

# LANDOWNER'S GUIDE To Washington Water Rights





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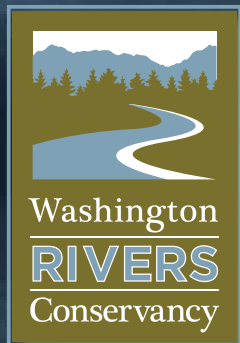
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Washington Rivers Conservancy is a non-profit organization working in Washington's communities statewide to provide water rights expertise, including negotiating and facilitating the transfer of water to instream flow. We partner with water right owners, land trusts, state and federal agencies, and tribal entities promoting voluntary, market based approaches that have economic, environmental and social benefits for communities in Washington. We promote and develop effective policies and programs to ensure Washington's rivers and streams are healthy while benefiting agriculture, jobs, fisheries, water quality, and other community values. We provide expertise and technical assistance to local watershed planning groups, conservation districts, private landowners and others on water rights and water rights acquisitions. We assist private landowners in the development of innovative transaction methods for flexibly managing their water for irrigation use and instream flow. We also provide non-regulatory evaluations of the extent and validity of water rights for public entities and private individuals.

## INTRODUCTION

This handbook is intended to demystify water rights and provide the basic tools for understanding what a water right provides and what it doesn't. This is important if you own land with water rights, want to buy or sell land with water rights, or want to transfer water rights from one piece of property to another. Unfortunately, there is a great deal of misinformation in circulation about water rights. This misinformation has caused many landowners and would-be land buyers great disappointments.

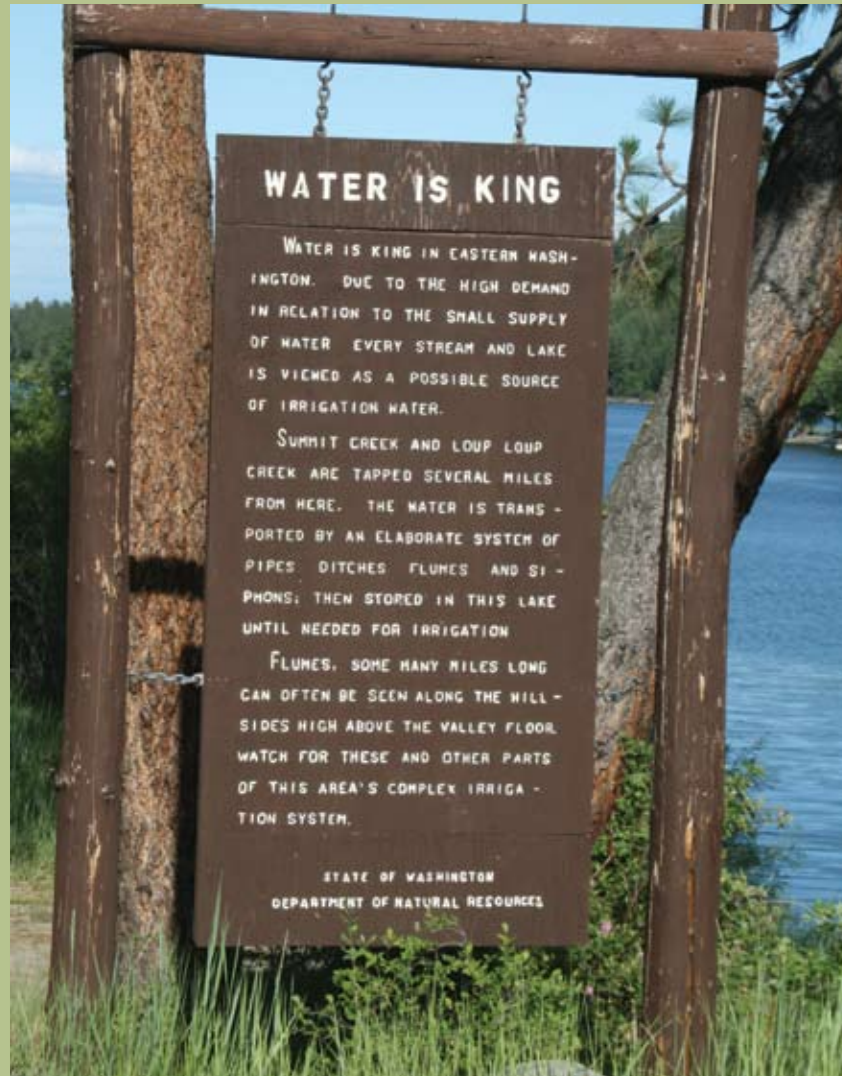
Although this guide will not make you a water rights expert, it will provide you with sufficient background to understand the basics of a water right, help you know what questions to ask and help you understand the answers provided. Washington's water law is very complex. It is based upon state law and is interpreted through a number of administrative rules and case law. Each water right is specific to a location, source, use, and other parameters.

This handbook is not a legal or technical guide and is not meant to replace legal advice. If you have particular questions regarding a specific water right, we encourage you to seek advice from a technical water rights specialist, an attorney who specializes in water law, and/or staff at Washington Rivers Conservancy.

We used to have the luxury of thinking that water was an unlimited resource. However, particularly in Eastern Washington, this has not been the case for many years. As early as 1905 when the Bureau of

Reclamation came to the Yakima Valley, there were already more claims to water than the rivers and streams could provide. The limited water supply has become more evident as the population of the state has grown.

Between 1950 and 2000, the number of people living in Washington grew from 2.4 million to 5.9 million. By the year 2020, the population is projected to reach 7.4 million. This growth is not limited to the Puget Sound region. Between 2000 and 2008, three eastern Washington counties were in the top five fastest growing counties in the state, including Franklin County, which came in first with a whopping 42 percent population increase. This growth, coupled with further possible changes to climate, is anticipated to create critical challenges in managing the state's water resources. We must become better stewards of our water if we are to ensure sufficient amounts are available for all, including agriculture uses, recreation, power generation, municipal supply and rivers. Part of this stewardship is an understanding of how water rights work under Washington water law.







I understood when I was a child that without water,  
everything dies. I didn't understand until much later  
that no one "owns" water.

*Marq de Villiers, Water, 2000*



## IF ONLY I HAD KNOWN...

The following tale is based upon real events that are unfortunately fairly common. The author's name has been withheld and some of the details have been changed to protect the privacy of those involved, but the basic story is true and points to one of the key reasons this handbook was created.

For most of my life, I had dreamed of having a small farm and horses. In 2004, I fell in love with 40 acres of land for sale that was advertised as having "irrigation water rights." The sellers' disclosure statement affirmed there were irrigation rights to the property. The land all around the property was being actively irrigated and farmed, although the 40 acres I had my eye on were not currently being irrigated. My understanding was that this parcel had originally been part of an 800-acre spread that had been subdivided three years earlier into 40-acre pieces.

I wrestled with the decision to buy the land. It met many of my criteria—beautiful views, accessible, good soil, great building site, and not too far from town. But the property was not inexpensive so I needed to consider the investment carefully. Eventually, I did make an offer on the land and wound up buying it. A couple of months later, I contacted a local driller to install a new well to irrigate the property.

Some time went by and the driller finally called me back and told me he couldn't find any water right documents for my property. Under state law he was not supposed to drill a well unless there were papers showing there was water with the land. Although I hadn't received any water right documents from my real estate agent or the seller, I was quite sure they existed somewhere because the property had been advertised as having water rights, irrigation water rights were referred to in the deed, and the neighbors were irrigating.



Photo by Pam Jenkins

Both the real estate agent and the seller searched but found no documents. I was devastated. What good was 40 acres with no water for irrigation? How could I live on 40 acres of dry land that I had no hope of ever turning green? What sort of pasture could I have for my horses if I couldn't grow grass or hay? How was I ever going to sell this useless piece of land?

Needless to say, this was an extremely painful experience. This landowner learned the hard way that lack of knowledge about water rights can lead to huge disappointments and potentially costly mistakes. The *Landowners' Guide to Washington Water Rights* will help you to avoid such a difficult experience.

Water is the best of all things.

Pindar (c. 522- c. 438 BC), *Olympian Odes*





Photo by Wendy Valdez



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# WASHINGTON WATER LAW

## WHAT IS A WATER RIGHT?

A water right is the *right to use* water. But that's just the beginning of the story. Water is a public resource, which is owned by all the people of the state in common. When you acquire a water right, you do not acquire ownership of the water, rather you acquire a right to use water according to the terms and conditions of your specific water right.

### **A water right is:**

**A right to a beneficial use of a reasonable quantity of public water for beneficial purpose during a certain period of time occurring at a certain place.**

In general there are two types of water rights-- surface water rights and groundwater rights. If you have the right to divert water from a river, stream, lake, or spring, you have a surface water right. If you have the right to pump water from a well, you have a groundwater right. Many of the same principles apply to both surface water rights and groundwater rights, but there are also important differences, some of which we will highlight in this handbook.

Your right to use water is defined and limited by the elements of your water right and any provisions on the water right documents. The elements include where you can take water (point of diversion, point of withdrawal), at what rate you can take water (instantaneous quantity), how much water you can use in total each year (annual quantity), what you can use the water for (purpose of use), where you can use it (place of use), and when you can use it (season of use) (See "What are the key parameters specified in a water right?" page 4) .



Photo by Pam Jenkins

A **water right** is referred to as a *usufructuary* or *use* right—a property interest in the use of water. Many people believe that “It’s my water, it’s my water right, and I can do what I want with it. It’s a property right.” This is a commonly held belief, which is only partially true. In considering a water right as a property right, it is helpful to compare it to the variety of property rights to land. The most common type of property right to land is ownership of the land, but there is also a right to temporarily occupy the land (a lease), a right to cross the land (an easement), or a right to use the land in a defined way (a license). All of these are types of property rights. The fact that a water right is a property right does not mean ownership of the molecules of water; rather it means a person has the right to use the water within the scope and limits of the water right.



## KEY CONCEPTS OF A WATER RIGHT

There are several terms used in association with water rights that are especially important to understand. We highlight four terms here: beneficial use, priority date, instantaneous quantity, and annual quantity.

### Beneficial Use

The term *beneficial use* is one of the most powerful terms related to water rights. Beneficial use has dual meanings. It is both the “measure and limit” of a water right and the purpose(s) for which water is used.

People talk about “paper water rights.” What they are referring to is what the water right document says is the quantity of water under the right. Your *actual* water right is determined by how much water you and your predecessors have historically used. If historical water use has been less than the full quantity of water stated in the document,

your right is limited to the amount that has actually been used; that is, the water right is limited by the beneficial use of the right.

