



Whatcom County Bar Association Water Adjudication Advisory Committee

Whatcom
County Bar
Association

January 17, 2024
Meeting Summary

**Agenda and Materials distributed to committee are attached to this summary.*

Members in Attendance:

Shannon Hinchcliffe, Betsy Brinson, Bob Carmichael, Bridget Bryck, Charles Hurt, Jon Sitkin, Sara Frase, Dominique Zervas, Gabriel D. Cantu, Genissa Richardson, Haylee Hurst, James Hanika, Matt Janz, Jessica Kuchan, Jonathan Charnitski, James Stroud, Kristen Cavanaugh, Luke Phifer, Patrick Byrnes, Stephanie Kraft, Peter Spoerl, and Sallye Quinn.

Others in Attendance:

Ann-Charisse Koukal (AOC), Dan Raas

Meeting participants were asked to identify 1) What is your most pressing concern about the upcoming water adjudication; 2) what is the one thing you hope this committee will accomplish?

The following issues were noted as areas of concern, in no particular prioritized order:

- Prioritization of the water adjudication case over other non-criminal cases.
- Defining motion practice.
- Concerns about conditional certificates and having the same challenges that *Acquavella* had related to having to essentially re-litigate them towards the end of the case.
- Ecology not filing lis pendens at the outset of the case and people getting adequate notice of the adjudication; also the process related to the change in claimants.
- The larger picture of how procedural rules and process impacts the deterioration of the habitat.
- Concerns about Notice and the outreach effort to find claimants, acknowledging that certified mail and publication by newspaper will be used but, publication by newspaper doesn't mean the same thing as it used to and may not reach as many as it used to.

- Clear rules and establishing clarity around the process, including motions practice (as mentioned above.)
- eFiling was a concern cited by many practitioners, including the accessibility to individual and “smaller” filers.
- Clear discovery rules and establishing clarity around the process.
- Creating resources for claimants about the process and filing. Several resources were suggested such as: an FAQ or guidance provided regarding completing forms on washingtonlawhelp.org as a way to get to small claimants; working with the local volunteer organization Law Advocates to establish a clinic for completion of these forms similar to existing tenant and family law clinics (focused on the small use of water claims); an additional was using Bankruptcy as a guidepost because any person can file proof of a claim in a bankruptcy case and the Notice of Bankruptcy that is sent out clearly specifies key deadlines, dates, and resources.
- Understanding the roles of Commissioners vs. Referees and how the court intends on using those roles.
- Establishing equitable access for a range of filers to navigate the process.
- The court making decisions without the committee’s input.
- Make sure that resources are available to claimants related to finding resources and hiring attorneys.

Hopes for the committee to accomplish:

- That the committee does accomplish things and recommendations and doesn’t succumb to death by committee partially because of the amount of committee members.
- Give recommendations about scheduling and notice.
- Investigate whether there will be a centralized database for claimants or other types of access available.

The current state of the adjudication was presented. The agenda items were touched on and eFiling was briefly discussed. Shannon explained the process related to AOC’s budget request for both statewide eFiling and water adjudication eFiling. Both budgets were approved and Tyler Technologies and AOC are currently working to configure case types and other legwork necessary to stand up eFiling. While civil water adjudication is being prioritized for eFiling, it is possible that eFiling for all cases could be available simultaneously or shortly thereafter. Snohomish County currently uses eFiling with the same vendor.

Whatcom County passed emergency court rules on the afternoon of January 16th and were transmitted the committee shortly before the meeting start time.



**Whatcom County Bar Association Water
Adjudication Advisory Committee**

January 17, 2024
Zoom Only

Whatcom
County Bar
Association

Purpose: To provide feedback related to Whatcom Superior Court Administration related to the procedural and administrative processes in the anticipated Nooksack WRIA 1 water adjudication.

AGENDA

1. Welcome - Format of meetings, nature of this advisory committee in contrast to other Case Management Committees in other western states, and feedback loop to the court.

Shannon Hinchcliffe

2. Featured Meeting Topic(s):

A. Member Introductions – 1) What is your most pressing concern about the upcoming water adjudication; 2) what is one thing you hope this committee will accomplish?

All

B. Current State of the Adjudication

Shannon Hinchcliffe

- i. Department of Ecology
 - a. [Ecology Nooksack Newsletter Subscription](#)
 - b. [Draft Claim Form Comment Period](#)
 - c. [January 31 at 5:30 p.m. webinar](#)
- ii. Administrative Office of the Courts
 - a. Legislative Bills: [SB 5828](#), [SB 5827](#), [HB 1992](#)
 - b. 2024 Supplemental Budget [Request to Fund Water Rights Adjudication](#)
 - c. eFiling
- iii. Whatcom County Superior Court Administration
- iv. Others?

