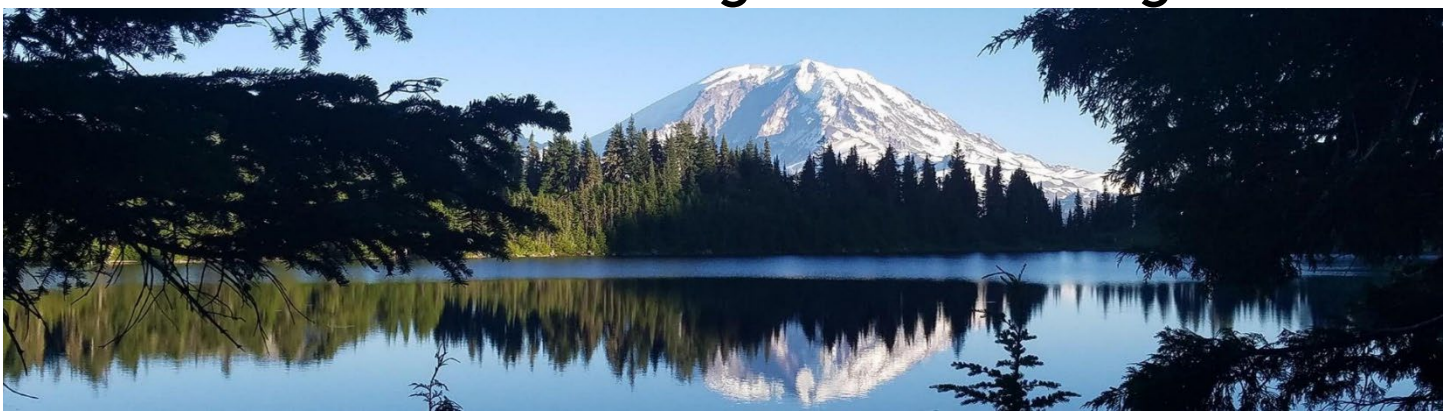
# Focus on: Water Rights in Washington



The Department of Ecology (Ecology) manages the state's water resources, working to meet all the varied demands on Washington's public waters. Water rights play a crucial role in managing and allocating this finite resource.

Under state law, the waters of Washington collectively belong to the public and cannot be owned by any one individual or group. Instead, Ecology may grant individuals or groups the right to use them, in the form of a water right.

**Please note:** Although Washington historically has been known as a water-rich state, the availability of water for new projects can no longer be taken for granted. It is increasingly difficult in most areas of the state. Alternatives to new water rights are available, and many are included in this publication.

## What is a water right?

A water right is a legal authorization to use a certain amount of public water for a beneficial purpose. The water must be applied without waste to uses such as irrigation, domestic water supply and power generation, to name a few.

There are three main types of water right documents: claims, permits and certificates. This document focuses on permits and certificates. (For more detail on claims, refer to Ecology publication #97-2022-S&WR, “Q&A on Water Right Claims.”)

- A claim is simply that, a claim to a water right, for a water use that predates the state’s water permitting system (for surface water, 1917/1932, for groundwater, 1945). The validity of a claim can only be confirmed through judicial processes.
- A permit is permission by the state to develop a water right; it is not a final water right. A permit allows you to proceed with construction of the water system and start putting the water to beneficial use, in accordance with the terms of the permit.
- Ecology issues a certificate after confirming that all the conditions of the permit have been met. A Certificate of Water Right is the legal record of your water right, and is recorded at your county auditor’s office. Once Ecology issues a certificate, the water right is considered appurtenant (attached) to the land on which the water is used.

## Who needs a water right?

A water right is necessary if you plan to use any amount of water for any purpose from:

- Surface waters (water located above ground) such as lakes, streams, and springs.
- Groundwaters (water under the ground) for all uses, with these exceptions:
  - Single or group domestic purposes using less than 5000 gallons per day.
  - Industrial purposes using less than 5000 gallons per day.
  - Watering a half-acre or less of lawn or non-commercial garden.
  - Stockwater.

Washington water law requires users of public water to receive approval from the state prior to the actual use of water. Approval is granted in the form of a water right permit or certificate. In addition to water rights authorized by the state under the permit system, Washington recognizes claims to water rights established prior to the time the permit system originated, and federal reserved water rights.

