

# Water Right Claims

## Focus on

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.

Water rights are generally represented by three different types of water right documents: claims, permits and certificates. A water right claim is simply that – a claim to a water right for a beneficial use which predates the state water-permitting system. The validity of a claim can only be confirmed through judicial processes.

### Background: History of Washington Water Law

In our early history, Washington settlers obtained water rights under two doctrines: the riparian doctrine and the prior appropriation doctrine. The riparian doctrine allowed a person with property next to a surface water body (such as a stream or lake) to draw water from that source; it was not concerned with the priority of use among users. Prior appropriation allowed water to be used on land that was not close to the water source, and was based on a priority system ("first in time, first in right," see below).

In 1917, the Washington Legislature enacted the Water Code, still in use today, affirming that "all waters within the state belong to the public, subject to existing rights." The Water Code provided for centralized water administration by the state. While the Water Code did not affect existing rights, it did make a state permitting system the exclusive way to establish new rights. It did not address water rights that were established before 1917.

With the 1917 Water Code, water law was now officially based on the legal concept of "first in time, first in right:" that is, an individual's right to a specific quantity of water depends on the effective date of the water right (the "priority date"). In times of shortage, senior water right holders have their water needs satisfied first.

By 1945, many people were using groundwater wells as a source of water. The Legislature enacted the Groundwater Code, which required permits for use of groundwater from 1945 on. ("Groundwater" is water under the ground.) Today, Ecology manages permitting for both surface water and groundwater.

The Groundwater Code does allow an exemption (often referred to as simply "the groundwater exemption"). On November 18, 2005, the state Attorney General's Office issued a formal opinion regarding how the groundwater exemption, especially for watering livestock, should be applied.

There are four types of groundwater uses exempt from the state water-right permitting requirements:

- Providing water for livestock (no gallon per day limit or acre restriction).
- Watering a non-commercial lawn or garden one-half acre in size or less (no gallon per day limit).
- Providing water for a single home or group of homes (limited to 5,000 gallons per day).
- Providing water for industrial purposes, including irrigation (limited to 5,000 gallons per day but no acre limit).

Water use of any sort is subject to the "first in time, first in right" clause, originally established in historical Western water law and now part of Washington state law. This means that a senior right cannot be impaired by a junior right. Seniority is established by priority date - the date an application was filed for a permitted or certificated water right - or the date that water was first put to beneficial use in the case of claims (discussed above) and exempt groundwater withdrawals.

While the water codes required administrative permits for most water uses starting after the effective dates of the codes, water uses predating the codes did not. Therefore, documentation of pre-code water rights was often incomplete or non-existent.

By the 1960s, it became clear to the Legislature that a more definitive accounting of the amount of water being used throughout the state was necessary. This information would let the state know how much water was still available for appropriation (distribution), and to plan for future needs.

Since records for pre-code rights, as well as groundwater exempt uses, were often unavailable, the state had no accurate record of the amount of water being used statewide. The Claims Registration Act was passed in 1967 to record the amount and location of pre-code and groundwater exempt rights. A statement of claim needed to be registered with Ecology to report and preserve these rights.

## Claims Registration

The Claims Registration Act set up periods of time for water users to file their water right claims with the state. All water users relying on rights established before the water codes were adopted were advised to register a claim to a water right. (Exceptions are listed below.) To date, there have been four registration periods. Each period had somewhat different requirements for registering: notably uses under the groundwater exemption were required to be registered during the first three openings, but were specifically excluded under the fourth.

(Water use for stock watering under the groundwater exemption was not required under the first opening.)

Ecology acknowledged receipt of the claims, but did not determine the validity of the information. More than 166,000 claims are now on file with the Claims Registry.

Some users were not required to file a claim during any of the four registration periods, including:

- Individuals who were served water through a company, district, public or municipal corporation. (However, the water supplier must have a valid water right or claim.)
- Persons with a valid Water Right Permit or recorded Certificate.
- Individuals with a water right determined by Court Decree and recorded through issuance of a Certificate of Adjudicated Water Right by Ecology or one of its predecessor agencies.
- Persons using water non-consumptively: uses such as boating, swimming, or other recreational and aesthetic uses, which do not reduce the amount of water in the stream.

## Answers to commonly asked questions

### What is the difference between a water right claim, permit and certificate?

These are all types of water right documents, but with significant differences:

- A claim is simply that, a claim to a water right for a water use which predates the water permitting system. Its validity can only be confirmed through judicial processes.
- A permit is the first step towards securing a perfected water right. There is a step-by-step application process, resulting in a permit issued by Ecology which allows you to construct your water system and put the water to beneficial use.
- When all the conditions of a water right permit are met, the water right is said to be perfected. When Ecology receives information confirming perfection, Ecology

issues a certificate documenting that the right has been perfected. (A different type of certificate, an adjudicated certificate, will be issued after a claim has been confirmed through a general adjudication.)

