date, only one general stream adjudication joining Tribal and federal parties has occurred in Washington state courts, and it was specific to only surface water (did not address groundwater withdrawals). Ecology has concluded the superior court phase of adjudication of surface water rights in the Yakima Basin in *Dept. of Ecology v. Acquavella et al.*, Superior Court for Yakima County.

The Yakima Basin surface water adjudication took many years and ultimately produced certainty among users, the Yakama Nation, the United States Bureau of Reclamation (USBR), and facilitated the wide-ranging water projects within the Yakima Basin Integrated Plan. Although dozens of small, local drainages have been adjudicated, comprehensive, general stream adjudications have not yet been conducted in Washington's other 61 watersheds. Future adjudications are expected to be significantly more efficient than *Acquavella*, due to amendments and clarifications in the law and innovations in technology.

This request does not require changes to the law. The current statutory framework clearly prioritizes rights between competing water needs ("prior appropriation"). But the law is not self-executing, and Ecology cannot fully manage water, including protecting federal and Tribal rights, without using the tool of adjudication.

NOTE: More detailed and complete background related to Ecology's recommendation for adjudication is in Ecology's 2020 Water Resources Adjudication Assessment Legislative Report (<https://apps.ecology.wa.gov/publications/SummaryPages/2011084.html>).

Current Condition/Problem Statement

In 2019, the Legislature directed Ecology to conduct a statewide overview of the need for water rights adjudications, and then assess, in detail, four watersheds with substantial uncertainty about legal water use. In 2021, the Legislature funded Ecology's preparation for adjudication in two

of these watersheds that face profound and time-sensitive needs for improved water regulation: The Nooksack (WRIA 1) and the Lake Roosevelt area. This request is for funding to proceed with filing an adjudication in the Nooksack (WRIA 1) basin to address:

- Tribal claims for water and likely impacts on state water management and water availability, and the need for integration between State and Tribal water management both on and off reservation.
- Chronic local water disputes due to the unresolved legal status of Tribal rights, streamflow rules, and state water rights (irrigation, municipal, domestic, and industrial).
- Restricted ability for Ecology to fairly and comprehensively protect legal water use, enforce against unlawful water use, and ensure streamflow protection.
- Challenges to local growth management and other planning that rely on clarity of legal water availability.
- Cost-intensive and unpredictable results when changing and transferring water rights. This inhibits establishment of water mitigation banks, which are critical tools to protect streamflow while allowing out-of-stream uses.
- Ongoing investment of time and expense, over many years, in local efforts that have not yet yielded complete or satisfactory water management solutions, despite widespread good-faith efforts and resources.
- Increasing uncertainty and risk of water disputes with neighboring jurisdictions, sovereign Tribes, and federal parties.
- Disproportionate impact to the natural resources (including critical habitat for listed salmon) and subsistence and economies of Tribal communities, where historic inequity has compromised the health and safety of Native people for generations.
- Lost opportunities for multilateral negotiation of water resource solutions that court decrees will protect through an open and established court adjudication process.

Unique opportunity to proceed efficiently

In 2019 and 2020, a unique opportunity arose when the Lummi Nation and Nooksack Tribe petitioned Ecology under state law to use the state's court process for water right adjudication purposes. Historically, Tribes have resisted state jurisdiction over treaty and reservation water, which has led to many years of litigation over jurisdiction and venue by Tribal and federal parties when states pursue adjudication. The petitions demonstrate that these Tribes asked for the determination of their priority and quantity of water rights in the courts of Washington (Whatcom County Superior Court rulings may be appealed to State Appellate and Supreme Courts; certain issues of the Washington State Supreme Court may be reviewed by the U.S. Supreme Court).

The Tribes' request to enter state courts to resolve water rights presents an unprecedented opportunity to make immediate progress to address the fundamental legal foundations of water management. With the willing participation of Tribal governments, the state court's determination of the legal status of water rights can proceed.

To bring Tribal and federal parties into state court, however, the state must adjudicate all pertinent water users in a comprehensive general stream adjudication. Adjudication will apply the law fairly and consistently to all claimants of a water source, including individual, municipal, Tribal, federal, and instream flow water rights.

Proposed Solution

Adjudications of water rights in WRIA 1 will begin a long-term but necessary process. This work will result in a court decree resolving conflicts and claims for water rights among all parties. Ecology will have an accurate inventory of water rights for enforcement, changes, and new permit decisions. Water users whose water rights are now only tentative will have more certain and permanent water rights established in the adjudication.

Certainty of water rights will allow for secure, long-range planning for water use and protection. Adjudicated rights can be accurately valued in efficient water markets, and security of legal status can support investments in water-related infrastructure.

During the 2021-23 biennium, Ecology conducted pre-adjudication work. This included coordinating with the Administrative Office of the Courts, superior courts, and Attorney General's Office to prepare for case filing; establishing the databases and technology to manage records and enhance efficiency during the case; and defining details of how an adjudication would proceed in the Nooksack Basin. Ecology is now ready to implement the work done during pre-adjudication and begin the court process.

This request will allow Ecology to file the case, serve all applicable parties, and begin the process of adjudication in Whatcom County Superior Court.