C. Adjourn

Identified Procedural and Administrative Topics by the Court

- Local Court Rules
- Objection Form (and the need for other standardized forms)
- Remote Proceedings
- Service Lists and other published website information
- Other issues identified by the court or committee members

Next Meeting: Wednesday, February 21, 2024 @ 9:00 a.m.



**Whatcom County Bar Association
Water Adjudication Advisory
Committee**

Whatcom County
Bar Association

Member List

- Whatcom County Superior Court Administrator – Stephanie Kraft
- Administrative Office of the Courts Principal Legal Analyst– Shannon Hinchcliffe
- Whatcom County Bar Association Liaison – Genissa Richardson
- Department of Ecology Assistant Attorney General (AAG) – Matt Janz

SKraft@co.whatcom.wa.us

Shannon.Hinchcliffe@courts.wa.gov

Genissa@truenorthlegalservices.com

Matt.Janz@atg.wa.gov

- Patrick Byrnes
- Jon Sitkin
- Jessica Kuchan
- Charles Hurt
- Dominique Zervas
- Bob Carmichael
- Luke Phifer
- Bridget Bryck
- Sallye Quinn
- Sara Frase
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- James S. Stroud
- James Hanika
- Jonathan W. Charnitski
- Haylee Hurst
- Peter Spoerl
- Peter Arkison
- Gabriel D. Cantu
- Kristen Cavanaugh

Pbyrnes@ffmlawfirm.com

JSitkin@csdlaw.com

Kuchan@confluencelaw.com

CHurt@nooksack-nsn.gov

Dominique@zervaslaw.com

Bob@carmichaelclark.com

Lphifer@carmichaelclark.com

BBryck@carmichaelclark.com

squinn@barronlaw.com

SFrase@csdlaw.com

Betsy@BrinsonHeinz.com

JamesS@lummi-nsn.gov

JamesH@lummi-nsn.gov

jonathan@texistowinglawyer.com

Haylee@bellinghamlegal.com

Peter.spoerl@gmail.com

Aph1@qwestoffice.net

GabrielC@lummi-nsn.gov

Kristen@belcherswanson.com

**SUPERIOR COURT OF THE STATE OF WASHINGTON FOR
WHATCOM COUNTY**

IN RE COURT ADMINISTRATION

No. 24-2-00001-37

**Emergency Rule Changes to
WCAR and WCSPR**

The Washington State Department of Ecology has announced their intention to file for a Water Adjudication under RCW 90.03.140 and RCW 90.44.220 for the WRIA 1 Nooksack Basin in Whatcom County Superior Court. These emergency rule additions to WCAR 0.3 and to the WCSPR are hereby adopted as first steps in the preparation for the orderly handling of this adjudication and the projected 25,000 individual claims in the action.

WCAR 0.3

New Section (e)

The Presiding Judge will assign a judge to oversee any general water rights adjudication that is filed in Whatcom County Superior Court pursuant to RCW 90.03.140 and RCW 90.44.220. In assigning a judge, the Presiding Judge will consider the projected length of litigation, the experience of the judicial officer, and give particular weight to the importance of consistency through the period of the adjudication. At the presiding judge's discretion, the decision to assign may be delegated to a majority vote of the bench.

Water Court Adjudication Rules

WCSPR 99.01 Scope of Rules Pursuant to the Court's authority provided in RCW 90.03.160(3), these rules shall apply to all general water rights adjudications filed pursuant to RCW 90.03.140 and RCW 90.44.220. In entering these rules, the court is guided by concerns of judicial economy, efficiency, and resolution of this adjudication in as short a time as the complexities of this case and its scope allow.

WCSPR 99.02 Case Prioritization Subject to State funding, the Court will prioritize general water adjudications over all other case matters except those matters specifically prioritized by statute.

WCSPR 99.30 Electronic Filing and Service

The provisions of GR 30 shall apply. Additionally, the following are required:

(a) Definitions.

(6) “Conventional filing” means a process whereby a filer files a paper document with the court.

(7) “Document” means a pleading, a paper, a motion, a declaration, an application, a request, a brief, a memorandum, an exhibit, or other instrument submitted by a filer, including any exhibit or attachment referred to in the instrument. Depending on the context, as used in this chapter, “document” may refer to an instrument in either paper or electronic form.

(8) “Electronic filing system” means the systems provided by the Washington Administrative Office of the Courts for the electronic filing and the electronic service of a document via the Internet. A filer may access this system through the Whatcom County Water Court Website.