Over the years the purposes of use that have been accepted as beneficial uses have changed. Originally, irrigation, mining, manufacturing, and domestic/municipal supply were functions that were considered to be beneficial uses of water. The list of beneficial uses has expanded over the years as people’s activities and uses of water have grown. The list now also includes stockwatering, industrial and commercial uses, hydroelectric power production, and thermal power production purposes. In addition, leaving water instream is also recognized as a beneficial use.

You do not own the water itself, just the right to use it.

Historically only out-of-stream uses of water were considered to be beneficial uses. As people recognized the need for water to support fish and wildlife, the legislature recognized that beneficial uses may also include leaving water instream for fish and wildlife maintenance and enhancement, and recreational purposes such as whitewater rafting. In response to the recognized need for water in stream for fish and wildlife, the Washington Department of Ecology (Ecology) is in the process of setting instream flow levels in various rivers and creeks around the state. These instream flows are recognized as water rights equal in all respects to water rights for out-of-stream uses.

### Priority Date

The priority date of a water right is a very important element in valuing a water right. Washington has a prior appropriation water right system also referred to as a system of “first-in-time, first-in-right.” A person who established a water right first has a senior priority and the right to divert all their water before the person with the next junior right (next right in chronological order) can take any of their water from the same source. As a result, if two farmers have rights to divert water from the





same stream, and the first farmer has a water right with a priority date of June 30, 1885, the first farmer is allowed to divert water at the maximum rate of diversion under that water right before the second farmer with a June 15, 1900, priority date can take any water.

If your water right was established prior to the water codes, the priority date is the date the water was first put to use. If your water right was acquired through the permitting process, the priority date is the date the application for a water right was filed with Ecology.

### Instantaneous Quantity and Annual Quantity

One concept that commonly causes confusion is the difference between the rate at which you may divert or pump water—the instantaneous quantity, and the total quantity of water you may use each year—annual quantity. To understand how the two concepts fit together it can be helpful to imagine using a hose to fill a bathtub. The annual quantity you are allowed under your tub water right is one full tub of water per year. Once the tub is full, that is all the water you can use for that year. The instantaneous quantity of your right is the maximum rate at which water may flow out of your hose into the tub. If the hose is turned on full blast, it may take only minutes to fill the tub. If however, the faucet is turned down and the water comes from the hose in drips, it may take a couple of days to fill the tub. No matter if the tub is full in a few minutes or a few days, once the tub is full, you are not authorized to divert or withdraw any more water that year.

The same is true for your water right. For many irrigation water rights, if water is diverted or pumped continuously at the maximum allowable rate, the annual quantity of water will be used well before the irrigation season is over for the year. The choice of how you use water under your water right is up to you, but your use is limited by both the instantaneous and annual quantities. As a responsible water



Photo by Growing Washington

right holder, you should keep track of both the rate at which you divert water and the total quantity of water you use throughout the season. This is best done by metering your use. (See metering, page 8.)

If you have an older water right that was developed many years ago, it may not include a limit for the total quantity of water you can divert or withdraw and put to beneficial use each year. The water right may specify only the instantaneous quantity or rate of diversion. If that is the case, your water right is still limited to the total annual quantity needed for the beneficial use of the water.

Handy Volume Equivalents		
1 acre-foot	=	325,851 U.S. gallons
1 million gallons	=	3.0689 acre-feet
1 cubic foot per second	=	448.8 gallons per minute
1 cubic foot per second	=	1.983 acre-feet per day
1 gallon per minute	=	0.004418 acre-feet per day

For example, if you irrigate apple trees, your right will be limited by the consumptive use (CU- the amount of water used by the trees during the growing season) required for apples in your area, plus a reasonable efficiency for your irrigation system. If, for example, the CU is 3.0 acre-feet per acre, your system is 75% efficient and you irrigate 20 acres of orchard, your right is limited to a total

quantity of 80 acre-feet of water per year.  $(3.0 \text{ af/a} \times 20 \text{ a} = 60 \text{ af} / .75 = 80 \text{ af.})$

Using substantially more water than is required for a given beneficial use is referred to as *waste*, which is prohibited under the water code. Under this example, use of substantially more than 80 acre-feet per year could be considered *waste*.



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

**CERTIFICATE OF WATER RIGHT**

Surface Water (issued in accordance with the provisions of Chapter 117, Laws of Washington for 1917, and amendments thereto, and the rules and regulations of the Department of Ecology.)

Ground Water (issued in accordance with the provisions of Chapter 205, Laws of Washington for 1945, and amendments thereto, and the rules and regulations of the Department of Ecology.)

ISSUANCE DATE	APPLICATION NUMBER	PERMIT NUMBER	CERTIFICATE NUMBER
---------------	--------------------	---------------	--------------------

APPLICANT (FIRM): \_\_\_\_\_ CITY: **Wenatchee** STATE: **Washington** ZIP CODE: **98801-2819**

This is to certify that the herein named applicant has made proof to the satisfaction of the Department of Ecology of a right to the use of the public waters of the State of Washington as herein defined, and under and specifically subject to the provisions contained in the Permit issued by the Department of Ecology, and that said right to the use of said waters has been perfected in accordance with the laws of the State of Washington, and is hereby confirmed by the Department of Ecology and entered of record as shown, but is limited to an amount actually beneficially used.

**PUBLIC WATERS TO BE APPROPRIATED**

SOURCE: **Lake Chelan**

TRIBUTARY OF (IF SURFACE WATERS): **Columbia River**

MINIMUM CUBIC FEET PER SECOND	MAXIMUM GALLONS PER MINUTE	MAXIMUM FEET PER YEAR
<b>0.011</b>		<b>.5</b>

QUANTITY, TYPE OF USE, PERIOD OF USE:  
**0.011 cfs and .5 acre-feet per year for continuous single domestic supply.**

**LOCATION OF DIVERSION/WITHDRAWAL**

APPROXIMATE LOCATION OF DIVERSION/WITHDRAWAL:  
**2200 feet east and 700 feet north from the southwest corner of Section 33**

LOCATED WITHIN (SMALLEST LEGAL SUBDIVISION)	SECTION	TOWNSHIP N.	RANGE (E. OR W.) W.M.	M.F.L.A.	COUNTY
<b>SE 1/4 SW 1/4</b>	<b>33</b>	<b>28</b>	<b>21 E</b>	<b>47</b>	<b>Chelan</b>

**RECORDED PLATTED PROPERTY**

LOT	BLOCK	OF (GIVE NAME OF PLAT OR ADDITION)
-----	-------	------------------------------------

**LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED**

**That portion of Government Lot 4, Section 33, T. 28 N., R. 21 E.W.M.**

**PROVISIONS**

All practical and appropriate water conservation practices will be employed.

This authorization is subject to Washington Department of Fisheries juvenile salmon screening criteria (pursuant to RCW 75.20.040) and/or Washington Department of Wildlife gamefish screening criteria. Screening criteria: The diversion intake shall be tightly screened at all times with wire mesh having openings with dimensions not greater than 0.125 (1/8) inch. The approach velocity of the water is to be no greater than 0.40 ft/sec.

At such time that the Department of Ecology determines that regulation and management of the subject waters is necessary and in the public interest, an approved measuring device shall be installed and maintained in accordance with RCW 90.03.360.

What are the key parameters specified in a water right?

**Instantaneous quantity (Qi):** The rate at which surface water is diverted, expressed in cubic feet per second (cfs,) or the rate at which groundwater is withdrawn, expressed in gallons per minute (gpm).

**Annual quantity (Qa):** The total quantity of water that may be diverted or withdrawn in one year.

**Purpose of use:** The purpose for which the water is diverted or withdrawn, e.g., irrigation, stockwatering, municipal use. The purpose of use must be a use that is recognized as a beneficial use of water.

**Season of use:** The period of time during the year when water can be diverted or withdrawn and put to beneficial use.

**Point of diversion or point of withdrawal:** The location where surface water is diverted from a stream, or groundwater is withdrawn from a well.

**Place of use:** The location where the water will be put to beneficial use. The place of use is identified by its legal description-- section, township, and range to the nearest quarter/quarter section, by parcel number, or by metes and bounds survey.



## HOW IS A WATER RIGHT ESTABLISHED?

It is important to know how water rights were historically established. This understanding helps in determining whether a water right is valid. In Washington there have been two different eras for establishing water rights-- before and after the adoption of the water codes.

When the pioneers came west and began to cultivate, mine, and log the land, water rights could be established in two ways. First, if a person owned land adjacent to a stream or lake, he or she also automatically became an owner of *riparian water rights*. For others who wanted to use water but needed to divert it and transport it to their land, they could simply post notice on a tree and/or record notice with the county and proceed to divert the water and put it to beneficial use on the land. This method of acquiring a water right is called *appropriation* and is the basis of Washington's *prior appropriation system*.

When the water codes were adopted in 1917 (surface water) and 1945 (groundwater), things changed dramatically. Since those dates, in order to establish a water right you must file an application with Ecology and obtain a *permit* to develop the water right. Once you have put the water to full beneficial use, the water right is considered to be "perfected" and Ecology will issue a water right *certificate* for the quantity of water put to beneficial use and the other elements as shown on the permit. If you currently have a water right permit, you must put the water to beneficial use and obtain a certificate from Ecology. If you have a certificate from Ecology, you have a water right, as long as you continue to use it.

If you have a surface water right that was established before 1917, or a groundwater right that was established before 1945, your water right must be represented by a *water right claim*. Because water rights that were established prior to the water codes often had little or no paper trail, the legislature allowed people with such water rights to file a claim to the right with Ecology. Since 1969 there have been three registration periods. If you have a valid water right claim for the use

of surface water before 1917 or groundwater before 1945 on file with Ecology, you have preserved whatever right was established prior to the water code.

**Beware: If you do not use your water for a period of five years, the water right may expire.** More discussion on this topic is provided in a later section. As long as you continue to use your water right according to the terms of the certificate or valid water right claim, you will retain your water right. (See "How do you keep your water right?" page 7).

### *Do you own the water right if you are served by a ditch company or irrigation district?*

If the water you use is supplied by an irrigation district formed under Chapter 87.03 RCW, the right to use the water is appurtenant to your land and your beneficial use of that water is the basis, measure and limit of your portion of the overall water right. But the water right itself is typically held by the irrigation district, who also has a right to divert, distribute and convey the water for you and all the water users within the district. In addition to any other required approvals, a change in place of use water within the district boundaries is at the discretion of the District's Board of Directors as provided in Chapter 90.03.380 RCW. Contact the district manager to review the district's policy on water transfers.

