

# Water Right Relinquishment

## Focus on

### Introduction

Washington's water law includes the principle that a water right is confirmed and maintained through beneficial use. People often use the expression "use it or lose it" to describe this principle. Put simply, a water right may be wholly or partially lost through extended periods of voluntary non-use. The return of unused water to the state is called relinquishment. The purpose of relinquishment is to ensure that Washington's limited water resources are put to maximum beneficial use for all of Washington's citizens.

**RCW 90.14.180** reads in part:

"Any person hereafter entitled to divert or withdraw waters of the state through an appropriation... who abandons or voluntarily fails, without sufficient cause, to beneficially use all or any part of said right for a period of five successive years shall relinquish such right or portion thereof, and such right shall revert back to the state..."

### Sufficient Cause

Five or more successive years of non-use triggers relinquishment of a water right unless there is *sufficient cause* to explain the non-use. The burden to prove that the right is still in good standing and should not be considered relinquished, rests on the water right holder.

According to the law (RCW 90.14.140), there are several categories of reasons that may serve as "sufficient causes" to explain why water has not been used:

#### Water unavailability

- Drought or other water unavailability.

#### Military duty

- Active service in the U.S. Armed Forces during military crisis.
- Non-voluntary service in the U.S. Armed Forces.

### Legal proceedings

- Operation of legal proceedings that directly prevent the water right holder from using the water.

### Special federal or state programs

- Federal or state agency leases or purchase options for lands or water rights that reduce or prevent the use of the right by the owner.
- Federal laws or voluntary enrollment in a federal program imposing land or water use restrictions, acreage limits, or production quotas.

### Irrigation specific

- Temporarily reduced irrigation due to varying weather conditions, as long as water diversion and delivery facilities remain able to support the full beneficial use of the water right.
- Temporarily reduced water use for irrigation resulting from the terms of a contract or similar agreement in which an electricity provider buys back electricity needed either to divert or withdraw the water or to use the water for irrigation purposes.
- Use of water conservation measures as part of the Yakima River Basin Water Enhancement Project, so long as the conserved water is reallocated in accordance with the provisions of P.L. 103-434.
- Use of measured or reliably estimated return flows in place of water from the primary source of supply.
- Reduced use of irrigation water due to crop rotation when sound farming practice advises the temporary change of crop type, and the remaining portion of the water right is put to beneficial use.
- Reduced irrigation water use from an aquifer within the Odessa ground water subarea (as defined in chapter 173-128A WAC), due to drought or low flow period.

### Change applications

- RCW 90.14.140 (1) (I) Waiting for a final determination from the Department of Ecology (Ecology) on a change application filed under RCW 90.03.250, 90.03.380, and 90.44.100.

**Additionally**, under RCW 90.14.140 (2) there are several situations that make water rights exempt from relinquishment:

### Power development purposes

- Water rights for power development, as long as annual license fees are paid in accordance with chapter 90.16 RCW.

### Standby or reserve water rights

- Water rights used only in times of drought or other low flow periods, so long as withdrawal or diversion facilities remain in good operating condition.

### Municipal water supply

- Municipal water supply for residential purposes with fifteen or more service connections or for governmental purposes by a city, town, public utility district, county, sewer district, or water district. [While exempt from relinquishment, municipal water rights are still subject to abandonment.]

### Water rights of the United States

- Use of certain waters of the state when prevented for specific periods under RCW 90.40.030.

### Water right leases for use on new land

- Ecology approved water right leases for use on new lands, if the person leasing the water right makes beneficial use of the right.

### Reclaimed water use

- Agricultural industrial process water used for all or a portion of the right as authorized under RCW 90.46.150.

### Trust water

- Trust water rights established under chapter 90.38 or 90.42 RCW.

### Future determined development

- Determined future development uses, to take place within fifteen years of the most recent beneficial use of the water right.

### Understanding Future Determined Development Plans

The Washington State Supreme Court held that the water right holder must have a firm, fixed plan prior to the expiration of five years from the date of last use of water.

Feasibility studies do not constitute such a plan. A plan may not be altered once it is fixed and determined, and the actual physical development must be consistent with the plan.

Factors that may serve as evidence of development plans include, but are not limited to: 1) applying for necessary permits; 2) notifying Ecology of a plan to use the water for a future development; 3) actual physical development consistent with the plan; 4) acquisition of additional land, materials, and so on, to carry out the plan.

For legal guidance, review *R.D. Merrill Co. v. Pollution Bd.*, 137 Wn.2d 118, 969 P.2d 459 (1999).

## How are Water Rights Formally Relinquished?

A person may voluntarily relinquish their water right and should do so if the water use has diminished or completely stopped for five or more successive years. You may obtain a form to voluntarily relinquish a water right by contacting any Ecology office listed below or by visiting the Water Resources Program forms website at <http://ecology.wa.gov/publications>.

Relinquishment can also occur when Ecology notifies a water right holder (through an administrative order) that evidence shows the water right has not been put to full use. The order will state that all or a portion of a water right has been relinquished unless sufficient cause for not using the water is shown either to Ecology or through an appeal to the Pollution Control Hearings Board. If sufficient cause is not shown, the water right will be relinquished.

It is the responsibility of the water right holder to maintain the water right in good standing.

## Make Your Own Evaluation of a Water Right Document

It is important to verify the validity of a water right associated with a property purchase or water right transfer. We recommend making your own independent assessment of whether the water was consistently used and in the manner described in the water right document. For additional information on assessing a water right, see Publication #97-1804-WR "Focus on Assessing Your Water Right."

If a water right has been formally relinquished and the paperwork completed, the regional offices should have the information in their records. However, be aware that non-use for five or more successive years without sufficient cause may result in relinquishment whether the paperwork is completed or not.

## Contact Information



Region	Counties served	Mailing Address	Phone
<b>Southwest</b>	Clallam, Clark, Cowlitz, Grays Harbor, Jefferson, Mason, Lewis, Pacific, Pierce, Skamania, Thurston, Wahkiakum	P.O. Box 47775 Olympia, WA 98504	360-407-6300
<b>Northwest</b>	Island, King, Kitsap, San Juan, Skagit, Snohomish, Whatcom	P.O. Box 330316 Shoreline, WA 98133	206-594-0000
<b>Central</b>	Benton, Chelan, Douglas, Kittitas, Klickitat, Okanogan, Yakima	1250 West Alder Street Union Gap, WA 98903	509-575-2490
<b>Eastern</b>	Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grant, Lincoln, Pend Oreille, Spokane, Stevens, Walla Walla, Whitman	4601 North Monroe Spokane, WA 99205	509-329-3400
<b>Headquarters</b>	Statewide	P.O. Box 46700 Olympia, WA 98504	360-407-6000

## Related Information

Find related laws and rules, including case law, on the Department of Ecology’s web site at: <http://ecology.wa.gov>.

## ADA Accommodation

To request an ADA accommodation, contact Ecology by phone at 360-407-6872 or email at [WRpubs@ecy.wa.gov](mailto:WRpubs@ecy.wa.gov), or visit <https://ecology.wa.gov/accessibility>. For Relay Service or TTY call 711 or 877-833- 6341.