(9) “Electronic service” means the electronic transmission of a notice of filing by the electronic filing system to the electronic mail (email) address of a party who has consented to electronic service either via the electronic filing system or by filing a Consent to Electronic Service form. The notice will contain a hyperlink to access a document that was filed electronically for the purpose of accomplishing service. When the serving entity is the court, electronic service may be completed through the electronic filing system or through conventional email.

(10) “Service contact” means any party and their email address designated for electronic service between the parties through the electronic filing system.

(11) “Other service contact” means any person associated with the filer for purposes of an action whom the filer wishes to receive email notification from the electronic filing system of documents electronically served in the action. An “other service contact” includes another attorney, administrator, or staff from the filer's place of business, or another person who is associated with the filer regarding the action or otherwise has a legitimate connection to the action.

(12) “Accept” refers to the determination that a document electronically filed has met the standards set forth in the rules below. The clerk has the discretion to later reject such a filing if it deems it appropriate to do so.

(13) “Confidential” in reference to a document or information means the document or information will not be accessible to the public because it is exempt from public disclosure pursuant to Washington State Court General Rule 31.1 or it has been sealed by the court order

pursuant to or it contains information barred from disclosure to the public under federal or state law. The information or document that is confidential may be accessible to certain court personnel and where applicable, to certain governmental entities as authorized by law, court rule, or court order.

(14) “Conventionally signed document” means a paper document with a handwritten signature.

(b) Electronic filing authorization, exception, service, and technology equipment.

(5) Filers that are **required** to electronically file and serve, except for documents that must be filed conventionally, include:

a. Attorneys

b. Government agencies or departments

c. Filers who are third parties tasked with submitting reports, evaluations, or other communications as directed by the court or required by law.

(6) Self-represented Parties.

a. Self-represented parties who are individuals and not attorneys may elect to electronically file documents through the electronic filing system but are not required to do so. Those who elect not to utilize electronic filing and who require paper/mail service from the court must identify the physical address for service in the certificate of service and pay designated mail service fees to the court clerk at the time of filing. A self-represented party who elects to electronically file and serve documents through the electronic filing system must continue to do so for the life of the case unless the court has granted a motion to withdraw from electronic filing and service.

b. Self-represented parties (who are individuals) who utilize the electronic filing system to file forms are also required to submit subsequent filings through the electronic filing system.

c. Self-represented parties may also submit electronic documents by email and these may only be emailed to WaterCourtClerk@co.whatcom.wa.us. Documents sent to other email addresses will not be accepted.

d. Self-represented parties may file documents in-person to the court clerk.

(7) Exceptions. A demonstrative or oversized exhibit must be filed conventionally. A motion to seal by court order and the document(s) subject to the motion must be filed conventionally.

(8) The official court record for a case filed or maintained in accordance with these rules is the electronic case file maintained by the court, as well as any paper filings and other conventional filings maintained by the court in accordance with these rules.

(9) If feasible, the court clerk shall digitize, record, scan, or otherwise reproduce a document that is filed conventionally into an electronic record, document, or image.

(10) After the court clerk digitizes, records, scans or otherwise reproduces a document that is filed in paper into an electronic record, document or image for entry in the court's case file, the court's electronic record, document or image is the official court record of the filed document.

(c) Time of filing; Confirmation; and Rejection

(4) If a document submitted electronically for filing is rejected, the electronic filing system will send an email to the filer that explains why the court rejected the document, unless the filer has elected through system settings not to receive the email. The email will include a hyperlink to the document.

(ii.) Resubmission of Rejected Filing; Relief. A filer who resubmits a document within 3 business days (excluding legal holidays) of the date of the request for correction under this section may request, as part of the resubmission, that the date of filing of the resubmitted document relate back to the date of submission of the original document to meet filing requirements. If the third day following request for correction is not a judicial day, then the filer may resubmit the filing with a request under this subsection on the next judicial day. A filer who resubmits a document under this subsection must include in the "Comments to Court" field notification for an electronic resubmission the following words: "Resubmission of corrected filing, request filing relate back to [the date of original submission]."

(e) Filing fees, electronic filing fees

(3) Payment Due on Filing. A filer must pay the fees for filing a document electronically at the time of electronic filing. Acceptance of the document triggers payment to be captured. In the event the payment funds are not available, at the time of filing or the acceptance, the filing will be rejected.

(f) Applicability of Electronic Service to Parties of Record (eService).