Purchase Description

This request will fund staff to file the adjudication in Whatcom County Superior Court and to manage and respond to major wide-scale litigation

that includes thousands of water users. Staff will include a manager, specialists, and other positions described below. Ecology's request herein also includes the costs of summons by certified mail and publication. It also includes funds for support through the Attorney General's Office (AGO). Administrative Office of the Courts (AOC) will independently request funds for Whatcom County Superior Court's support of adjudication, and those costs are not included in this request.

This funding will allow Ecology to preserve and continue work done to date to prepare for the adjudication. During the pre-adjudication phase, Ecology made significant progress toward pre-adjudication work. Continued funding will allow Ecology to initiate the court filings in fiscal year 2024.

This request will maintain Ecology's current capacity of staff and legal advisors who have been preparing for adjudication. Maintaining existing staff will avoid the costs of losing and/or replacing skills, technical familiarity, and institutional knowledge.

Impact on Population Served:

Adjudication will directly impact water users in the adjudicated watersheds, particularly water rights holders and Tribal populations. There are approximately 5,400 water right holders in the Nooksack Basin, and an estimated 15,000 more who use water on private wells without a permit (Adjudication proceedings do not include water users who obtain water from a municipal purveyor like a city, town, or utility district.). An adjudication will give water right holders a formal determination of their rights to use water, with associated values, affirmed by a court and embodied in the court's decrees.

Aligning water uses with legal rights to use water, through a Superior Court adjudication process, reduces uncertainty about legal availability of water for economic development. Clear legal protection of water rights through a court decree facilitates well-founded permitting and enforcement, benefiting streamflow and ecosystems and protecting endangered species.

Adjudication entails substantial time and expense, but it ultimately resolves and reduces local, state, and legislative conflict over water resources.

Alternatives Explored:

In the 2021-23 biennium, the Legislature funded a "collaborative process" led by Whatcom County to explore the possibility of a negotiated solution to water disputes in WRIA 1. This led to a proposal for a local "solutions table" to bring together governments and stakeholders to discuss water solutions. To date, no formal watershed-wide "solutions" meetings have been attended by all necessary parties. Lummi Nation and Nooksack Tribe have submitted a request to the United States for a federal settlement team to represent Tribal interests in WRIA 1 water management, and Ecology officially supports that request. Ecology participates in efforts for solutions beyond adjudication, but it appears adjudication is a necessary step in this process. Decades of substantial time and resources have been devoted to alternative water management solutions. These alternative solutions have not yet resolved local disputes about water rights despite many years of good-faith effort.

Adjudication is a fundamental water management tool provided for in the law. Ecology is also authorized to adopt streamflow protection rules, approve or deny water right permit applications, and advise counties on legal water availability. However, without a formal adjudication, the other legal mechanisms are insufficient to fairly and completely regulate water use in the basin.

Consequences of Not Funding This Request:

If this request is not funded, the work to date in preparing for adjudication will stall, and Ecology would not be able to file a Nooksack adjudication. This would significantly impair and delay the adjudication process, which would impair state and local government ability to successfully manage water needs in WRIA 1 due to lack of water right certainty. Considerable state, local, and Tribal investments in watershed planning, water supply development, prior litigation, and other flow improvement efforts would continue with limited effectiveness. Current challenges would only get worse with time, as increased demands on the water resource lead to critical decline of habitat and water supply. If funding is discontinued, even temporarily, future attempts at adjudication would be even more expensive and time-consuming than if funding is provided now.

The impacts of water use uncertainty are exacerbated by climate change. Failure to prepare and file adjudication in WRIA 1 threatens irrevocable change to stream habitat, threatened species of salmon, and the communities' ecosystems that depend on them.

Particularly in WRIA 1, Washington and water users would remain vulnerable to claims by Tribal and federal governments in the event Tribes brought action against the state of Washington for impairment of Tribal water rights.

Assumptions and Calculations

Expansion, Reduction, Elimination or Alteration of a current program or service:

This request will expand Activity A003 – Implementing Integrated Solutions to Protect Instream Resources by providing funding for additional staff, costs, and legal resources to file adjudication in the Nooksack watershed (WRIA 1). Work on adjudications is only a portion of Activity

A003. There are currently three FTEs doing adjudication work. Below is a summary of the 2019-21 and 2021-23 base funding and FTEs for this activity. Administrative Overhead related to this activity is also in the agency's Administration Activity A002, but not included in the totals below.

A003 - Implementing Integrated Solutions to Protect Instream Resources		
	2019-21	2021-23
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489-1 Pension Funding stabilization Account	\$354,000	\$0
TOTAL	\$20,535,000	\$15,127,000

Detailed Assumptions and Calculations:

Assumptions:

1. All funding will be from General Fund-State.
2. Staff will finalize preparation for adjudication and support filing, service, and adjudication work during the 2023-25 biennium.
3. Ecology's three existing permanent FTEs, currently working on preparing for adjudication, will continue preparation and support filing in the 2023-25 biennium. The FTE resources in this request are in addition to Ecology's current base of three FTEs.
4. Beginning in Fiscal year 2024, staff (both base and in this request) will finalize filing of an adjudication petition with the Attorney General's Office, issue summons and service to all parties, and provide substantial customer-service level support to the public.
5. Funding for legal services through the AGO as reflected below and in the AGO budget.
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7. Ecology anticipates the Nooksack adjudication will take between five and ten biennia to complete once filed in Superior Court.