### **What if I (or the previous property owner) established a perfected right, but failed to file a claim?**

If you (or your predecessor) did not file a claim for a perfected right, that right was relinquished (that is, you are no longer authorized to withdraw or redirect that water), unless your pre-code right was exempt from the claims registration requirement. (See list of users not required to file on previous page). The Claims Registry is closed and Ecology cannot accept new claims. You will need to secure access to a legal supply of water by applying for a new water right permit or obtaining a right from someone else and obtaining Ecology's permission to change the right to your use/location.

### **How do I know if a water right claim was filed for my property?**

You may request a record search of Ecology's claims registry. Please contact the Ecology regional office nearest you. (Addresses and phone numbers are on the last page.) Note: water right records are filed by section, township and range. Be sure to include this portion of your legal property description, or have it handy, when making a request.

### **If I filed a claim, do I have a water right?**

Not necessarily. A claim filed under the Claims Registration Act does not give you a right to use the water. It was necessary to file a claim to protect a perfected water right which was established prior to 1917/1932 for surface water and 1945 for groundwater. A water right is an official authorization to use water. A water right claim is only a statement that you claim to have a perfected right.

### **Will my claim to a perfected right ever be confirmed by the state?**

A small portion of Washington's pre-code rights have already been confirmed through a process known as a general water right adjudication. An adjudication is a legal process, conducted through the Superior Court, to determine the validity and extent of existing water rights in a given area. An adjudication does not create new rights, it only confirms existing rights.

If your right is confirmed by the court, you will receive a certificate issued by the state. Each confirmed right includes a priority date (that is, the date the water right became effective), quantity, point of diversion, and place of use. Ecology will protect and enforce the elements of your right as stated on the certificate once a pre-code right is confirmed and a certificate is issued. (Note: Ecology will tentatively determine the extent and validity of a claim as part of an evaluation on an application for change, but the final determination can only be made through an adjudication.)

### **How can I protect my water right claim?**

First, verify the elements of your registered claim. A claim protects a pre-code water right if you:

- Used surface water before 1917/1932, or groundwater before 1945, and
- Filed a water right claim with the state, and
- Have continuously used the same amount of water.

You can demonstrate that the system existed prior to 1917/1932 or 1945 and has been in continuous use by showing items like photographs or maps depicting the water system, historical documents or old letters that describe the system, or tax documents. You can also use direct testimony by anyone with personal knowledge of the development of water use in the vicinity (sometimes referred to as "old timer" testimony).

If you have a registered claim, it is extremely important that you collect and maintain historical records of your water use, in order to support your claim. (For more information, refer to Ecology publication #97-1804-WR, "Assessing Your Water Right.")

### What if Ecology advises me that my water use is not protected by a claim?

You should not continue to use water if it appears that you do not have a perfected water right. Ecology will work with you to try and find alternate ways for you to use water legally. Unauthorized use of water is illegal and detrimental to your neighbors, as well as to our state's waters.

### How will I know if an adjudication will occur in my area?

When an area is scheduled for an adjudication, all affected water users within the area are notified by summonses issued from the Superior Court. It is important, however, that you not wait until that time to collect the information you need to support your claim.

### For more information

To find out more about your claim, you should first research and document your historical water use. This will prepare you to answer our questions and speed up the Ecology review. Then if you need more information about your claim and available alternatives, you can write or call the Water Resources Program at the Department of Ecology regional office nearest you. (Please have the section, township and range for the place of use handy.)

#### Northwest Regional Office

15700 Dayton Ave N, Shoreline  
P.O. Box 330316  
Shoreline, WA 98113-9716  
(206) 594-0000

#### Southwest Regional Office

300 Desmond Dr, Lacey  
P.O. Box 47775  
Olympia, WA 98504-7775  
(360) 407- 6300

### Does my claim limit my water usage in any way?

Yes. Your claim protects your water right for the quantity, purpose, and place of use established prior to the surface water and groundwater codes. Your current water use should be consistent with this information. You may request to change the purpose and place of use of your water right, but increasing the quantity of water historically used is not allowed. If you contemplate expansion of your water use, you must obtain prior authorization in the form of a new state-issued water right. If you expand your water use without first obtaining a state- issued permit, you are subject to enforcement.

#### Central Regional Office

1250 W Alder St  
Union gap, WA 98903-0009  
(509) 575-2490

#### Eastern Regional Office

N. 4601 Monroe  
Spokane, WA 99205-1295  
(509) 329-3400

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