(1) Consent to eService, Withdrawal of Consent.

a. A party who electronically appears in the action by filing a document through the electronic filing system, that has been accepted, is deemed to have given consent to accept electronic service of any document filed by any other registered filer in this action or the court, except for any document that requires personal service, pursuant to Washington court rules. Service by electronic means upon this filer through their designated service contact is thereafter mandatory unless exempted by rule or court order and constitutes service under CR 5. When using the File and Serve option, service will not be completed until the filed document has been accepted by the clerk's office.

b. Service When Using Guide and File. Self-represented parties (who are individuals) who utilize Guide and File to file water adjudication-related documents are also required to exchange service between the parties through the electronic system.

c. Self-represented parties who choose to submit documents via email or in-person to the court are presumed to consent to electronic service from other parties of record, but are not required to do so and may opt out of electronic service.

d. For self-represented parties who have not consented to electronic service from other parties of record, service under CR 5 is required.

e. A filer who is dismissed as a party from the action or withdraws as an attorney of record in the action, may withdraw consent to electronic service in that specific action.

f. Once self-represented parties have consented to be electronically served, they must petition to the court to be removed from eService.

(g) Service of Documents by the Court.

(1) Washington State Bar Association Members. All active members of the Washington State Bar Association that electronically file with the court must provide a single email address to the court for the purpose of service of documents from the courts to that attorney. The email address designated may be either a general office address or an individual's address. The same designated email address must appear in the caption of all pleadings and in the certificate of service used on all proposed pleadings for the court's review, signature, and service. The courts must use this designated email address for service of all notices or orders generated and served by the court.

(2) Registered users of the electronic filing system, who are not members of the Washington State Bar Association, must provide an e-mail address as part of the registration and the court will use the e-mail address to send documents from the court related to the water adjudication. It is the registered user's responsibility to ensure that the correct email address is provided and it may only be changed upon notice to the court and parties.

(3) Self-represented parties who choose to file documents by e-mail or in-person are encouraged to consent to electronic service from the court due to the large number of parties and lengthy time periods involved.

(h) Format of Documents to be Electronically Filed

(1) A document submitted electronically to the court must be in the form of a text-searchable Portable Document Format (PDF) or a text-searchable Portable Document Format/A (PDF/A) file that does not exceed 25 megabytes. The PDF or PDF/A document must allow copying and pasting text into another document, as much as practicable. A document that exceeds the size

limit must be broken down and submitted as separate files that do not exceed 25 megabytes each. A filer submitting separate files under this section must include in the Filing Comments field for each submission a description that clearly identifies the part of the document that the file represents, for example, "Motion for Summary Judgment, part 1 of 2."

(2) Except as provided in subsections (a) or (b) of this section or in GR 30, when a document to be electronically filed incorporates a documentary exhibit, an affidavit, a declaration, a certificate of service, or another document, the electronic filing must be submitted as a unified single PDF file, rather than as separate electronically filed documents, to the extent practicable. An electronic filing submitted under this section that exceeds 25 megabytes must comply with section (1) of this rule.

(a) If an electronic filing consists of a motion or similar document and a corresponding proposed order, judgment, or any other document that requires court signature, the filer must submit the document requiring court signature through the eFiling system as a separate electronically filed document from the motion. A filer submitting separate documents under this subsection must include in the Filing Comments field for each submission a description that clearly identifies the filing, for example, "Motion for Summary Judgment" and "Proposed Order Granting Motion for Summary Judgment."

(b) If an electronic filing is filed in a case that is not confidential by statute or rule, but includes an incorporated document that is confidential or otherwise exempt from disclosure, the filer must submit the incorporated document through the eFiling system as a separate electronically filed document. When submitting a confidential document through the eFiling system under this subsection, a filer must designate the document as confidential. A filer submitting separate documents under this subsection must include in the Filing Comments field for each submission a description that clearly identifies the filing, for example, "Motion for Stay" and "Confidential Attachment to Motion for Stay." A filer otherwise eFiling any confidential document, or any document in a case that is confidential by statute or rule, also must comply with GR 30.

(c) The reference in section (2) to an affidavit and a declaration applies to only an affidavit or a declaration that is an incorporated document.

(3) When viewed in an electronic format and when printed, a submitted document must comply with the requirements of GR 30 except as to any requirement that a document bear a physical signature when filed.

(4) When submitting an electronic filing that creates a new case or adds a party to an existing case,

(a) A filer must enter into the "Add Party" screen the names of all known parties or all parties being added; and

(b) A filer must enter party names in proper case, for example, "J Doe" and not "J DOE."

(i) Applicability.

(1) As of January 1, 2024, this rule governs electronic filing for document submitted for Chapter 90.03 RCW water adjudication cases only.

LEE GROCHMAL

DATED this 16th day of January, 2024



JAN 16 2024

Judge Lee Grochmal, Presiding Judge