Beginning in fiscal year 2024 and ongoing, Ecology will require:

1. 1.0 FTE Environmental Planner 5 to manage overall project, including communications with local parties and Legislature, oversight of communication plan with local partners, involvement in parallel or complementary water solutions or settlement efforts, coordination with AGO, managing case schedule, managing and directing staff activities to meet case schedule requirements, etc.
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4. 1.0 FTE AAG costs for AGO legal support. The AGO will also request authority in their own budget to match Ecology funding levels.

In fiscal year 2024, Ecology will require \$400,000 one-time funding for certified mailing and other mailing and service costs to all water right holders party to the adjudication.

Beginning July 1, 2023 and ongoing, Ecology will require salary, benefits, and associated staff costs for 6.33 FTEs to support adjudication filing in Whatcom County Superior Court.

Beginning July 1, 2024 and ongoing, Ecology will require salary, benefits, and associated staff costs for 9.78 FTEs to assist with preparing and issuing summons and service requirements to notify relevant entities that they are party to the adjudication. These new FTEs will provide customer service and technical support to the thousands of residents and water users throughout the watershed who are served in adjudication.

Beginning July 1, 2025 and ongoing, Ecology will require salary, benefits, and associated staff costs for 9.78 FTEs to conduct reviews of all water rights claims in the Nooksack adjudication. These new FTEs will assist with preparing and issuing summons and service requirements to notify relevant entities that they are party to the adjudication.

Ecology has coordinated with the AGO and AOC regarding this request. Ecology will need AGO support in the form of legal advice, preparation, and filing of adjudication petitions. For AOC, funding is needed to support new e-filing technology in Whatcom County and an increase in staffing for local superior court clerks and judicial staff as necessary to address the extraordinary costs of high-volume litigation.

Workforce Assumptions:

Expenditures by Object		<u>FY 2024</u>	<u>FY 2025</u>	<u>FY 2026</u>	<u>FY 2027</u>	<u>FY 2028</u>	<u>FY 2029</u>
A	Salaries and Wages	439,715	659,501	659,501	659,501	659,501	659,501
B	Employee Benefits	160,496	240,717	240,717	240,717	240,717	240,717
E	Goods and Services	571,587	186,089	186,089	186,089	186,089	186,089
G	Travel	12,287	18,989	18,989	18,989	18,989	18,989
J	Capital Outlays	6,765	10,455	10,455	10,455	10,455	10,455
T	Reimbursements	172,561	258,813	258,813	258,813	258,813	258,813
Total Objects		1,363,411	1,374,564	1,374,564	1,374,564	1,374,564	1,374,564

Staffing

Job Class	Salary	<u>FY 2024</u>	<u>FY 2025</u>	<u>FY 2026</u>	<u>FY 2027</u>	<u>FY 2028</u>	<u>FY 2029</u>
ENVIRONMENTAL PLANNER 5	98,587	1.00	1.00	1.00	1.00	1.00	1.00
ENVIRONMENTAL SPECIALIST 4	73,262	4.00	7.00	7.00	7.00	7.00	7.00
HYDROGEOLOGIST 4	96,159	0.50	0.50	0.50	0.50	0.50	0.50
FISCAL ANALYST 2		0.55	0.85	0.85	0.85	0.85	0.85
IT APP DEVELOPMENT-JOURNEY		0.28	0.43	0.43	0.43	0.43	0.43
Total FTEs		6.33	9.78	9.78	9.78	9.78	9.78

Explanation of costs by object:

Salary estimates are current biennium actual rates at Step L.

Benefits are the agency average of 36.5% of salaries.

Goods and Services are the agency average of \$4,834 per direct program FTE.

\$400,000 is included for one-time certified mailing costs to support service to water right holders, and \$145,000 each fiscal year for AGO legal support costs.

Travel is the agency average of \$2,234 per direct program FTE.

Equipment is the agency average of \$1,230 per direct program FTE.

Agency Administrative Overhead is calculated at the federally approved agency indirect rate of 28.75% of direct program salaries and benefits, and is shown as object T. Agency Administrative Overhead FTEs are included at 0.15 FTE per direct program FTE, and are identified as Fiscal Analyst 2 and IT App Development-Journey.

Strategic and Performance Outcomes

Strategic Framework:

This request is essential to achieving Ecology's Goal 1: Support and Engage our Communities, Customers, and Employees and Goal 4: Protect and Manage our State Waters, because it will fund the resources Ecology needs to resolve conflicts and claims for water rights in the Nooksack watershed. Certainty of water rights will enable state and local government to successfully manage water in WRIA 1 and will improve longstanding inequities for the Lummi Nation and Nooksack Tribes.

This request is essential to achieving the Governor's Results Washington Goal 2: Prosperous Economy and Goal 3: Sustainable Energy and a Clean Environment because it will encourage local economic development and meet community needs for reliable water supplies, while protecting essential habitats for endangered salmon and the Orca food chain.

This request also directly implements the following recommended priority and action in the 2021 Governor's salmon strategy update:

- Strategic Priority: 4. Build climate resiliency
- Action: 4c. Ensure clean, cold water in streams and rivers to build climate resiliency

Performance Outcomes:

The outcome of this request will be the filing and support of adjudication in the Nooksack (WRIA 1) watershed.