Ditch and canal companies were historically formed in one of two ways. The first was for a few individuals who owned land and water rights to organize a company to deliver water through a common distribution system. The company would acquire ownership of the water rights and issued shares to individuals who were then entitled to be delivered water based upon the number of shares they owned.

The second was for a larger group of water right owners to form a company to deliver the water. In these types of companies, the water rights were retained by individual land owners. If you are a member of a ditch or canal company, we encourage you to contact the company to find out specifically whether you or the ditch company owns the water rights for your property. You should request a copy of the articles of incorporation and bylaws of the ditch or canal company. Information on your water right may also be included in the title to your property or on the face of the plat.





STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY  
WATER RIGHT CLAIMS REGISTRATION

**WATER RIGHT CLAIM**

RECEIVED  
DEC 11 10 30 AM '08  
WATER RIGHTS DIVISION

1. NAME \_\_\_\_\_  
ADDRESS \_\_\_\_\_  
ENTIAT, WA ZIP CODE 98822

2. SOURCE FROM WHICH THE RIGHT TO TAKE AND MAKE USE OF WATER IS CLAIMED: SURFACE  
(SURFACE OR GROUND WATER)  
W.R.I.A. \_\_\_\_\_ (LEAVE BLANK) 46

A. IF GROUND WATER, THE SOURCE IS \_\_\_\_\_  
B. IF SURFACE WATER, THE SOURCE IS ENTIAT RIVER

3. THE QUANTITIES OF WATER AND TIMES OF USE CLAIMED:  
A. QUANTITY OF WATER CLAIMED 2.2 C.F.S. PRESENTLY USED NONE  
(CUBIC FEET PER SECOND OR GALLONS PER MINUTE)  
B. ANNUAL QUANTITY CLAIMED 320 PRESENTLY USED NONE  
(ACRE FEET PER YEAR)  
C. IF FOR IRRIGATION, ACRES CLAIMED 80 PRESENTLY IRRIGATED NONE  
D. TIME(S) DURING EACH YEAR WHEN WATER IS USED: APRIL - SEPT.

4. DATE OF FIRST PUTTING WATER TO USE: MONTH NOT KNOWN YEAR 1890

5. LOCATION OF THE POINT(S) OF DIVERSION/WITHDRAWAL: 1000' FEET EAST AND 100'  
FEET NORTH FROM THE NW CORNER CORNER OF SECTION 33  
BEING WITHIN SW 1/4 - SW 1/4 OF SECTION 38 T. 26 N., R. 20 E. (E. OR W.) W.M.  
IF THIS IS WITHIN THE LIMITS OF A RECORDED PLATTED PROPERTY, LOT \_\_\_\_\_ BLOCK \_\_\_\_\_ OF \_\_\_\_\_  
(GIVE NAME OF PLAT OR ADDITION)

6. LEGAL DESCRIPTION OF LANDS ON WHICH THE WATER IS USED: NW 1/4 OF SE 1/4 AND SW 1/4 OF NE 1/4 OF SEC 33 T 26 Range 20 E.  
SEE LEGAL DESCRIPTION ATTACHED

7. COUNTY CHELAN

7. PURPOSE(S) FOR WHICH WATER IS USED: IRRIGATION - STOCK

8. THE LEGAL DOCTRINE(S) UPON WHICH THE RIGHT OF CLAIM IS BASED: APPROPRIATION  
WATER RIGHT FILED 2-12-1913 IN CHELAN CO.

DO NOT USE THIS SPACE  
THE FILING OF A STATEMENT OF CLAIM DOES NOT CONSTITUTE AN ADJUDICATION OF ANY CLAIM TO THE RIGHT TO USE OF WATERS AS BETWEEN THE WATER USE CLAIMANT AND THE STATE OR AS BETWEEN ONE OR MORE WATER USE CLAIMANTS AND ANOTHER OR OTHERS. THIS ACKNOWLEDGEMENT CONSTITUTES RECEIPT FOR THE FILING FEE.  
DATE RETURNED \_\_\_\_\_ THIS HAS BEEN ASSIGNED WATER RIGHT CLAIM REGISTRY NO. \_\_\_\_\_

I HEREBY SWEAR THAT THE ABOVE INFORMATION IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF.  
 X  
DATE 6-25-74  
IF CLAIM FILED BY DESIGNATED REPRESENTATIVE, PRINT OR TYPE FULL NAME AND MAILING ADDRESS OF AGENT BELOW  
\_\_\_\_\_  
\_\_\_\_\_  
 ADDITIONAL INFORMATION RELATING TO WATER QUALITY AND/OR WELL CONSTRUCTION IS AVAILABLE

DIRECTOR - DEPARTMENT OF ECOLOGY  
*[Signature]*

A FEE OF \$2.00 MUST ACCOMPANY THIS WATER RIGHT CLAIM ORIGINAL DWR  
RETURN ALL THREE COPIES WITH CARBONS INTACT, ALONG WITH YOUR FEE TO:  
DEPARTMENT OF ECOLOGY  
WATER RIGHT CLAIMS REGISTRATION  
P.O. BOX 829 OLYMPIA, WASHINGTON 98504

**Is a water right claim a water right?**

The short answer is maybe. Water rights can be represented by different documents. A water right claim may be a water right; however, unlike a water right certificate there has been no agency or court review of whether the claim is valid. If the water rights in an area are adjudicated by a court, the holder of a water right claim (or a water right certificate) must prove his/her claim in court. At the end of the adjudication, the court issues a decree that affirms, modifies, or denies the water right claim. Ecology then issues each claimant who has a valid claim an adjudicated water right certificate. Until an area is adjudicated, a water right claim is the paper document that reserves and represents the water right.





## HOW DO YOU KEEP YOUR WATER RIGHT?

Once your water right has been perfected by being put to beneficial use, you must continue to use the water or face possible loss of all or a portion of your water right through *abandonment* or *relinquishment*.

*Abandonment* is a common law doctrine that says you may be found to have abandoned your water right if you fail to use your water for an extended period of time and you intended to abandon or give up the right.

Historically, a person could lose a water right only through abandonment. While abandonment still applies to water rights in Washington, the more common way a water right is lost is through *relinquishment*. Relinquishment is a statutory provision that has been in effect since 1967. Relinquishment applies when you voluntarily fail, without sufficient cause, to use all or a portion of your water for five consecutive years. The portion of the right not used is subject to being lost.

The doctrine of relinquishment has caused unintended consequences, including waste of water. In order to fend off relinquishment, some people have diverted water and run it through their delivery system and out the other end without applying the water to any beneficial use. Others have applied substantially more water than needed in a given year, again to avoid relinquishment of a part of their water right. Both of these actions are considered waste under the law and are not valid methods for preserving a water right. There are other ways to keep your water right from being relinquished if you are using less than the full amount for five or more years.

State law provides relief from relinquishment under certain circumstances. One section of the relinquishment statute lists conditions that may impact water use and which can shield you from relinquishment. These conditions include years where there is a drought, circumstances where water is not available such as a washed out diversion, variations in weather that reduce crop water requirements such as cooler temperatures or

higher than normal precipitation amounts, and other conditions that are beyond the control of the water right holder.

There are also certain types of water rights where relinquishment does not apply. These include water rights that are in the Trust Water Rights Program. The Trust Water Rights Program offers you an opportunity to protect your water right from relinquishment and contribute to stream flows. You may also be paid for your water while it is in trust. (see trust water, page 19.)

The sufficient causes and exceptions to relinquishment have been the subject of numerous court cases. If you think an exception to relinquishment may apply to your situation, we recommend you talk to a water rights expert.

### ***Relinquishment***

For the purposes of relinquishment “**sufficient cause**” includes the nonuse of all or a portion of the water by the owner of a water right for a period of five or more consecutive years as a result of:

- drought, or other unavailability of water;
- leases with a federal or state agency;
- leases of or options to purchase lands or water rights;
- temporarily reduced water need for irrigation use due to precipitation and temperature that warranted the reduction in water use;
- reduced use of irrigation water resulting from crop rotation.

There shall be no relinquishment of any water if:

- such right is used for a standby or reserve supply in time of drought or other low flow; or
- such right is a trust water right.

A complete list of sufficient causes and water rights not subject to relinquishment can be found in RCW 90.14.140. (see *Resources for Additional Information in the Appendix* for link to the statute.)



## METERING YOUR WATER RIGHT

Measuring water use is not a new concept. In the 1921 adjudication of water rights from Beaver Creek, a tributary to the Methow River, the Report of Referee directed as follows:

*Any person taking water from Beaver Creek and tributaries shall provide and maintain at his own expense proper diversion works and measuring devices as are required by statute, under Section 87 of Chapter 117, laws of 1917.*

Measuring is still required by statute. RCW 90.03.360 requires metering of the following:

- Diversions for all new water rights;
- Diversions from waters in which the salmonid stock status is depressed or critical;
- Diversions of more than 1 cubic feet per second (cfs).

In addition, Ecology may require metering for all previously existing water rights.

Metering can be a valuable strategy for maintaining your water right and maintaining its value. In some areas water rights are more valuable than the property on which the water rights are used. In such cases, having solid information on the quantity of water applied to the land is extremely important for establishing valuation. Metering records provide substantive information to a potential buyer of your water right.

Metering also provides information to quantify your water right if you want to apply for a change of use or some other modification of the right.

As watershed management evolves, metering can provide essential information for local water planning. Metering can help ensure that water is beneficially used and applied according to valid water right specifics, and can encourage more efficient water use. This

information may become even more critical if global climate change affects local water storage and precipitation patterns.

Ultimately, verifiable, quantifiable knowledge of your water use is powerful information that backs up the value and validity of your water right. Rather than something to be feared, metering will help all of us better understand and exercise good management of this precious public resource.

For information about obtaining a meter see Resources for Additional Information in the Appendix.



Photo by Dennis O'Callaghan



## HOW CAN YOU CHANGE OR TRANSFER YOUR WATER RIGHT?

- Can you change the location where you use your water right?
- Can you change the purpose for which you are using the right?
- Can you sell your water right to someone who wants to move the water to another location?

The answer to each of these questions is “yes, maybe.”

