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**STATE OF WASHINGTON
WHATCOM COUNTY SUPERIOR COURT**

9 IN THE MATTER OF THE
10 DETERMINATION OF THE RIGHTS
11 TO THE USE OF THE SURFACE
12 AND GROUND WATERS OF
13 WATER RESOURCE INVENTORY
14 AREA 1

NO. 24-2-80000-37

STATEMENT OF FACTS AND MAP
OF WATER RESOURCE
INVENTORY AREA 1

13 COMES NOW the State of Washington, Department of Ecology, through its Director
14 Laura Watson and its attorney, Matthew Janz, Assistant Attorney General, and submits this
15 Statement of Facts and Map in the above-entitled Court for the general adjudication of surface
16 and ground waters of Water Resource Inventory Area 1 (WRIA 1). This Statement of Facts and
17 Map are filed pursuant to RCW 90.03.110. Attached in support of this Statement of Facts and
18 Map are a proposed order directing summons, proposed summons, and the declaration of
19 Ecology employee Leigh Bedell with maps of the subject area and list of defendants.

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I. INTRODUCTION

22 The Department of Ecology is authorized under RCW 90.03 to initiate the determination
23 of rights to waters of the state upon a petition brought by a planning unit or one or more persons
24 claiming the right to any waters of the state. *See* RCW 90.03.110(1). In 2019 and 2020, Ecology
25 received requests from the Lummi Nation and Nooksack Tribe petitioning the State adjudicate
26 surface and ground water rights in WRIA 1. Ecology, after extensive assessment, finds that the
general adjudication of the surface and ground waters of WRIA 1 is in the public interest.

1 Pursuant to RCW 90.03.110, this Statement of Facts and Map initiates the adjudication of the
2 waters of WRIA 1 as described herein.

3 **II. JURISDICTION AND VENUE**

4 a. The Superior Court has jurisdiction over this matter under RCW 90.03.

5 b. WRIA 1 is predominantly located in Whatcom County and also includes some
6 northern areas of Skagit County. Ecology files this adjudication in the Superior Court of
7 Whatcom County as the county most convenient to the parties as authorized by RCW 90.03.110.

8 c. This Court has jurisdiction over all water users in WRIA 1, including the United
9 States on its own and as trustee for Lummi Nation and Nooksack Tribe. The United States
10 consents to state jurisdiction in general stream adjudications under the McCarran Amendment,
11 43 U.S.C. § 666.

12 **III. PARTIES**

13 a. The Plaintiff is the State of Washington, Department of Ecology, authorized
14 under RCW 43.21A to manage the water resources of the State of Washington, and including
15 the authority to initiate the adjudication of water rights in superior court under RCW 90.03.110.

16 b. Defendants will be identified as all parties with a claimed interest in the waters
17 of WRIA 1 and will include:

18 i. As required by RCW 90.03.110(1)(a)(i), each person owning real property
19 in the subject area outside the service area of a city, town, or special purpose
20 district, listed in Exhibit C to the Bedell Declaration.

21 ii. As required by RCW 90.03.110(1)(a)(ii), all known persons claiming a right
22 to water within the subject area reflected in the plan map. This includes all
23 persons, and any spouse they may have, owning real property within the
24 place of use of a water right document on file with the Department of
25 Ecology, also listed in Exhibit C to the Bedell Declaration.

1 basins where tribal senior water rights, unquantified claims, and similar uncertainties about the
2 seniority, quantity and validity of water rights exist.” E.S.H.B. 1109, § 302(6), 66th Leg., Reg.
3 Sess. (2019).

4 In response, Ecology conducted a statewide assessment to identify and prioritize areas
5 where adjudication is needed to address pressing issues of demand on the water resource.
6 Ecology presented its Water Resources Adjudication Assessment to the Legislature in
7 September 2020. Dep’t of Ecology, *Water Resources Adjudication Assessment Report*,
8 Publication 20-11-084 (Sept. 2020). In the assessment, Ecology found that it is in the public
9 interest to commence immediate adjudication of WRIA 1. In 2021, the Legislature funded
10 Ecology to prepare for the WRIA 1 adjudication including mapping, developing data systems,
11 and outreach to impacted communities. In 2023, the Legislature funded Ecology to finalize
12 preparation for, and to file, this adjudication.