Equity Impacts

Community outreach and engagement:

See "Target Populations or Communities" section for combined answer to Equity Impacts questions.

Disproportional Impact Considerations:

See "Target Populations or Communities" section for combined answer to Equity Impacts questions.

Target Populations or Communities:

Insufficient water management disproportionately affects Tribal communities and Tribal members in the Nooksack (WRIA 1). The waters subject to these petitions are a central focus to the culture, identity, and well-being of these Tribes. Securing adequate water is essential for a range of needs among these economically vulnerable populations. These Tribes have steadfastly pursued protection and restoration of salmon populations and other species and habitats without having adequate Tribal participation in water management decisions that affect these environmental and cultural imperatives.

Ecology does not have legal authority to recognize or protect Tribal water rights without an adjudication. Adjudication is the only complete process that will comprehensively address longstanding inequities around water for Lummi Nation and Nooksack Tribe by resolving their claims to water for their reservations and any water for treaty rights fisheries and shellfish. These inequities result from a legal framework that limits Ecology's authorities without adjudication, and adjudication will provide legal clarity and authority for how to proceed.

In the Nooksack watershed, there are strong environmental justice considerations to address Tribal senior water rights and the impacts of water uncertainty on vulnerable populations. This adjudication proposal is both responsive to these longstanding requests from Tribes, and addresses critical natural resource and economic development challenges in these watersheds.

Other Collateral Connections

Puget Sound Recovery:

N/A

State Workforce Impacts:

N/A

Intergovernmental:

Ecology has conducted significant intergovernmental outreach in its adjudication assessment process to date (see details in 2020 Legislative Report). Ecology has engaged with Whatcom County, the City of Bellingham, and other cities, and with the Nooksack Tribe and Lummi Nation and will continue to do so. This request includes Ecology staff time and costs for providing significant outreach throughout the affected communities. Local governments (county, cities, towns and special purpose districts) and the Washington Department of Fish and Wildlife have water rights that will be adjudicated. After the adjudication begins, the Court will determine a schedule these parties to review and submit their water rights. Costs for these parties to participate in the adjudication are indeterminate at this time. Ecology anticipates that all other governmental parties will incorporate any costs within their own budget process.

Ecology will continue to work with the Administrative Office of the Courts and the Whatcom County Clerk to ensure adequate support of impacts of adjudication to local government.

Stakeholder Response:

There is a mix of opposition and support for adjudication, consistent with current disputes over water rights. Individual stakeholder comments and positions received are detailed in Ecology's September 2020 Legislative Report (<https://apps.ecology.wa.gov/publications/SummaryPages/2011084.html>).

Those with strong and senior claims are more inclined to support adjudication than those with junior and less certain claims. The cost of adjudication is a deterrent, but the certainty provided when an adjudication is complete encourages local economic development and environmental protection.

State Facilities Impacts:

N/A

Changes from Current Law:

N/A

Legal or Administrative Mandates:

In its 2021 budget proviso, the Legislature directed Ecology to address outstanding water rights issues in WRIA 1 by preparing for adjudication of state water rights in the Nooksack. ESSB 5092 302(11)(a).

IT Addendum

Does this Decision Package include funding for any IT-related costs, including hardware, software, (including cloud-based services), contracts or IT staff?

No

Objects of Expenditure

Objects of Expenditure <i>Dollars in Thousands</i>	Fiscal Years		Biennial	Fiscal Years		Biennial
	2024	2025	2023-25	2026	2027	2025-27
Obj. A	\$440	\$660	\$1,100	\$660	\$660	\$1,320
Obj. B	\$160	\$241	\$401	\$241	\$241	\$482
Obj. E	\$571	\$186	\$757	\$186	\$186	\$372
Obj. G	\$12	\$19	\$31	\$19	\$19	\$38
Obj. J	\$7	\$10	\$17	\$10	\$10	\$20
Obj. T	\$173	\$259	\$432	\$259	\$259	\$518

Agency Contact Information

Jim Skalski

(360) 407-6617

jska461@ecy.wa.gov



Agency Recommendation Summary

Ecology is proposing an adjudication of water rights in the area of Lake Roosevelt and its Middle Tributaries (Water Resource Inventory Area [WRIA] 58). Water is critical for fish, wildlife, recreation and all economies in the Lake Roosevelt area, but uncertainties about Tribal senior water rights, the U.S. Bureau of Reclamation water right, and the validity of water uses pose ongoing impediments to effective water management to support the state's environment and economy. Adjudication of Lake Roosevelt will provide urgently needed resolution of water rights disputes (Adjudication of the Nooksack WRIA 1 is addressed in a separate decision package). Ecology is requesting \$1.54 million to conduct a general adjudication of surface and groundwater rights that will determine who has a legal right to use water, including the federal government and Indian Tribes (Spokane Tribe and Colville Confederated Tribes), and the priority and quantity of each right. (General Fund-State)

Fiscal Summary

Fiscal Summary <i>Dollars in Thousands</i>	Fiscal Years		Biennial	Fiscal Years		Biennial
	2024	2025	2023-25	2026	2027	2025-27
Staffing						
FTEs	1.7	6.3	4.0	9.8	9.8	9.8
Operating Expenditures						
Fund 001 - 1	\$573	\$963	\$1,536	\$1,375	\$1,375	\$2,750
Total Expenditures	\$573	\$963	\$1,536	\$1,375	\$1,375	\$2,750