It should be noted that if you are paying a water distribution entity (such as an irrigation district or a municipal water supplier) for water, you personally do not need a water right. However, the entity from which you purchase water must hold a valid water right or claim.

### Exceptions to water right permitting

You do not need to apply for a water right for a groundwater use that falls within the exceptions listed above. Although you are exempt from the water right permit process in these cases, all other water laws and regulations still apply.

The limits of the groundwater exemption apply to all wells for any given project: For example, if you wish to develop land and supply the development with domestic water from several wells, the combined withdrawal from all wells cannot exceed the 5,000 gallons a day limit. If the cumulative total is greater than 5,000 gallons per day, you need a water right.

## Applying for a new water right

Note: The procedure for making changes to existing water rights is covered in a separate Ecology publication; see last page.

The traditional process for a new water right is described here. Applicants may also use cost reimbursement contracting for faster processing. Refer to page 7 for more information.

There is a lot of competition for water across the state and much has already been spoken for, making decisions on water rights complex and often controversial. Though not required, we strongly encourage your first step to be a pre- application consultation with Ecology staff in your region.

A pre-application consultation allows us to understand your water needs and in turn, we can share our perspective on the risks, alternatives, and opportunities. We can give you an idea of the time frame in which a decision can be made on your application. We would rather you saved the time and money needed to submit a water right application if the likelihood of getting a water right is low.

Refer to the last page of this document for links to forms and additional information. Regional contact information is on page 6.

The general process, including a pre- application meeting, is as follows:

1. Fill out a "Water Right Pre-Application Consultation" form, to initiate a consultation meeting at the appropriate regional office. The meeting itself can take place in person or by phone.
2. After the consultation, if you decide to proceed, fill out an "Application for a Water Right." Instructions are included with the form. The mandatory minimum fee to file an application is $50, but additional fees may be required.
3. Return the completed application, along with the application fee in the form of a check or money order, to:

   Department of Ecology
   Cashiering Unit
   PO Box 47611
   Lacey WA 98504-7611

**Note:** Applications are date-stamped on the day they are received. This date will normally become the "priority date," if the application is accepted and has the correct filing fee. The priority date establishes the order of processing and seniority of a water right, so it is to your advantage to be sure the application is complete, and the necessary filing fee is attached before mailing.

4. Ecology reviews your application for completeness. If additional fees are required, you will be notified at this time.
5. Once Ecology begins to work on your application, Ecology will send you a legal notice to publish in an approved newspaper with general circulation in the county (or counties) where water would be withdrawn, stored, and used.

   The notice, published once a week for two consecutive weeks, includes:

   - The basic facts of your request.
   - Information regarding the 30-day protest period for any member of the public who feels that your proposed water use would impair other uses of the resource. This 30-day period begins on the last day that your legal notice is published.
6. After final publication of the notice, send Ecology an original, notarized Affidavit of Publication that you get from the publishing newspaper. Ecology cannot take action on your water right request until the affidavit is submitted.
7. Ecology then conducts an investigation of the application (which may include a field examination of your proposal). The results of the investigation are summarized in a Report of Examination (ROE). The report contains Ecology's decision on your water right request.

   The decision may be a denial, an approval, or an approval with conditions.
8. Ecology sends you, anyone who filed a protest, and identified interested parties a copy of the final decision. You (and others) have 30 days to appeal Ecology's decision. The state Pollution Control Hearings Board (PCHB) handles appeals if you do not agree with the decision.

9. If Ecology approves your application and there are no appeals, you will receive a Permit to Appropriate Public Waters of the State of Washington. The permit allows you to construct your water system and put the water to use.
10. Your permit will include a development schedule, which specifies the dates by which you must: 1) begin construction of your water system, 2) complete construction of your water system, and 3) put the water to full use, as described in your permit. As you complete each phase, you must submit a progress report to Ecology on the appropriate form.
11. When the water is put to full beneficial use, you must complete and submit a notarized Proof of Appropriation of Water affidavit form. This form will provide Ecology with a detailed description of your water use.
12. After reviewing your Proof of Appropriation, Ecology may determine further verification of your water use is needed. In that case, you will need to hire a certified water right examiner to perform a field inspection, called a proof examination. (See last page for a link to information on hiring an examiner.)
13. After Ecology reviews the certified water right examiner's proof exam report -- or if Ecology determines an inspection is not necessary -- you will receive a request for the certificate filing and recording fees.
14. Once the appropriate fees are received, Ecology issues a Certificate of Water Right, based on the information in your Proof of Appropriation and the certified water right examiner's field inspection (if one is conducted). The certificate cannot exceed the amount of water that has actually been put to use, up to the limits set in the permit. The certificate is recorded at the auditor's office in the county where the project is located, and at Ecology. The county auditor will forward your certificate to you. It becomes part of the legal record of your water right.