### *Water Right Changes*

Modifying an element of a water right is called a change. For example, you own and have irrigated 10 acres under your water right. You recently purchased a 12-acre parcel next door that does not have a water right on it. The parcel has better soil and will increase crop yield. You could apply to Ecology or your county’s Water Conservancy Board to change the place of use from the original 10-acre parcel to the new 12-acre parcel. If Ecology found that this change could be made without injury to any other water rights, the department would approve the change. Your right would still be limited to the irrigation of 10 acres within the 12-acre place of use. Ecology would issue a superseding certificate with the new place of use. If your water right is represented by a water right claim, Ecology would issue a certificate of change with the new place of use.

A water right may also be transferred. If you were to sell your property including the water right, the right would be transferred to the buyer and no Ecology action is required. If you kept your property but sold your water right to someone who wanted to use it on other land the water right would be transferred to the buyer and to a different place of use. This would require Ecology approval. The determination of whether a change or a transfer will be allowed requires the same analysis by Ecology to determine whether any other water right might be impaired. We refer to both transfers and changes as changes.

As it becomes more and more difficult to obtain new water rights, people are relying upon changes to existing water rights to meet their needs. Water rights can be changed or transferred as long as Ecology approves the request. When a request is filed with Ecology to change a water right, Ecology’s primary focus is whether the change would impair any other water right. If the change would cause impairment, Ecology cannot approve the change. Unlike the regulation of water rights where a senior right has priority over junior rights, a change may not harm *any* water right, senior or junior, to the right being changed.

In making a decision on a request to change a water right, Ecology also makes a tentative determination of the *extent and validity* of the water right to be changed. That is, Ecology investigates the legal basis of the water right and also the historical use of the right. If Ecology finds that the change can be made without impairing any other existing water rights, it will approve the change in the quantity it determines has been historically used.

To expedite the change process many counties have approved the formation of a county Water Conservancy Board as authorized by Chapter 90.80 RCW. Conservancy Boards are empowered to accept and review applications for changes to water rights. The Board reviews the proposed change, investigates the water right and issues a Record of Decision approving or denying the change. The Board’s recommendation is sent to Ecology for a final decision in which the department may affirm, reverse, or modify the Board’s decision. If your county has a Conservancy Board you can obtain a decision on your change application much more quickly than if you file it directly with Ecology.

## WATER RIGHTS ADJUDICATIONS

As previously discussed, if you apply to change your water right, Ecology will investigate the legal basis of the right and the historic use of water under the right and make a “tentative determination” of the extent and validity of the right. However, only a court-- through what is called a *water rights adjudication*-- can legally confirm what your water right is. A water rights adjudication is a court proceeding to “quiet title” to all water rights within the area of the adjudication. The court determines the validity and extent of all water rights in the area and how they fit together by priority date for purposes of regulation.

Historically, adjudications were often the result of feuds over water rights to a particular stream. When someone thought someone else was getting more water than they should, they would ask (demand)



Photo by Pam Jenkins

### *Adjudications*

There have been 83 water right adjudications in the state of Washington since 1918. The earliest was in 1918 and the latest is still underway. A map of adjudicated basins can be found at [www.ecy.wa.gov/programs/wr/rights/Images/pdf/adjinstateamap.pdf](http://www.ecy.wa.gov/programs/wr/rights/Images/pdf/adjinstateamap.pdf). A stream can be adjudicated more than once if the original adjudication occurred many years ago. Probably the most well known adjudication is the Yakima adjudication. This general adjudication began in 1977 and the trial court issued the last conditional final order in April 2009. The order has been appealed to the Court of Appeals. When it is completed, the court will have confirmed or denied water rights for the Bureau of Reclamation, the Yakama Nation, and cities, as well as irrigation districts and canal companies representing more than 40,000 landowners and water right owners.

that the water rights be adjudicated. Adjudications are now being considered more as tools for water management rather than ways to resolve water right disputes. Once all the water rights in an area are adjudicated, Ecology can assign a watermaster or stream patrolman to the area who has the authority to regulate water use based upon the rights as confirmed by the court.

If an adjudication occurs in your area, you will be required to make a claim in court for your water right and provide evidence in support of your claim. This will be the case whether you have a certificated water right or a water right claim. The court cannot grant new water rights in an adjudication; it only has the authority to confirm existing rights. But the court can find that a water right is not valid and deny the right or find that the right has been used at less than its full amount and reduce the right. At the end of the adjudication, the court issues a decree that lists all the confirmed water rights and directs Ecology to issue a certificate to each water right owner. Such certificates are referred to as “*adjudicated certificates*.”



## INVESTIGATING A WATER RIGHT

A water right is a valuable asset. Just as you keep track of and manage your other assets, it is important to know what your water right really is and to ensure it remains valid. As we discussed above, your actual water right is not necessarily what is stated on the certificate or water right claim—that is your *paper water right*. If you want to know what your actual water right is, you can conduct a *due diligence* investigation of your right.

A due diligence investigation is also extremely important if you are considering buying property with a water right or buying a water right to move it to a different location. (In Washington, a water right is sold with the property unless it is specifically reserved from the sale.)

The primary focus of a due diligence analysis is to determine the current validity and extent of the water right. You will want to find a document that provides evidence of the legal basis for your water right (water right claim, permit or certificate). You will also want to obtain evidence of continued beneficial use since the date water was first put to use. If you are considering buying a water right, there are additional steps you may want to take.

You don't have to collect every bit of information on the list but you want to have enough to support two primary assertions: (1) that the right is valid, and (2) that the quantity of water stated on the water right document has been beneficially used under the right.

You can conduct a due diligence investigation on your own. However, if you are considering buying property that is advertised as having a water right or buying a water right to transfer off the land, we recommend you consult Washington Rivers Conservancy, a technical water right expert, or an attorney experienced in water law.

The following is a brief discussion of information and resources that Washington Rivers Conservancy uses when conducting a due diligence determination of a water right.

### Supporting information for ensuring the validity of a water right:

1. **Obtain copies of the water right certificate, permit, or claim.** Ecology maintains files on virtually every water right within the state. You may obtain copies of water right documents from Ecology by contacting the regional office for the county in which your property is located (see the Resources section). Keep in mind that the summary information you see on the document, including instantaneous quantity, annual quantity, and acres irrigated, is not necessarily the actual extent of your water right. The actual numbers depend on historic usage.
2. **Carefully review the current deed to the property.** Compare the legal description of the place of use and point(s) of diversion with the legal description of the land that you are considering buying. (Legal descriptions can be a little intimidating to follow. See the section “How Do You Read a Legal Description?”) If the point of diversion is not on the land you are looking at you should find out whether there is an agreement to share a well or a diversion on someone else's land. You should also verify that there is an easement for a pipe or ditch to convey the water to the property where you would be using the water.

Also review the deed to determine whether water was reserved (severed) from the land in a previous sale.

3. **Obtain topographic maps or Metsker maps** and locate the property and the point of diversion on the map, following the legal description found in the deed. Historic topographic maps may also be helpful.
4. **Obtain parcel maps** and other property descriptions from the county assessor's office.
5. **Obtain chain of ownership records from the county or title company.** Property deeds often mention water rights. These records are maintained by the county auditor's office. They may also be available from a local title company—sometimes for a fee.
6. **Gather any other historical documents that describe the property and/or water system.** This may include homestead documents, notices of appropriations, ditch easements, newspaper clippings referring to the property or water system, letters indicating water use or development,

### *Key questions include:*

- When was the water first used on the property?
- Who were the previous landowners and how did they use the water?
- Does the current water use on the property match the elements described in the water right document?
- Have there been five or more consecutive years of non-use of all or a portion of the water right? If so, what was the reason for the non-use?

books about the area, etc. Sometimes the county engineer's office has historic maps showing ditches and diversions. Other possible sources include the local conservation district, land trusts and historical societies.

7. **Track down "old timers" in the vicinity** who may have personal knowledge of water systems and water use in the vicinity.
8. **Confirm the priority date of the water right.** The priority date for a certificated water right is on the face of the certificate. For a water right claim, the claimant was required to state the date of first use of the water on the claim. Often this date is 80 to 100 years ago. To confirm the priority date of water rights represented by a water right claim you can look for recorded water rights at the county auditor's office. You can also consult local history books that discuss development of early irrigation ditches.
9. **If the right to use water is represented by shares in an irrigation district or ditch company,** contact the district or company to verify the status of the shares.
10. **Check whether the water rights are interruptible rights.** The use of some water rights is subject to interruption when the flow in the source stream or river falls below established minimum flow levels. Such rights are called "interruptible rights." If a water right is subject to interruption based upon flow levels, it will be described in the provisions section of the permit or certificate.

### **Supporting information useful for determining actual use of a water right:**

For a water right to become perfected, the water has to be put to beneficial use and all the conditions of the permit met. Once a right is perfected, the right is maintained through beneficial use. A key part of the due diligence investigation is researching the beneficial use through the lifetime of the right.

1. **Obtain historic aerial photos.** Aerial photos can be extremely useful in establishing dates of irrigation water use. Often historic photos taken approximately every ten years can help demonstrate continuous water use on particular property or show that there was a lapse in water use at a specific location. Photos can be viewed or ordered from Washington Department of Natural Resources and may also be available from the county or through Washington State Department of Transportation.
2. **Acquire historic photos of the property or the irrigation system.** Photos found in newspapers, family albums and other sources can also help establish a date and water use.
3. **Obtain diversion records, meter records, or power records for a diversion pump or well pump.** Obtaining these records can be very useful in quantifying water use. We recommend that such information be interpreted by a water engineer or other professional.
4. **Track down crop production records.** Documents showing what was grown and harvested from specific lands can also be used to demonstrate beneficial use. This might include sales receipts, accounting records, farm production logs, bills of lading, tax statements, material receipts and other transaction records.



## Additional information helpful for purchase of land with a water right:

If you are considering buying land with water rights or buying water rights separate from a piece of land, you should consider gathering additional information about the water rights.

1. **Conduct a site visit.** Walk the property, find the point of diversion, look at the condition of the water system equipment, and identify which portions of the land are currently irrigated. Take pictures. Locate key features of the land on your topographic map.
2. **Seller's Disclosure.** By law, anyone selling real property in Washington State must fill out a Seller's Disclosure form and provide it to the prospective purchaser. (Chapter 64.04 RCW.) The current disclosure form includes questions regarding both household water and irrigation water. It is important to review the disclosure statement closely and question the seller and the agent if the form raises any questions about the water rights.  
  