Decision Package Description

Background/Context

The uncertainty of legally available water is a challenge statewide, and some watersheds face particularly significant uncertainty in this area. "Uncertainty" here means that Ecology cannot definitively determine how much water is legally available for use; how much water is legally required for habitat; who is entitled to its use; whether the rights, certificates, and claims to water are valid; or the legal priority of water rights during water shortages. Lack of clarity about who has the legal right to use water creates obstacles to current and future water management in the face of increasing competition for in- and out-of-stream needs. The Colville Confederated Tribes have requested this adjudication through a petition to Ecology. The Spokane Tribe has indicated they do not object to adjudication. The United States Bureau of Reclamation (USBR) and its customers, the most significant non-Tribal user of Lake Roosevelt Waters, have been part of regular outreach efforts but have not responded with an official position.

Adjudication applies state law of "prior appropriation" to all existing water rights in an area identified by Ecology. This is a comprehensive and meticulous process where Ecology files a petition in court and sends notice to all water users. The court sets deadlines and establishes a process for users to submit claims for Ecology review. Ecology submits reports of findings to the court with a recommendation as to the legal quantity, priority date, purpose and place of use of each water right. The court then hears objections, issues final rulings, and lists the final water rights on a decree. The decree is an inventory of all water rights by priority date, location, and quantity. For more information about the adjudication process, refer to Ecology's legislative report and publication, Process for Conducting a Water Rights Adjudication (<https://apps.ecology.wa.gov/publications/SummaryPages/1011013.html>).

To date, only one general stream adjudication joining Tribal and federal parties has occurred in Washington State Courts, and it was specific to only surface water (did not address groundwater withdrawals). Ecology has concluded the superior court phase of adjudication of surface water rights in the Yakima Basin in *Dept. of Ecology v. Acquavella et al.*, Superior Court for Yakima County.

The Yakima Basin surface water adjudication took many years and ultimately produced certainty among users, the Yakama Nation, the USBR, and facilitated the wide-ranging water projects within the Yakima Basin Integrated Plan. Although dozens of small, local drainages have been adjudicated, comprehensive, general stream adjudications have not yet been conducted in Washington's other 61 watersheds. Future adjudications are expected to be significantly more efficient than *Acquavella*, due to amendments and clarifications in the law and innovations in technology.

This request does not require changes to the law. The current statutory framework clearly prioritizes rights between competing water needs ("prior appropriation"). But the law is not self-executing, and Ecology cannot fully manage water, including protecting federal and Tribal rights, without using the tool of adjudication.

NOTE: More detailed and complete background related to Ecology's recommendation for adjudication is in Ecology's 2020 Water Resources Adjudication Assessment Legislative Report (<https://apps.ecology.wa.gov/publications/SummaryPages/2011084.html>).

Current Condition/Problem Statement

In 2019, the Legislature directed Ecology to conduct a statewide overview of the need for water rights adjudications, and then assess, in detail, four watersheds with substantial uncertainty about legal water use. In 2021, the Legislature funded Ecology's preparation for adjudication in two of these watersheds that face profound and time-sensitive needs for improved water regulation: The Nooksack (WRIA 1) and the Lake Roosevelt area. This request is for funding to proceed with filing an adjudication in the Lake Roosevelt area to address:

- Tribal claims for water and likely impacts on state water management and water availability, and the need for integration between State and Tribal water management both on and off reservation.
- Restricted ability for Ecology to fairly and comprehensively protect legal water use, enforce against unlawful water use, and ensure streamflow protection.
- Challenges to local growth management and other planning that rely on clarity of legal water availability.
- Increasing uncertainty and risk of water disputes with neighboring jurisdictions, sovereign Tribes, and federal parties.
- Disproportionate impact to the natural resources and subsistence and economies of Tribal communities, where historic inequity has compromised the health and safety of Native people for generations.
- Lost opportunities for multilateral negotiation of water resource solutions that court decrees will protect through an open and established court adjudication process.

Unique opportunity to proceed efficiently

In 2019, a unique opportunity arose when the Colville Confederated Tribes petitioned Ecology under state law to use the state's court process for water right adjudication purposes. Historically, Tribes have resisted state jurisdiction over treaty and reservation water, which has led to many years of litigation over jurisdiction and venue by Tribal and federal parties when states pursue adjudication. The petition demonstrates that this Tribes asked for the determination of their priority and quantity of water rights in the courts of Washington (Superior Court rulings may be appealed to State Appellate and Supreme Courts; certain issues of the Washington State Supreme Court may be reviewed by the U.S. Supreme Court).

The Tribes' request to enter state courts to resolve water rights presents an unprecedented opportunity to make immediate progress to address the fundamental legal foundations of water management. With the willing participation of Tribal governments, the state court's determination of the legal status of water rights can proceed.

To bring Tribal and federal parties into state court, however, the state must adjudicate all pertinent water users in a comprehensive general stream adjudication. Adjudication will apply the law fairly and consistently to all claimants of a water source, including individual, municipal, Tribal, federal, and instream flow water rights.