13 **B. Necessity for WRIA 1 Adjudication**

14 **1. Clarification and prioritization of Tribal rights and other federal claims**

15 Adjudication of WRIA 1 will respond to the petitions of the Lummi Nation and
16 Nooksack Tribe, identifying, prioritizing, and quantifying all federal and tribal rights in the
17 order of prior appropriation. The Tribes, both federally recognized Indian Tribes with
18 reservations located within WRIA 1, petitioned Ecology to adjudicate their water rights. An
19 adjudication of their water rights would help in water resource management. Currently, the
20 Tribe’s water rights are unquantified, which creates uncertainty and frustrates water resource
21 management.

22 The Nooksack River system supports diverse wildlife, including providing migration
23 spawning, incubation, rearing, and foraging habitats for all nine native Pacific Northwest
24 salmonid species. These fish populations are in decline. *See Carol J. Smith, Salmon and*
25 *Steelhead Habitat Limiting Factors in WRIA 1, the Nooksack Basin*, Washington State
26 Conservation Commission (2002). Water for habitat is decreasing due to surface and ground

1 water consumption, land practices, and the snowpack and temperature impacts of climate
2 change. Murphy, R. D. *Modeling the Effects of Forecasted Climate Change and Glacier*
3 *Recession on Late Summer Streamflow in the Upper Nooksack River Basin*, Western
4 Washington University (2016).

5 **2. Clarification and prioritization of state surface and ground water uses,**
6 **including permit exempt uses**

7 Adjudication will also quantify and prioritize state rights to surface and ground water,
8 including all uses of state water by municipalities, agricultural irrigators, private domestic and
9 commercial users, and any others. This will include rights subject to the permitting
10 requirements, rights predating the water code and subject to the claims registry requirements,
11 and ground water uses exempt from permitting.

12 The users of water in WRIA 1 need affirmation of their water rights. An adjudication of
13 surface and ground water rights addresses many challenges facing the region. The prior
14 appropriation doctrine is straightforward, but water management is not. An adjudication will
15 affirm water right claims filed under the Claim Registration Act, allowing Ecology to manage
16 water rights claims on a basis of priority and manage state issued water rights, including permit
17 exempt wells. Furthermore, the effects of climate change make the adjudication of water rights
18 all the more important. Murphy, R. D., *supra*. Drought and other impacts to future water
19 availability will make prioritization of water rights critical to meet future water management
20 needs.

21 **C. Area Identified for Adjudication (Map)**

22 Under RCW 90.03.110(1), Ecology is required to delineate the locality under
23 investigation for adjudication. Ecology identifies WRIA 1 and includes two maps of this area
24 as Exhibits A and Exhibit B to the Bedell declaration. Exhibit A is a full map of WRIA 1, the
25 area to be adjudicated, and Exhibit B includes subbasins.

1 Water Resource Inventory Areas (WRIAs) are authorized under the Water Resources
2 Act of 1971, RCW 90.54 and established by rule under WAC 173-500-040. The state of
3 Washington is divided into 62 WRIAs that are generally analogous in size with counties, but
4 have different boundaries. Ecology is authorized by law to develop and manage WRIAs. *See*
5 RCW 90.54.040. The waters within a WRIA, while proximate, are not necessarily in hydrologic
6 continuity (connected waters) with each other. WRIA boundaries represent the administrative
7 underpinning of Ecology’s business activities. Per WAC 173-500-060(2), “sufficient data are
8 obtained for each WRIA and/or grouping thereof in the state to enable the department to
9 formulate a water resource planning and management program for such area.” The original
10 WRIA boundary agreements and judgments were reached jointly by Washington’s natural
11 resource agencies (Ecology, Natural Resources, Fish and Wildlife) in 1970.

12 WRIA 1 includes most of Whatcom County and parts of northern Skagit County. *See*
13 WAC 173-450-040. WRIA 1 is dominated by the Nooksack watershed, consisting of three forks
14 (North, Middle, and South) that run from the Mount Baker area to the mainstem Nooksack
15 River, which enters Bellingham Bay. *Bedell Decl.* at 5. In addition to the Nooksack drainage,
16 WRIA 1 includes all areas of Whatcom County up to its northern border, which is the border of
17 the United States and Canada. *Id.* To the south, WRIA 1 includes certain areas of Skagit County
18 that are included in connected river system drainages. *Id.* It does not include the southernmost
19 areas of Whatcom County that are not connected to these drainages. *Id.*

20 In the interest of comprehensiveness, and in order to respond fully to the petitions of
21 Lummi Nation and Nooksack Tribe and resolve all associated reserved water right claims,
22 Ecology identifies the entirety of WRIA 1 for adjudication. This includes Point Roberts, along
23 with a number of islands not contiguous with the rest of the WRIA.