Caution: often current owners are not fully aware of the status of their water rights and may answer questions on the disclosure form incorrectly and not know it. The seller's disclosure is only part of the due diligence for a water right.
3. **Interview water owner/user.** Ask the current landowner or water user about the property and the water system. Ask for dates, historical information, and additional documents as noted previously.
4. **Ask the sellers for a map or site plan of the property being sold.** Compare this with your map showing the point of diversion and place of use. Ask questions if the two are inconsistent.
5. **Investigate the reliability of the water source.** In some areas, dry years are common and the water source may not produce adequate water throughout the irrigation season every year. Records of water-short years may be obtained from the Bureau of Reclamation, the National Oceanic and Atmospheric Administration, the local irrigation district or ditch company, local conservation district, or Ecology.

## Agencies and Water Regulation

### Ecology (Ch. 90.03-90.90 RCW)

- Water right permitting, including new water rights and changes
- Water right regulation and enforcement
- Review of Water System Plans submitted to Department of Health

### County Water Conservancy Board (Ch. 90.80 RCW)

- Water right changes only

### Washington Department of Health (Ch.43.70; 70.116; 70.119; 70.119A RCW; CH. 246-290 WAC)

- Review and approval of water system plans for Group A and B public water system
- Public water systems must show adequate water rights and water quantity for supplying water users on the system

### County / City / Town

- GMA authority (Ch. 36.70A RCW) – ensures public facilities, including domestic water systems, are in place and adequate when development is occupied
- Subdivision approval (RCW 58.17.110)—may not be granted unless written findings show that potable water supplies are provided.
- Building permits (RCW 19.27.097)—applicants must show evidence of adequate water supply for intended use of building unless potable water facilities are not needed.

6. **Determine the reliability of the water right.** Check the diversion records, if available to determine whether there have been years when not all the water under the right was available.

## EXEMPT WELLS

Exempt wells are a special case for groundwater rights. Under certain conditions, the law allows a person to drill a well and withdraw groundwater without applying for a water right and receiving a permit from Ecology. The exempt well provision was included in the law recognizing that some uses of small quantities of water should not be required to go through the formal permitting process required for larger uses of water. There is NO exemption for small diversions of surface water.

Specifically, an exempt well may be constructed and used to withdraw groundwater for specific purposes and in limited amounts, as follows:

- Providing water for livestock
- Watering a non-commercial lawn or garden one-half acre in size or less
- Providing water for a single home or groups of homes (limited to 5,000 gallons per day)
- Providing water for industrial purposes (limited to 5,000 gallons per day).

If you have a piece of property outside the city limits or otherwise not served by a municipal water system and want to build a house on it, you can drill an exempt well and withdraw up to 5,000 gallons per day for in-house use and irrigation of not more than a half-acre of lawn and garden. This is the most common use of an exempt well.

Where things become more complicated is if you have property not served by a municipal water system that you would like to subdivide and develop into multiple lots with water provided. **The exempt well provision does not allow you to construct a 5,000 gallon-per-day well for each lot.** If the property has a valid water right this can be used (perhaps requiring a change application) to provide water for the new



lots. Or one or more exempt wells may be installed to serve all of the lots, but the total withdrawals from all the wells combined would be limited to 5,000 gallons per day.

If there will be more than two water connections to the water system, the subdivision qualifies as a public water system. That brings the State Department of Health (DOH) and/or the county health department into the picture. The health department(s) must approve

a water system plan for any public water system. Part of the plan is a requirement that the developer demonstrate there are adequate water rights to support the water system for the development

Although an exempt well can be constructed without first obtaining a permit from Ecology, use of the well is subject to the same regulations and requirements as a water right under a permit, certificate or claim. The doctrine of “first in time, first in right” still applies to exempt wells. If you are interested in constructing an exempt well,

you should contact the local planning department in your county for information about current rules and regulations.

Washington State Department of Health has the final approval authority for a water system plan. Development of a water system plan is described in regulations and in publications listed under Resources For Additional Information in the Appendix. Part of the review by the Department of Health is to request review and comment on the water rights by Ecology. Counties planning under the Growth Management Act (“GMA”) must require any proposed development to show there is adequate water available for the proposed development project.



## YAKIMA BASIN EXEMPT WELLS

As the competition for water increased and the time for Ecology to make permit decisions lengthened, more people used exempt wells to meet their water demands. The figures on the following page demonstrate the expanding use of exempt wells in the upper Yakima Basin from 1940 through 2000. Developers in particular have turned to exempt wells as a way to provide water for residential developments. While exempt wells are authorized for use of up to 5,000 gallons per day, by law developers may not install multiple “exempt” wells in a single project and may not withdraw more than 5,000 gallons per day in total.

There is a growing concern about the use of exempt wells for any quantity of water-- period. People who have certificated water rights or water right claims are worried that construction of more exempt wells will result in an impairment of their ability to obtain their full allotment of water. Those interested in maintaining adequate instream flows are concerned that exempt wells will reduce the flow of groundwater to streams and result in even lower instream flows. When exempt wells are concentrated in an area, cumulative withdrawals from the wells can seriously deplete the aquifer (the groundwater source).



Photo by Iowa DNR (<http://wqm.igsb.uiowa.edu/activities/groundwater/Westfield/Westfield.htm>)



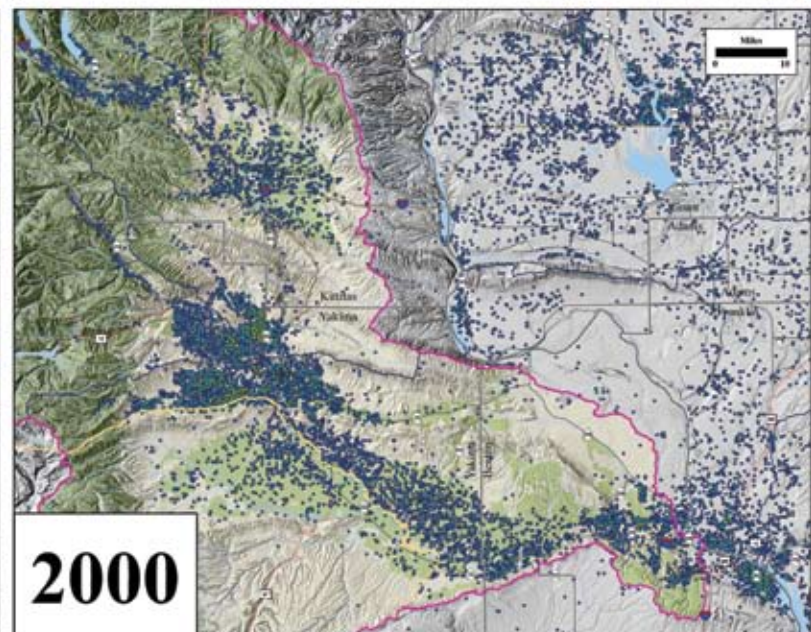
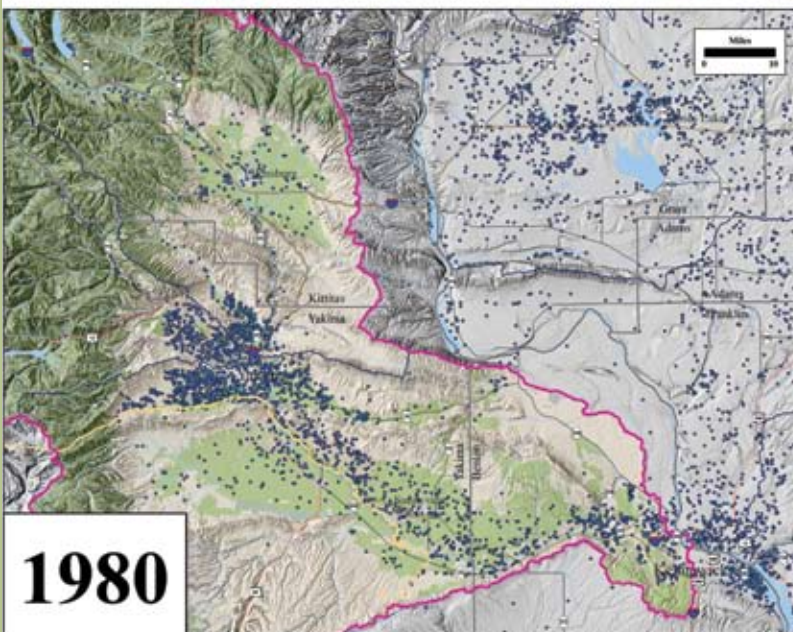
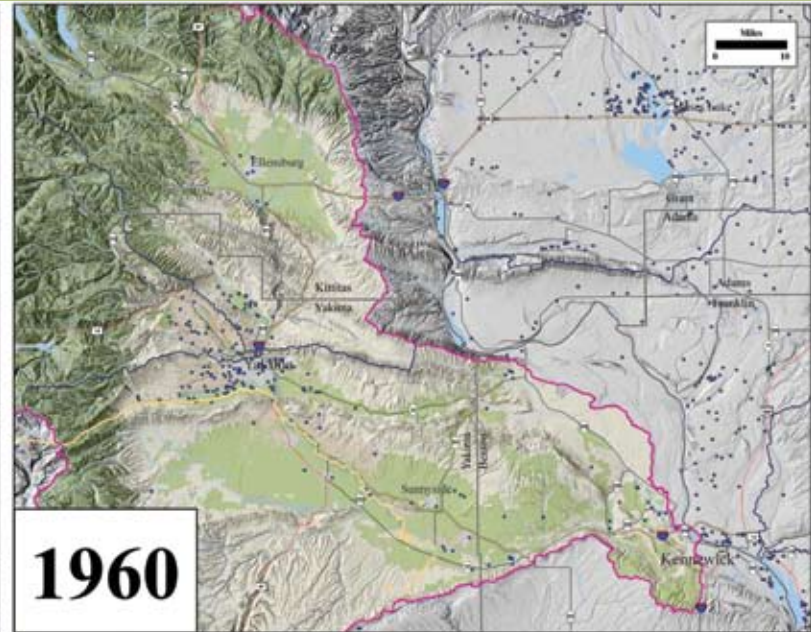
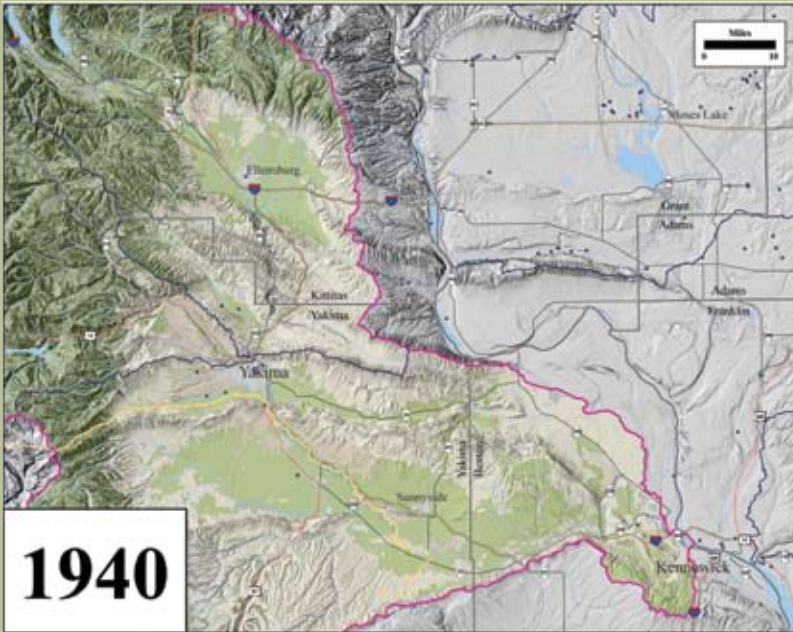


Image by Ecology



## WATER RIGHTS VALUATION

Your water right has value. But how much? Putting a price tag on the use of a public resource can be done, but it is very challenging. While it is of some interest to a landowner to know the value of water rights, it becomes extremely important to anyone who is proposing to buy or sell a water right. Real estate values are often determined by looking at comparable sales in a geographic area. This is one approach for valuing water rights but it is hampered by the fact that unlike sales of houses and land, there are relatively few sales of water rights. What we do know from those sales is that the price per acre-foot of water varies depending upon the location, reliability of the water right (priority date and source), and the buyer's intended use, among other factors.