Proposed Solution

Adjudications of water rights in Lake Roosevelt will begin a long-term but necessary process. This work will result in a court decree resolving conflicts and claims for water rights among all parties. Ecology will have an accurate inventory of water rights for enforcement, water right changes, and new permit decisions. Water users whose water rights are now only tentative will have more certain and permanent water rights established in the adjudication.

Certainty of water rights will allow for secure, long-range planning for water use and protection. Adjudicated rights can be accurately valued in efficient water markets, and security of legal status can support investments in water-related infrastructure.

During the 2021-23 biennium, Ecology conducted pre-adjudication work. This included coordinating with the Administrative Office of the Courts, superior courts, and Attorney General's Office to prepare for case filing; establishing the databases and technology to manage records and enhance efficiency during the case; and extensive work with Colville Confederated Tribes, Spokane Tribe, and the United States (USBR, Department of Justice, Bureau of Indian Affairs, and the United States Forest Service). Ecology will continue these discussions and conduct local community outreach to complete preparations before filing the case in superior court.

When pre-adjudication work has been completed, this request will allow Ecology to file the case, serve all applicable parties, and begin the process of adjudication in Lake Roosevelt.

Purchase Description

Over the past biennium's preparation, representatives from the DOJ have requested Ecology consider adjusting the proposed adjudication boundaries, which lead to further and ongoing discussions. During this same time, the State Supreme Court issued a decision in *Acquavella VI*, 198 Wn.2d 687, 498 P.3d 911 (2021) that could change available strategic approaches to the scope of future adjudications by making it more

difficult to finalize an adjudication in phases before a final judgment is issued on the entire area. For this reason, Ecology continues to work on hydrographic mapping and legal research to determine appropriate boundaries surrounding Lake Roosevelt for adjudication. If the boundaries are revised, Ecology will need to conduct further local outreach to apprise water users about whether they will be involved in adjudication.

This funding will allow Ecology to preserve and continue work done to date to prepare for the adjudication. Continued funding will allow Ecology to continue to prepare for adjudication in fiscal year 2024:

- Finalize mapping.
- Conduct outreach with local and federal interests.
- Complete consultation with Tribes.

This request will fund staff to file the adjudication when ready and to initiate the court filings by fiscal year 2025 in Superior Court, and manage and respond to major wide-scale litigation that includes hundreds of water users. Staff will include a manager, specialists, and other positions described below. Ecology's request herein also includes the costs of summons by certified mail and publication. It also includes funds for support through the Attorney General's Office (AGO). Administrative Office of the Courts (AOC) will independently request funds for the Superior Court's support of adjudication, and those costs are not included in this request. A final decision on superior Court venue (such as Stevens or Spokane County) has not been made.

This request will maintain Ecology's current capacity of staff and legal advisors who have been preparing for adjudication. Maintaining existing staff will avoid the costs of losing and/or replacing skills, technical familiarity, and institutional knowledge.

Impact on Population Served:

Adjudication will directly impact water users in the adjudicated watersheds, particularly water rights holders and Tribal populations. There are approximately 850 individual water right holders in the Lake Roosevelt area. Adjudication proceedings do not include water users who obtain water from a municipal purveyor like a city, town, or utility district. Adjudication will include the USBR water rights, and potentially their three contracted irrigation districts, but will not include the customers of those irrigation districts. An adjudication will give water right holders a formal determination of their rights to use water, with associated values, affirmed by a court and embodied in the court's decrees.

Aligning water uses with legal rights to use water, through a Superior Court adjudication process, reduces uncertainty about legal availability of water for economic development. Clear legal protection of water rights through a court decree facilitates well-founded permitting and enforcement, benefiting streamflow and ecosystems and protecting species.

Adjudication entails substantial time and expense, but it ultimately resolves and reduces local, state, and legislative conflict over water resources.

Alternatives Explored:

The Colville Confederated Tribes have submitted a request to the United States for a federal settlement team to represent Tribal interests in Lake Roosevelt water management. Ecology participates in efforts for solutions and settlement efforts beyond adjudication, but it appears adjudication is a necessary step in this process.

Adjudication is a fundamental water management tool provided for in the law. Ecology is also authorized to adopt streamflow protection rules, approve or deny water right permit applications, and advise counties on legal water availability. However, without a formal adjudication, the other legal mechanisms are not as effective for overall water management in the basin.

Consequences of Not Funding This Request:

If this request is not funded, the work to date in preparing for adjudication would stall, and Ecology would not be able to complete preparatory work and file a Lake Roosevelt adjudication. This would significantly impair and delay the adjudication process, which would impair state and local government ability to successfully manage water needs in the Lake Roosevelt area due to lack of water right certainty. Considerable state, local, and Tribal investments in watershed management would continue with limited effectiveness. Current challenges would only get worse with time, as increased demands on the water resource lead to critical decline of habitat and water supply. If funding is discontinued, even temporarily, future attempts at adjudication would be even more expensive and time-consuming than if funding is provided now.

The impacts of water use uncertainty are exacerbated by climate change. Failure to prepare and file adjudication in Lake Roosevelt threatens irrevocable change to stream habitat, species, and the communities' ecosystems that depend on them.

Washington, USBR customers, and other water users would remain vulnerable to claims by Tribal and federal governments in the event Tribes brought action against the state of Washington for impairment of Tribal water rights.