24 WRIA 1 is divided into ten subbasins that represent separate units within WRIA 1 based
25 on their geography. They are:
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- 1 1. South Fork of the Nooksack River and all tributaries thereto.
- 2 2. Middle Fork of the Nooksack River and all tributaries thereto.
- 3 3. North Fork of the Nooksack River and all tributaries thereto.
- 4 4. Lower Nooksack River and all tributaries thereto.
- 5 5. Sumas Subbasin and all tributaries thereto.
- 6 6. Lake Whatcom Subbasin and all tributaries thereto.
- 7 7. Coastal North Subbasin.
- 8 8. Coastal South Subbasin.
- 9 9. Coastal West Subbasin.
- 10 10. Chilliwack River Basin and all tributaries thereto.

7 Ecology identifies these subbasins on the map attached to the Bedell Declaration as
8 Exhibit B for reference. This is intended to orient the Court and parties to areas for reference as
9 the adjudication proceeds.

10 **D. Requirement of Court Consultation**

11 As required by RCW 90.03.110(2)(a), Ecology has consulted with the Administrative
12 Office of the Courts to determine whether sufficient judicial resources are available to commence
13 and prosecute the adjudication in a timely manner. Ecology included court costs in its budget in
14 2021 and 2023, and supported the court's request for additional judicial funding in 2024.

15 **E. Service of Summons**

16 Following this filing, Ecology expects this Court to order the service of a Summons with
17 a return date:

18 **Upon the filing of the statement and map as provided in RCW 90.03.110 the**
19 **judge of such superior court shall make an order directing summons to be**
20 **issued, and fixing the return day thereof, which shall be not less than 100 nor**
21 **more than 130 days, after the making of such order: PROVIDED, That for good**
22 **cause, the court, at the request of the department, may modify said time period:**
23 **PROVIDED FURTHER, That for an adjudication filed in water resource**
24 **inventory area 1 after June 1, 2023, the return day for the latest time to file**
25 **claims pursuant to such a summons shall be not less than one year after the**
26 **making of such an order, unless special rules of procedure established by the**
court pursuant to RCW 90.03.160(3) provide for a later date.

RCW 90.03.120(1) (emphasis added).

1 the time and place named in said order and assert such right; that the court cause said summons
2 to be served in the matter provided by law; and that upon said hearing the court enter judgment
3 adjudicating and determining the relative rights to the use of the waters of WRIA 1 for beneficial
4 uses and determining the extent and priority of the rights of all persons claiming such right to
5 use said waters.

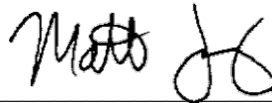
6 DATED this 1st day of May 2024, in Olympia, Washington.

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Digitally signed by Laura Watson
Date: 2024.04.26 09:24:58 -07'00'

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11 LAURA WATSON, Director
12 Washington Department of Ecology

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15 ROBERT W. FERGUSON
16 Attorney General

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22 MATTHEW T. JANZ, WSBA #50173
23 Assistant Attorney General
24 Matthew.Janz@atg.wa.gov
25 360-586-6770
26 *Attorney for Plaintiff State of Washington,
Department of Ecology*

Exhibit 1

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**STATE OF WASHINGTON
WHATCOM COUNTY SUPERIOR COURT**

IN THE MATTER OF THE
DETERMINATION OF THE RIGHTS
TO THE USE OF THE SURFACE
AND GROUND WATERS OF
WATER RESOURCE INVENTORY
AREA 1

NO. 24-2-80000-37

ORDER DIRECTING ISSUANCE OF
SUMMONS AND FIXING RETURN
DATE
[PROPOSED]

The Washington Department of Ecology filed a General Water Adjudication for resolution and adjudication of all water rights in an area pursuant to RCW 90.03.110. RCW 90.03.120 states that “the judge of such superior court shall make an order directing summons to be issued, and fixing the return day thereof[.]” This summons will include a claim form provided by Ecology. The adjudication being of WRIA 1, the return date deadline for filing claims shall be “not less than one year after the making of such an order.” RCW 90.03.120(1).