A couple of important things to remember: a purchase and sale agreement for water rights being separated from the land is usually structured so that the total price is based upon the quantity of water that is approved for transfer for the intended use of the purchaser. These two factors can dramatically change the final purchase price.

Also, it can take a long time, even a few years, for Ecology to act on a request to change a water right. **During the time the change application is pending, the water right is not protected from relinquishment for nonuse, unless it is in the Trust Water Rights Program or some other exception to relinquishment applies.** So if you are selling a water right and have not used the water for some time prior to entering into the purchase and sale agreement, remember to protect your water right from relinquishment.



Photo by Jeff Gersh

# INSTREAM FLOWS AND TRUST WATER RIGHTS

## HOW DO INSTREAM FLOWS AFFECT YOUR WATER RIGHT?

Historically, many people viewed taking water out of a stream and using it somewhere else as the best use of that water. However, after many years we began to recognize that we needed to shift away from using all of our water for out-of-stream consumptive uses. In 1949, for example, Washington recognized that water left in stream should be recognized as a beneficial use. By then, however, many streams were over-appropriated—more water was allocated to out-of-stream water rights than naturally existed in these streams in many years, particularly during the late summer months.

Over-appropriation has led to serious problems. In some basins it has resulted in streams drying up completely. That situation has put additional stress on our aquatic and riparian ecosystems. This is particularly disruptive to icons of the Northwest such as salmon and bald eagles as well as other species that depend on water being in stream for their survival.

Washington has implemented several legal mechanisms designed to protect stream flow, including setting minimum stream flows, closing over-appropriated basins to new water rights, and conditioning new permits on certain flows being available before water may be withdrawn. Water rights issued with a condition that they may only be diverted when the stream has a certain flow level are referred to as “interruptible” rights.

Ecology is authorized, and in some cases mandated, to “protect” and “preserve” instream flows by setting minimum stream flows-- the “level of stream flow... required in perennial streams to preserve wildlife, fish, scenic, aesthetic, and other environmental and navigational values” (RCW 90.54.020(3)). Other recognized values include water quality and water for livestock (RCW 90.22.040).



Once Ecology sets a specific flow level to protect these interests through a rulemaking process, that flow level legally defines how much water must be left instream and how much water is available for others to appropriate. The instream flow becomes a water right with a priority date as of the rule adoption date. If your water right is senior to the instream flow water right your water right will not be affected.

### *Instream Flows*

Instream flows (base flows) are minimum stream flows set by rule, intended to protect fish and wildlife.

Instream flow water rights are diversionary rights that have been transferred to the Trust Water Rights Program for instream flow purposes.

Both are recognized water rights that are protected based on their priority dates:

**Instream flow** – date of rule

**Instream flow water right** – priority date of transferred right



## CAN YOU “TRUST” YOUR WATER?

Since 1991 Ecology has managed a statewide program that allows water right holders to transfer some or all of their water rights to the Trust Water Rights Program (TWRP) either temporarily or permanently. (Ch. 90.42 RCW.) (Ch. 90.38 RCW defines a TWRP specific to the Yakima Basin.) The water rights in the TWRP may be used for any beneficial use, although to date, most of the water has been transferred to the TWRP for instream flow. When a water right is donated to the TWRP, the donor may designate the purposes for which the right may be used while it is in trust. **Significantly, a water right is protected from relinquishment as long as it is in the TWRP.**



As a water right owner, there are several ways in which you may benefit from the Trust Water Rights Program and at the same time provide benefit to the stream and fisheries resource. If you are not going to be using all or part of your water, you can temporarily transfer the unused water to the TWRP. By law, your right will be protected from relinquishment while it is in trust. When you are ready to use your right or transfer it to someone else, you can withdraw your right from trust. Using the TWRP this way allows you to protect your right without having to waste water or worry that if you don't use your right you will lose it.

Using the TWRP to augment stream flows also brings positive results for fish and local communities. Low stream flows have been identified repeatedly as a major limiting factor for healthy fish runs. Increased flows lead to restoration of habitat, healthier fish populations and

boost the economies of areas where fishing and boating are important activities. Instream flow trust water rights are protected against diversion and use by a junior water right holder located downstream of the historic place of use of the trust water right.

Washington Rivers Conservancy accepts permanent and temporary donations of water, and buys and leases water to transfer to trust for instream flow. When Washington Rivers Conservancy accepts a temporary donation or leases water, it remains in trust for the term of the agreement. Once the term is up, the water comes back out of trust in the same quantity as it was accepted. While your water is in trust, it is protected from relinquishment.

A Washington Rivers Conservancy representative or Ecology can provide you with assistance in this area. Washington Rivers Conservancy also purchases water rights and permanently transfers the water to trust for instream flow.



Photo by Anne Fritzel

## STEWARDSHIP OF A WATER RIGHT

The concept of stewardship of land is well accepted. People who live close to the land and depend upon it for their livelihood have long recognized the value of stewardship. Others who live more removed from the land are also embracing the value of stewardship. Stewardship as applied to water is a more recent concept but equally important.

As we discussed at the beginning of this handbook, your water right is a right to use a resource that belongs to the public. As we teach our kids, with rights come responsibilities. With a water right comes the responsibility to be a good steward of water-- that means using water within the bounds of your right; being efficient, not wasteful. It means keeping track of your water use by metering, measuring and reporting your water use. It also means doing what you can to ensure your source of water remains free of pollutants.

The reason a water right is limited in quantity is to protect the water rights of all water right holders. If you were allowed to use your water right in any quantity at any time of year for any purpose, you would more than likely impair your neighbors' ability to use their water. While fairness demands that everyone be offered an opportunity to use the

In 2009, the Trust Water Right statute was amended (ESSB 5583) to clarify some of the language and increase the effectiveness of the TWRP. The amendments permit groundwater rights to be placed in trust, and clarify that a water right is exercised while in trust, and that the consumptive use of a water right when removed from trust is equal to the consumptive use that was determined prior to going into trust. Also, the new legislation clarifies that when transferring a water right to trust that has been excused from relinquishment by the exemptions allowed by law, the amount of water eligible for transfer to the TWRP is based on the highest use in the most recent 5-year period prior to when exempted nonuse was established.

### *What will I do with my water right when I withdraw it from the Trust Water Rights Program? Do I need a plan?*

If your future plans could include changing any part of your water right, particularly to add a purpose of use or expand the irrigated acreage after the right is returned to you, you should be aware that a review of past beneficial and consumptive uses of your water right is required. This may affect how much of your water right can be authorized for change.

water, there is an associated responsibility to use sufficient care so that there is no damage to your neighbor or his property or his water source.

Stewardship also means not polluting the water we divert from the stream or pump from the ground. Whenever we use water to irrigate lawns, gardens, orchards or fields, some of the water is taken up by the plants and used for growth, some evaporates into the air, and a part of the water returns to the stream or the groundwater as *return flow*. This water will be used again by someone downstream.

Stewardship is about both the quantity of the water we use and the quality of the water that leaves our property.



Photo by Kristin Hyde



## A HAPPIER ENDING

Paul and Jane Burnley found this ad in a local paper when they were driving through Eastern Washington. Intrigued, they called the Realtor and made an appointment to see the land. They were taken by the site, which had a small creek flowing past. The land looked ideal for a small hobby vineyard and actually was larger than they needed. Unfortunately, the sale price was substantially higher than the top of their price range, but they contacted the real estate agent to express their interest and find out more.

The agent, knowing the seller would not lower the price, told them about another parcel for sale about two miles away. This acreage, though smaller, already had a house and barn, and this land also had water rights. The previous owners had grown hay on 12 of the 16 acres for many years.

Jane and Paul drove out to see the property. They called the Realtor to tell her they were interested. She told them the seller had recently dropped off the paperwork for the water right. Paul and Jane went in to the agent's office to look at the documents. Confused by the numbers and terms on the certificate, they asked their agent for some help. She had attended a workshop recently on water rights and pulled out a checklist to use when investigating a water right.

Following the checklist, Jane and Paul started looking at background information on the water right. The certificate had a date of 1936, and the land had been platted in 1975. The water right had been partitioned among six adjoining parcels, including the one in which they were interested. Their document showed an annual quantity of 36 acre-feet and maximum withdrawal of 0.3 cubic feet per second. This looked quite sufficient for their needs, so they thought they would make an offer on the land. But they weren't quite ready. . . . What else did they need to know?