## Water right certificates

Your rights to use water are outlined in your water right certificate. However, it is important to be aware that a "water right" is the entire record connected to that right.

This includes the application, Report of Examination, permit, certificate, and what the permit-and certificate holder actually did. All this information can impact a judicial evaluation of the water right.

All or part of a water right is subject to relinquishment if it is unused, without sufficient cause, for five or more consecutive years. The law provides for certain exemptions to relinquishment, such as a temporary reduction of irrigation water use resulting from crop rotation. Note: It is important to follow any conditions of your permit or certificate.

## Wait time

Depending on the complexities of water availability, the number of applications filed before yours, and on-going water use within your watershed, a decision on your water right application may take anywhere from months to years. Applicants should remember that the decision could be a denial, which is why a pre-application conference is encouraged.

## Other ways to secure water

Since much of the water in Washington has already been allocated or claimed, new water rights are increasingly difficult to obtain. As a result, more and more people are choosing to make changes to existing

water rights rather than apply for a new one. Generally, Ecology will consider changes to the following elements of an existing water right claim, permit, or certificate:

- Place of use
- Point of diversion or withdrawal
- Additional point(s) of diversion or withdrawal
- Purpose of use.

The water right change application process is similar to that of a new water right. Two additional approaches have been added to provide applicants with timelier water right changes than Ecology would otherwise be able to provide, given staffing and budgetary limitations. These approaches are:

- County Water Conservancy Boards that can process water right transfer and change applications. Board-generated ROEs are submitted to Ecology for final review. There are currently 15 boards operating throughout the state.
- Cost reimbursement contracting where you will pay to have Ecology's consultant to process your application for a change or transfer. (This process can also be used for a new water right application.)

For additional information on changing water rights, conservancy boards and cost- reimbursement, refer to links on last page.

## Does my water right protect me during a drought?

No. A water right does not guarantee the availability of water. The degree of reliability depends on your water source and the relative seniority of your water right.

## Are there other facts I should know concerning water rights?

Yes, please read the following carefully.

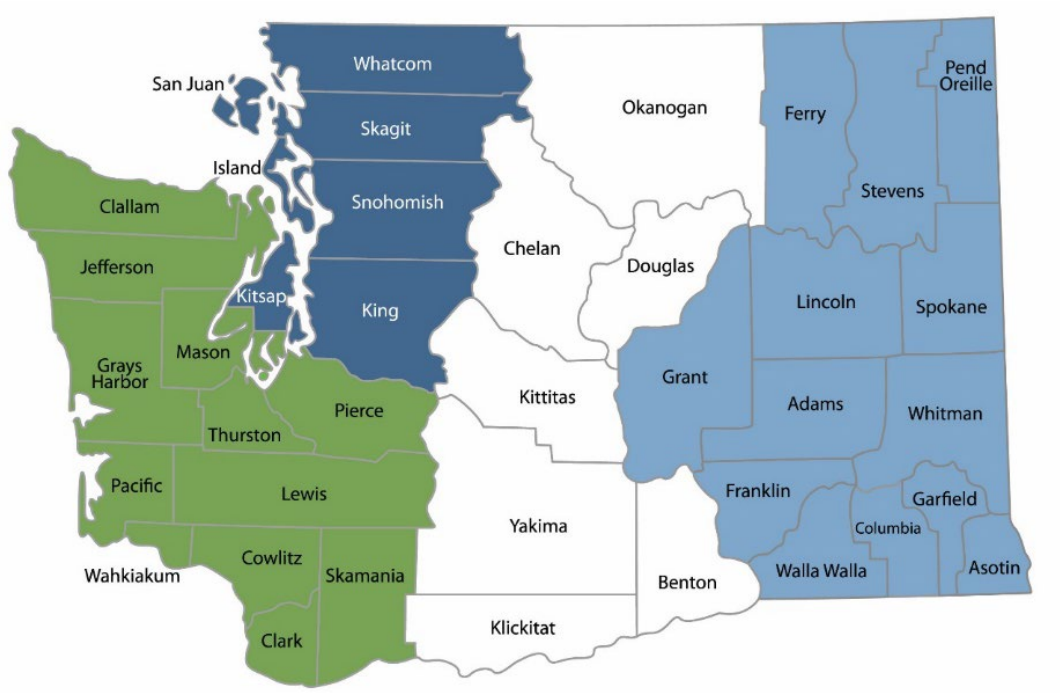
- ✓ The state water codes are based on a "first in time, first in right" doctrine. This means that any new water right is subject to existing rights. Therefore, your application may be denied, or your water use may be regulated (reduced or shut off) if it adversely affects existing rights. This doctrine also protects your water right against any impairment by future water right users.
- ✓ Water rights carry no right-of-way privileges. If the water source you wish to use is not on your property, you must make right-of-way arrangements with the appropriate property owner(s).
- ✓ A water right document (claim, permit or certificate) may be diminished or have little or no value due to unauthorized changes, non-use of water, or never having put the full amount of water to beneficial use in agreement with the terms of the permit. (Refer to the Ecology publication # 97-1804-WR, "Assessing Your Water Right.")
- ✓ Water right certificates remain attached to the land described on the water right, unless specifically withheld from the deed at the time of sale.
- ✓ Unless your proposal is a new exempt use of groundwater, no construction or water use should begin before a water right permit is obtained from Ecology.