The above entitled general water adjudication of surface and ground waters was filed with this Court for the adjudication of ground and surface waters in Water Resource Inventory Area 1 on 5/1/2024.

NOW, THEREFORE, IT IS ORDERED AND DIRECTED that a summons issue out of this Court, signed and attested by the Clerk thereof in the name of the State of Washington, Department of Ecology, as plaintiff, against all persons known and unknown claiming the right

1 to divert, withdraw, or otherwise make use of the surface and ground waters of WRIA 1 and
2 said summons shall contain the matters required by law, and

3 IT IS FURTHER ORDERD AND DIRECTED that the deadline to file claims in this
4 water adjudication by parties seeking a water right shall be due one year from the entering of
5 this order, _____, 2025.

6 DONE IN OPEN COURT this ___ day of _____ 2024.

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9 SUPERIOR COURT JUDGE
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**STATE OF WASHINGTON
WHATCOM COUNTY SUPERIOR COURT**

IN THE MATTER OF THE
DETERMINATION OF THE RIGHTS
TO THE USE OF THE SURFACE
AND GROUND WATERS OF
WATER RESOURCE INVENTORY
AREA 1

NO. ²⁴⁻²⁻⁸⁰⁰⁰⁰⁻³⁷
SUMMONS
[PROPOSED]

24-2-80000-37

TO:

The Department of Ecology of the State of Washington has prepared a Statement of Facts and Map in connection with the rights for all persons to use surface and ground waters of the Water Resource Inventory Area 1 (WRIA 1) (Nooksack Watershed), being situated in Whatcom and Skagit Counties, Washington. Ecology has filed said statement together with a map of WRIA 1 with the Clerk of the above-entitled court praying for an adjudication of the rights of all persons diverting or withdrawing water from said watershed and the rights of all persons claiming the right to divert or withdraw the surface and ground waters thereof, pursuant to Chapters RCW 90.03 and 90.44, and the identified parties who may be claimants to the use of said water. The Honorable _____, Judge of the above-entitled court, by an order dated _____, has directed summons to be issued to all persons known and unknown claiming the right to divert, withdraw, or otherwise make use of the surface and ground waters of WRIA 1.

1 NOW, THEREFORE, you are hereby notified that the purpose of this proceeding is to
2 adjudicate the rights of all persons to divert, withdraw, or otherwise make use of the surface or
3 ground waters of WRIA 1 situated in Whatcom and Skagit County, Washington, and adjudicate
4 the rights of all persons claiming the right to divert or withdraw the waters of said area. **You**
5 **are hereby further notified to complete and file with the Clerk of the above-entitled court,**
6 **on or before _____, the claim form provided to you by**
7 **Ecology with this summons as a statement of your claim to, or interest in, the waters of**
8 **said area. In the event that you fail to appear and assert your right to the use of the waters**
9 **of WRIA 1, judgment will be entered determining your right to the use of the same,**
10 **according to the evidence presented to the Court.**

11 SIGNED AND ATTESTED TO THIS ___ day of _____, 2024.

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14 Whatcom County Superior Court Clerk
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**STATE OF WASHINGTON
WHATCOM COUNTY SUPERIOR COURT
24-2-80000-37**

IN THE MATTER OF THE
DETERMINATION OF THE RIGHTS
TO THE USE OF THE SURFACE
AND GROUND WATERS OF
WATER RESOURCE INVENTORY
AREA 1

NO.


NOTE FOR MOTION DOCKET

CLERK'S ACTION REQUIRED

Please take note that an issue in this case will be heard on the date set out below and the clerk is requested to note the same on the motion docket for that day, subject to the confirmation rule.

Date and time: June 26, 2024, 9:30 a.m.
Location: 311 Grand Avenue, Bellingham, WA 98225
DATED this 1st day of May 2024.

ROBERT W. FERGUSON
Attorney General



MATTHEW T. JANZ, WSBA #50173
Assistant Attorney General
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360-586-6770
*Attorney for Plaintiff State of Washington,
Department of Ecology*