Before making an offer, Paul and Jane consulted the checklist again about how to find information to verify the use of irrigation water on the property. As suggested, Paul called the county assessor's office and requested some additional documentation, including a copy of the plat, and names of owners of the adjacent

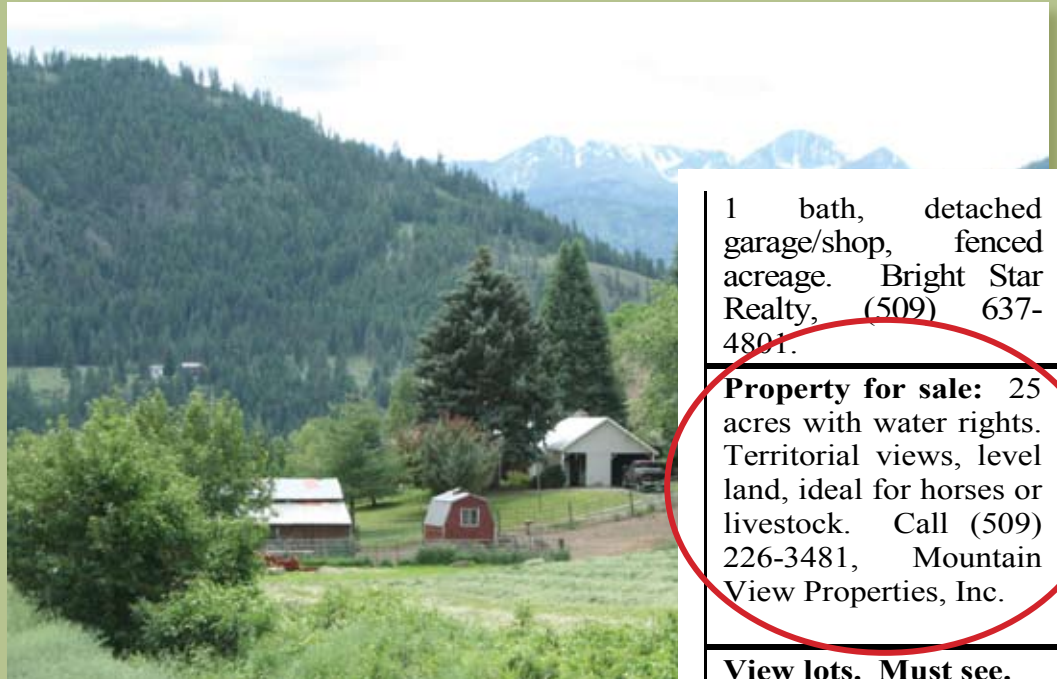


Photo by Pam Jenkins

1 bath, detached garage/shop, fenced acreage. Bright Star Realty, (509) 637-4801.

**Property for sale:** 25 acres with water rights. Territorial views, level land, ideal for horses or livestock. Call (509) 226-3481, Mountain View Properties, Inc.

**View lots. Must see.** 5 to 10-acre lots within 15 minutes of town. Call for appointment

parcels. In addition, Paul contacted the Department of Ecology as the primary repository of all water right information.

Hoping for some first-hand information, they contacted one of the neighbors, a long time resident of the valley.

"Well," said Mr. Samuels, "some folks bought that land in about 1994 and they were planning to settle in and bring in horses. But something happened in the family and they never got the project going. Seems like they hung on to the land as long as they could, and now they decided to sell it. They haven't run water in their ditch for at least 10, 12 years. And I don't imagine any of their equipment has seen any maintenance either. It's too bad. They seemed like nice enough folks and would've been good neighbors."

Jane and Paul reported their findings to the real estate agent. She made a brief call to a friend who is a water rights attorney. The attorney verified that a water right that has not been used for five years or more is probably no longer valid, unless there were specific extenuating circumstances. In this case, it sounded like the water right had been forfeited and was not likely to still be a legal right. Jane and Paul were highly disappointed. At least they had found out the property did not have water before they bought it. Still, their beautiful dream of a rural life was fading into a confusing and disappointing search.

On a visit to the area several weeks later, Paul was sitting in the local coffee shop and picked up a pamphlet. It was entitled "Can You 'Trust' Your Water?" The pamphlet explained that water was needed in the local streams to ensure sufficient flow for endangered fish. There was funding to pay landowners for their water rights in order to put the water back instream. Paul realized that the first parcel he and Jane had looked at seemed to have more water than the second parcel they considered—and therefore much more water than they were likely to need.



Photo by Pam Jenkins

Paul called Washington Rivers Conservancy. The representative agreed to meet with him the next week. In the meantime, Paul and Jane pulled together all the information they could on the water rights for the property. The 25-acre parcel with which they had first fallen in love had a 1952 water right for 100 acre-feet per year and 0.5 cubic feet per second. They were intrigued with the idea of putting water back in the stream for fish. When they met with the Washington Rivers Conservancy, they had lots of questions. Over the next several weeks, Washington Rivers Conservancy worked to answer their questions regarding how to change the point of diversion, how to preserve the portion of the water right they did not intend to use, and finally, how they might sell the unneeded water. Washington Rivers Conservancy introduced them to the Trust Water Rights Program and to a local land trust.

To make a long story short, the Burnleys were able to purchase their dream property by selling part of the water in the property's water right to a farmer downstream and by selling a conservation easement on 10 acres to the local land conservation group. They were able to build their home, plant a 10-acre vineyard, and install an irrigation system using water from the creek. In addition, they preserved 0.25 cfs and 50 acre-feet per year of water permanently in stream, and provided protection in perpetuity for a beautiful riparian area not far from their house. Their retirement dream had become real—and they had also gained a sense of true stewardship in making a permanent contribution to preservation of the valley ecosystem.

Sound like a fairy tale? It doesn't have to be. In this day of growing tension over management of water, it is refreshing to know that successful outcomes and balance between environmental and human needs can be achieved.





Photo by Pam Jenkins

# APPENDICES

## GLOSSARY

Abandonment	A common law doctrine that invalidates a water right if the water right owner fails to use his/her water for an extended period of time (usually 10 years or more) and intends to abandon or give up the right.	Certificate of change	The document issued by Ecology that officially authorizes a modification of one or more elements of an existing water right that was represented by a water right claim.
Acre-foot	A measurement of water volume equal to an acre of land covered with one foot of water. One acre-foot equals 43,560 cubic feet or 325,851 gallons.	Change	A modification to an existing water right or a transfer of an existing water right. Elements of a water right that can be changed include: place of use, point of diversion or withdrawal, (including additional points of diversion or withdrawal), purpose of use, and season of use.
Adjudication	The legal process of settling the rights of two or more owners of water rights with respect to one another. A general adjudication applies to the determination of extent and validity of existing water rights within a particular water system or basin. In Washington all adjudications are conducted by a superior court.	Conservancy board	A citizen board established in a specific geographic area, typically a county, for the purpose of evaluating water right change applications. The conservancy board creates a report of examination and a record of decision with its recommendation to Ecology and provides public notice of its action. Ecology has 45 days to affirm, reverse, or modify the recommendation of the board. Ecology may grant itself a one-time 30-day extension of time.
Annual quantity (Qa)	The total quantity of water that may be diverted or withdrawn in one year.	Consumptive use	A calculated quantity of water that represents the amount actually used by a crop during the growing season, or by a municipal population, that reduces the source of supply.
Appropriation	The action of diverting or withdrawing water for a beneficial use. Proof of appropriation is required to establish and perfect a water right.	Crop irrigation requirement (CIR)	The amount of water, determined by scientific formulation, needed for irrigation of a particular crop in a specific location. This quantity is typically calculated using the Washington Irrigation Guide.
Appropriative water right	A water right acquired by diverting or withdrawing water and applying the water to a beneficial use. Since 1917 for surface water and 1945 for groundwater, new appropriative water rights can only be acquired by the statutory permitting process.	Cubic feet per second (cfs)	A measurement of flow. One cfs equals 448.8 gallons per minute. A flow of 1.0 cfs over 24 hours is equivalent to 1.98 acre-feet.
Beneficial use	(1) Non-wasteful purpose for which water is used. Examples of beneficial use include: irrigation, domestic supply, stock watering, industrial and commercial uses, hydroelectric power production, and instream flow.  (2) The “measure and limit” of a water right, indicating a reasonable quantity of water applied to a non-wasteful use. Note: simply diverting water, running it down a ditch and back to the river is not a “beneficial use.”	Due diligence	The process of investigating the validity and extent of a water right, including determining the legal basis of the right, the historical use of water on a particular property, the point of diversion, when the water was used, and other related information.



Family Farm Permit	A permit for the irrigation of agricultural lands qualifying as a family farm-- a geographic area including not more than six thousand acres of irrigated agricultural lands, whether contiguous or noncontiguous, where the controlling interest is held by a person having a controlling interest in no more than six thousand acres of irrigated agricultural lands in the state of Washington which are irrigated under rights acquired after December 8, 1977.
Flow rate	A quantity of water that passes a location within a specific unit of time, commonly expressed as cubic feet per second or gallons per minute.
Instantaneous quantity (Qi)	The maximum rate at which surface water is diverted, expressed in cubic feet per second (cfs) or the rate at which groundwater is withdrawn, expressed in gallons per minute (gpm).
Interruptible water right	Water right for which the use may be reduced or shut off when flows in the source stream fall below established instream flows.
Junior water right	Between two water rights from a single source, the right that has the later priority date.
Nonconsumptive use	A use of water that does not result in any reduction in quantity. For example, water used to produce hydropower is nonconsumptive as long as water is not diverted out of the stream from the stream to the turbines.
Paper water right	The quantity of water as stated on the water right document. This may not represent the actual water right, which is determined by historical water use. If historical water use has been less than the full quantity of water stated in the document, the right is limited to the amount that has actually been put to beneficial use.
Perfecting a water right	The process of putting water to beneficial use according to the terms and conditions of the permit. A water right user provides a Proof of Appropriation to Ecology that documents proof of beneficial use, the point of diversion or withdrawal and place of use.

Place of use	The location where the water is put to beneficial use. The place of use is identified by its legal description- section, township, and range to the nearest quarter/ quarter section, by parcel number, or by metes and bounds survey.
Point of diversion	The location within a surface water source from which water is diverted.
Point of withdrawal	The location where groundwater is withdrawn from a well.
Priority date	The date of a water right that establishes its seniority relative to other water rights. If a water right was established prior to the water codes, the priority date is the date the water was first put to use. If a water right was acquired through the permitting process, the priority date is the date the application for a water right was filed with Ecology.
Purpose of use	The purpose for which water is diverted or withdrawn; for example: irrigation, stock watering, or municipal use. The purpose of use of a water right must be a use that is recognized as a beneficial use of water.
Relinquishment	Loss or forfeiture of a water right or a portion of a water right when a water right owner fails to use all or a portion of his/her water for five consecutive years or more without sufficient cause. The relinquishment is usually identified when Ecology examines a water right when a change application has been submitted.
Return flow	That portion of surface water diverted or groundwater withdrawn that is applied as irrigation water to the land and is not consumed. This water is returned to its original surface water source, another source, or returns underground to the aquifer.
Riparian water rights	Water rights acquired through ownership of land lying adjacent to a stream, river, or lake. Water rights based on the riparian doctrine had to be perfected by 1932 or they were lost.
Season of use	The period of time during the year when water can be diverted or withdrawn and put to beneficial use.