Expansion, Reduction, Elimination or Alteration of a current program or service:

This request will expand Activity A003 – Implementing Integrated Solutions to Protect Instream Resources by providing funding for additional staff, costs, and legal resources to file adjudication in Lake Roosevelt. Work on adjudications is only a portion of Activity A003. There are currently three FTEs doing adjudication work. Below is a summary of the 2019-21 and 2021-23 base funding and FTEs for this activity. Administrative Overhead related to this activity is also in the agency’s Administration Activity A002, but not included in the totals below.

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5. 1.0 FTE AAG costs for AGO legal support. The AGO will also request authority in their own budget to match Ecology funding levels.

In fiscal year 2024, Ecology will require \$200,000 one-time funding for certified mailing and other mailing and service costs to all water right holders party to the adjudication.

Beginning July 1, 2023 and ongoing, Ecology will require salary, benefits, and associated staff costs for 1.73 FTEs to support adjudication filing in Superior Court.

Beginning July 1, 2024 and ongoing, Ecology will require salary, benefits, and associated staff costs for 6.33 FTEs to assist with preparing and issuing summons and service requirements to notify relevant entities that they are party to the adjudication. These new FTEs will provide customer service and technical support to the thousands of residents and water users throughout the watershed who are served in adjudication.

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Ecology has coordinated with the AGO and AOC regarding this request. Ecology will need AGO support in the form of legal advice, preparation, and filing of adjudication petitions. For AOC, funding is needed to support improved technology in superior court and an increase in staffing for local superior court clerks and judicial staff as necessary to address the extraordinary costs of high-volume litigation.

Workforce Assumptions:

Expenditures by Object		<u>FY 2024</u>	<u>FY 2025</u>	<u>FY 2026</u>	<u>FY 2027</u>	<u>FY 2028</u>	<u>FY 2029</u>
A	Salaries and Wages	122,556	439,715	659,501	659,501	659,501	659,501
B	Employee Benefits	44,733	160,496	240,717	240,717	240,717	240,717
E	Goods and Services	352,251	171,587	186,089	186,089	186,089	186,089
G	Travel	3,351	12,287	18,989	18,989	18,989	18,989
J	Capital Outlays	1,845	6,765	10,455	10,455	10,455	10,455
T	Intra-Agency Reimbursements	48,096	172,561	258,813	258,813	258,813	258,813
Total Objects		572,832	963,411	1,374,564	1,374,564	1,374,564	1,374,564

Staffing

Job Class	Salary	<u>FY 2024</u>	<u>FY 2025</u>	<u>FY 2026</u>	<u>FY 2027</u>	<u>FY 2028</u>	<u>FY 2029</u>
ENVIRONMENTAL PLANNER 5	98,587	0.50	1.00	1.00	1.00	1.00	1.00
ENVIRONMENTAL SPECIALIST 4	73,262	1.00	4.00	7.00	7.00	7.00	7.00
HYDROGEOLOGIST 4	96,159		0.50	0.50	0.50	0.50	0.50
FISCAL ANALYST 2		0.15	0.55	0.85	0.85	0.85	0.85
IT APP DEVELOPMENT-JOURNEY		0.08	0.28	0.43	0.43	0.43	0.43
Total FTEs		1.73	6.33	9.78	9.78	9.78	9.78

Explanation of costs by object:

Salary estimates are current biennium actual rates at Step L.

Benefits are the agency average of 36.5% of salaries.

Goods and Services are the agency average of \$4,834 per direct program FTE.

\$200,000 is included for one-time certified mailing costs in fiscal year 2024 to support service to water right holders, and \$145,000 each fiscal year for AGO legal support costs.

Travel is the agency average of \$2,234 per direct program FTE.

Equipment is the agency average of \$1,230 per direct program FTE.

Agency Administrative Overhead is calculated at the federally approved agency indirect rate of 28.75% of direct program salaries and benefits, and is shown as object T. Agency Administrative Overhead FTEs are included at 0.15 FTE per direct program FTE, and are identified as Fiscal Analyst 2 and IT App Development-Journey.

Strategic and Performance Outcomes

Strategic Framework:

This request is essential to achieving Ecology's Goal 1: Support and Engage our Communities, Customers, and Employees and Goal 4: Protect and Manage our State Waters, because it will fund the resources Ecology needs to resolve conflicts and claims for water rights in the Nooksack watershed. Certainty of water rights will enable state and local government to successfully manage water in WRIA 1 and will improve longstanding inequities for the Spokane Tribe and Colville Confederated Tribes.

This request is essential to achieving the Governor's Results Washington Goal 2: Prosperous Economy and Goal 3: Sustainable Energy and a Clean Environment because it will encourage local economic development and meet community needs for reliable water supplies, while protecting essential habitats for fish and other wildlife.

This request also directly implements the following recommended priority and action in the 2021 Governor's salmon strategy update:

- Strategic Priority: 4. Build climate resiliency
- Action: 4c. Ensure clean, cold water in streams and rivers to build climate resiliency

Performance Outcomes:

The outcome of this request will be the filing and support of adjudication in the Nooksack (WRIA 1) watershed.

Equity Impacts

Community outreach and engagement:

See "Target Populations or Communities" section for combined answer to Equity Impacts questions.

Disproportional Impact Considerations:

See "Target Populations or Communities" section for combined answer to Equity Impacts questions.