## More Information

Contact the Ecology regional office nearest you.

### Department of Ecology's Regional Offices

Map of Counties Served




| Region | Counties served | Mailing Address | Phone |
|---|---|---|---|
| **Southwest** | Clallam, Clark, Cowlitz, Grays Harbor, Jefferson, Mason, Lewis, Pacific, Pierce, Skamania, Thurston, Wahkiakum | P.O. Box 47775<br>Olympia, WA 98504 | 360-407-6300 |
| **Northwest** | Island, King, Kitsap, San Juan, Skagit, Snohomish, Whatcom | P.O. Box 330316<br>Shoreline, WA 98133 | 206-594-0000 |
| **Central** | Benton, Chelan, Douglas, Kittitas, Klickitat, Okanogan, Yakima | 1250 West Alder Street<br>Union Gap, WA 98903 | 509-575-2490 |
| **Eastern** | Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grant, Lincoln, Pend Oreille, Spokane, Stevens, Walla Walla, Whitman | 4601 North Monroe<br>Spokane, WA 99205 | 509-329-3400 |

## Websites

- Water Resources website at https://ecology.wa.gov/water-shorelines/water-supply
- New Water Right Permit Process Schematics: https://www.oria.wa.gov/Portals/_oria/VersionedDocuments/Permit_Schematics/Water-Right-Permit-Process-Schematics%20-New.pdf
- Water availability information for your watershed: https://ecology.wa.gov/water-shorelines/water-supply/water-availability/in-your-watershed
- Certified Water Right Examiners: https://ecology.wa.gov/water-shorelines/water-supply/water-rights/water-right-examiners
- Water Conservancy Boards: https://ecology.wa.gov/water-shorelines/water-supply/water-rights/water-conservancy-boards

## Publications

- Changing or Transferring an Existing Water Right: https://apps.ecology.wa.gov/publications/SummaryPages/981802WR.html
- Focus on Cost Reimbursement: https://apps.ecology.wa.gov/publications/SummaryPages/2211022.html
- Groundwater Permit Exemption: https://apps.ecology.wa.gov/publications/SummaryPages/1911090.html
- Assessing Your Water Right: https://apps.ecology.wa.gov/publications/SummaryPages/2411024.html

## Forms

- "Water Right Pre-Application Consultation Form": https://apps.ecology.wa.gov/publications/summarypages/ecy070440.html
- "Application for a Water Right" form: https://apps.ecology.wa.gov/publications/UIPages/SummaryPages/ECY040114.html

**ADA Accessibility**

The Department of Ecology is committed to providing people with disabilities access to our information and services by meeting or exceeding the requirements of state and federal laws.

To request an ADA accommodation, email WRpubs@ecy.wa.gov, call 360-207-6872, or call Ecology through the Washington Telecommunication Relay for services including text telephone (TTY) at 711 or through your preferred relay service provider. Visit Ecology.wa.gov/ADA for more accessibility information.