Target Populations or Communities:

Insufficient water management disproportionately affects Tribal communities and Tribal members on the reservations of the Spokane Tribe and Colville Confederated Tribes. Lake Roosevelt is a central focus to the culture, identity, and well-being of these Tribes. Securing adequate water is essential for a range of needs among these economically vulnerable populations. These Tribes have steadfastly pursued protection and restoration of wildlife habitats without having adequate Tribal participation in water management decisions that affect these environmental and cultural imperatives.

Ecology does not have legal authority to recognize or protect Tribal water rights without an adjudication. Adjudication is the only complete process that will comprehensively address longstanding inequities around water for the Spokane Tribe and Colville Confederated Tribes by resolving their claims to water for their reservations and any water for fisheries. These inequities result from a legal framework that limits Ecology's authorities without adjudication, and adjudication will provide legal clarity and authority for how to proceed.

In this area, there are strong environmental justice considerations to address Tribal senior water rights and the impacts of water uncertainty on vulnerable populations. This adjudication proposal is both responsive to these longstanding concerns of Tribes, and addresses critical natural resource and economic development challenges in these watersheds.

Other Collateral Connections

Puget Sound Recovery:

N/A

State Workforce Impacts:

N/A

Intergovernmental:

Ecology has conducted significant intergovernmental outreach in its adjudication assessment process to date (see details in 2020 Legislative Report). Ecology has engaged with the United States and with the Spokane Tribe and Colville Confederated Tribes and will continue to do so. This request includes Ecology staff time and costs for providing significant outreach throughout the affected communities. Local governments (county, cities, towns and special purpose districts) and the Washington Department of Fish and Wildlife have water rights that will be adjudicated. After the adjudication begins, the Court will determine a schedule for these parties to review and submit their water rights. Costs for these parties to participate in the adjudication are indeterminate at this time. Ecology anticipates that all other governmental parties will incorporate any costs within their own budget process.

Ecology will continue to work with the Administrative Office of the Courts and the Whatcom County Clerk to ensure adequate support of impacts of adjudication to local government.

Stakeholder Response:

There is a mix of opposition and support for adjudication, consistent with current disputes over water rights. Individual stakeholder comments and positions received are detailed in Ecology's September 2020 Legislative Report (<https://apps.ecology.wa.gov/publications/SummaryPages/2011084.html>).

Those with strong and senior claims are more inclined to support adjudication than those with junior and less certain claims. It will take some time and resources to complete this effort, but the certainty provided when an adjudication is complete will encourage local economic development and facilitate environmental protection.

State Facilities Impacts:

N/A

Changes from Current Law:

N/A

Legal or Administrative Mandates:

In its 2021 budget proviso, the Legislature directed Ecology to address outstanding water rights issues in Lake Roosevelt by preparing for adjudication of state water rights in the area. ESSB 5092 302(11)(a).

IT Addendum

Does this Decision Package include funding for any IT-related costs, including hardware, software, (including cloud-based services), contracts or IT staff?

No

Objects of Expenditure

Objects of Expenditure <i>Dollars in Thousands</i>	Fiscal Years		Biennial	Fiscal Years		Biennial
	2024	2025	2023-25	2026	2027	2025-27
Obj. A	\$123	\$440	\$563	\$660	\$660	\$1,320
Obj. B	\$45	\$160	\$205	\$241	\$241	\$482
Obj. E	\$352	\$171	\$523	\$186	\$186	\$372
Obj. G	\$3	\$12	\$15	\$19	\$19	\$38
Obj. J	\$2	\$7	\$9	\$10	\$10	\$20
Obj. T	\$48	\$173	\$221	\$259	\$259	\$518

Agency Contact Information

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prepared by:

date:

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2/2/2023

w/Rob Edits

Cost Estimate for COURTROOM OF THE FUTURE 5TH FLOOR

item#	name	location	type	preformed/supplied by?	part #	qty	unit cost	facilities direct hourly rate	facilities direct labor cost	contracted work	materials	total	notes
1	GENERAL TENANT IMPROVEMENT		CONTRACTED	SUB		2400	\$ 180.00			\$432,000.00		\$432,000.00	
2	ARCHITECTURAL AND ENGINEERING		CONTRACTED	SUB		0.15	\$432,000.00			\$64,800.00		\$64,800.00	
3	FACILITIES LABOR		SELF PERFORMED	WC STAFF		300	\$ 75.00		\$22,500.00			\$22,500.00	
4	FACILITIES PROJECT MANAGEMENT		SELF PERFORMED	WC STAFF		320	\$ 100.00		\$32,000.00			\$32,000.00	
5	ELECTRONICS/JAVS		CONTRACTED	SUB		1	\$ 100,000.00			\$100,000.00		\$100,000.00	
6													
7													
8													
9													
10													
11													

					\$651,300.00	
					should = 0	0
Sub Total		\$54,500.00	\$596,800.00	\$0.00	\$ 651,300.00	
Tax	8.80%	no tax	\$52,518.40	\$0.00	\$ 52,518.40	
Total		\$54,500.00	\$649,318.40	\$0.00	\$ 703,818.40	

CONTINGENCY	10.00%				\$ 70,381.84	
ESTIMATED GRAND TOTAL					\$ 774,200.24	