Senior water right	Between two water rights from a single source, the right that has the earlier priority date.
Superseding certificate	A water right certificate issued by Ecology that officially authorizes a modification of one or more elements of an underlying water right certificate.
Transfer	A change in a water right regarding ownership or place of use. If a property is sold with the water right, the right is transferred to the buyer. If a water right is sold to someone who wants to use it on a different property, the water right would be transferred to the buyer and transferred to a different place of use. Ecology must approve all water right transfers except those occurring wholly within the boundaries of an irrigation district.
Trust water right	A water right that has been transferred to the state Trust Water Rights Program on a temporary or permanent basis. At trust water right is not subject to relinquishment as long as it remains in trust.
Waste	A portion of a diverted flow that is not put to beneficial use. For example, if an irrigator puts an excess amount of water on his field, causing some of the water to flow off his land onto the county road, that surface flow is considered waste.
Water right	The authorization to divert or withdraw some portion of waters of the state for a beneficial purpose, subject to the specific terms and conditions of a water right permit, certificate, or claim.
Water right certificate	Ecology issues a certificate when it has confirmed that the water right has been perfected. The Certificate of Water Right is the official legal record of the water right, and once the certificate is issued, the water right is considered to be attached (appurtenant) to the land on which the water is used unless and until it is intentionally severed from the property.

Water right claim	A claim to a water right for a beneficial use that predates the water permitting system. The validity of a claim is not officially confirmed until the claim is adjudicated by a court.
Water right permit	A permit is the first step in securing a perfected water right, either from a surface water source or from groundwater. Under a permit, the permit holder may construct the water system and may put the water to beneficial use.



## LEGAL DESCRIPTIONS - READING A LEGAL DESCRIPTION

Water right documents specify the point of diversion and place of use using terms that may not be familiar. These locations are referenced by *section*, *township*, and *range*. Townships are areas of land that are 6 miles on a side. In Washington and Oregon each township is identified by number representing its distance north or south from the Willamette Baseline (township) and its distance east or west of the Willamette Meridian (range). As seen on the map below, the Willamette Meridian and Baseline intersect at a point near Portland, Oregon.



Image by BLM

Each township is further divided into 36 squares or *sections*, each covering one square mile. The sections are numbered, starting at the northeast corner of the township, proceeding west (sections 1 through 6), then dropping down to the next row of sections south and proceeding east (sections 7 through 12), and continuing to zigzag down to the 36<sup>th</sup> section in the southeast corner of the township (Figure 1).

Any point in Washington can be identified within a township. For example, if a location is specified in Sec. 19, T3N, R5E, WM, the parcel would lie within the township located three townships north of the

36	31	32	33	34	35	36	31	32
1	6	5	4	3	2	1	6	
12	7	8	9	10	11	12	7	
18	18	17	16	15	14	13	18	
24	19	20	21	22	23	24	19	
25	30	29	28	27	26	25	30	
36	31	32	33	34	35	36	31	
1	6	5	4	3	2	1	6	5
12	RANGE						7	8

TOWNSHIP

Figure 1. Section Numbers within a Township

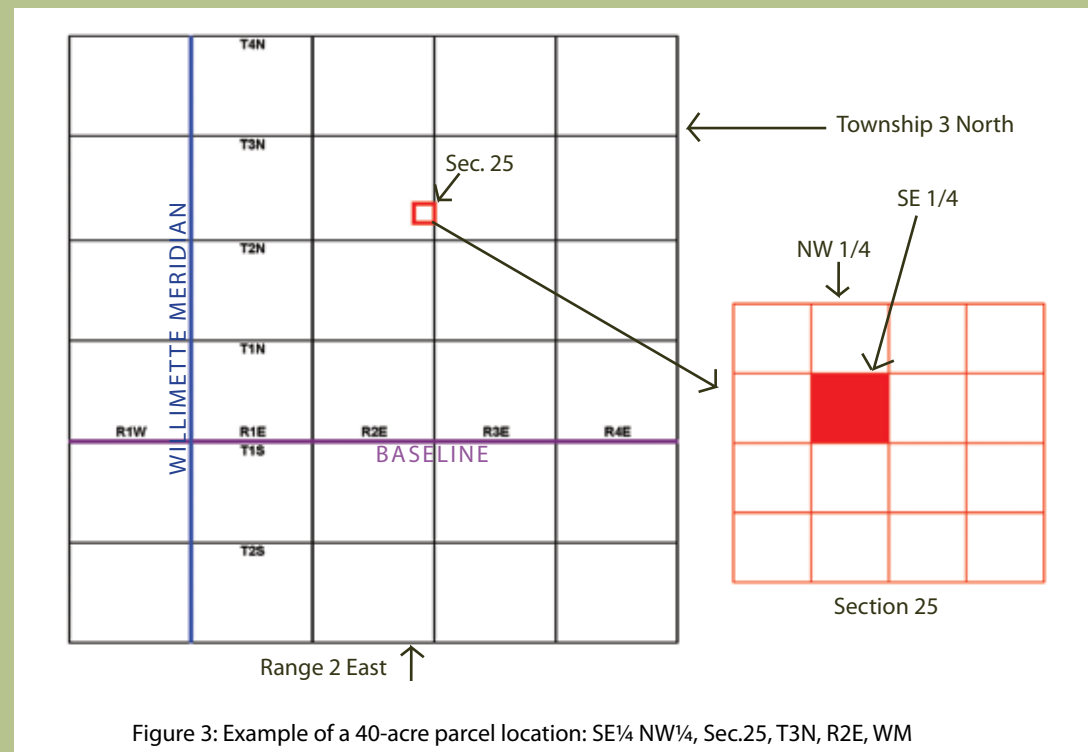
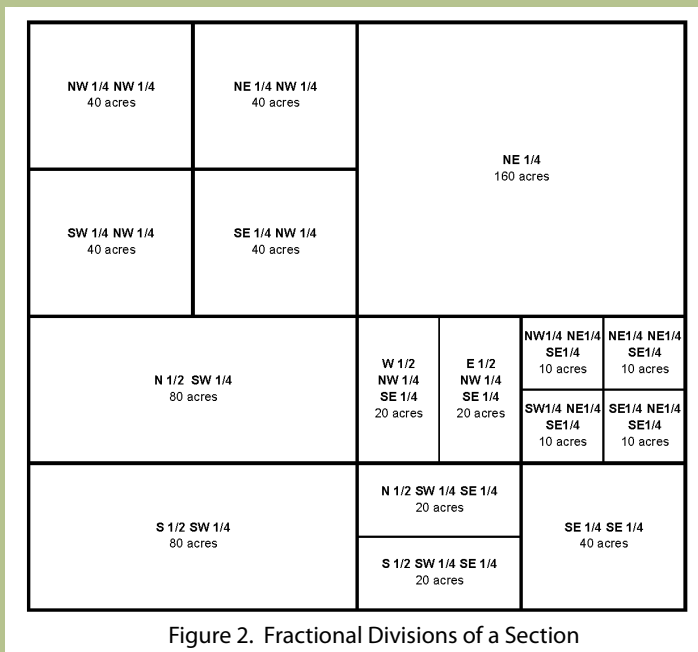
Baseline, five ranges east of the Willamette Meridian, and in Section 19 along the west edge of the township.

To pinpoint a location within a section, sections are subdivided into quarters and designated as follows: the northwest quarter (NW ¼), southwest quarter (SW ¼), northeast quarter (NE ¼), and southeast quarter (SE ¼). . Figure 2 illustrates these divisions and their nomenclature. There are 640 acres in a section and each quarter section contains 160 acres. Typically, legal descriptions will go as far as quarter-quarter sections, or down to a 40-acre tract. Fractions smaller than a

quarter-quarter are rarely used. A fractional section is identified by the smallest portion first, followed by the next larger division, and the next.

A 40-acre parcel might be identified as SE¼ NW¼, Sec. 25, T3N, R2E, WM. Using the nomenclature explained above, this property would lie at the spot identified in red in Figure 3.

Knowing the boundaries of your property and understanding exactly where—on the ground—your water right can be used is very important to maintaining your right.





# RESOURCES FOR ADDITIONAL INFORMATION

## General water right information

Ecology – Water Resources – Water Right Information  
[www.ecy.wa.gov/programs/wr/rights/water-right-home.html](http://www.ecy.wa.gov/programs/wr/rights/water-right-home.html)

## Groundwater well information

Ecology – Water Resources  
<http://apps.ecy.wa.gov/welllog/>

## Water right applications, water right changes and other related forms

Ecology – Water Resources – Water Right Information  
[www.ecy.wa.gov/programs/wr/forms/forms.html](http://www.ecy.wa.gov/programs/wr/forms/forms.html)

## Water Right Application Tracking System (WRTS)

Ecology – Water Resources  
[www.ecy.wa.gov/programs/wr/rights/tracking-apps.html](http://www.ecy.wa.gov/programs/wr/rights/tracking-apps.html)

## Water Right Statutes & Rules

Ecology – Water Resources  
[www.ecy.wa.gov/programs/wr/rules/rul-home.html](http://www.ecy.wa.gov/programs/wr/rules/rul-home.html)

## To request a copy of a water right or other related documents

Ecology – Public Records – Public Disclosure  
Coordinators  
List of contacts and phone numbers by region.  
[www.ecy.wa.gov/services/disclosure/coordinators.html](http://www.ecy.wa.gov/services/disclosure/coordinators.html)

## Washington Irrigation Guide

Natural Resources Conservation Service  
[www.wa.nrcs.usda.gov/technical/ENG/irrigation\\_guide/index.html](http://www.wa.nrcs.usda.gov/technical/ENG/irrigation_guide/index.html)  
Information about updates to the Washington Irrigation Guide  
Ecology – Water Resources  
[www.ecy.wa.gov/programs/wr/wig/wig.html](http://www.ecy.wa.gov/programs/wr/wig/wig.html)

## Irrigation efficiency information

Washington State Conservation Commission and Local Conservation  
Districts [www.scc.wa.gov](http://www.scc.wa.gov)

## Environmental Quality Incentives Program (EQIP)

EQIP is a voluntary conservation program for farmers and ranchers to promote agricultural production and environmental quality as compatible national goals. EQIP offers financial and technical help to assist eligible participants install or implement structural and management practices on eligible agricultural land.  
Natural Resources Conservation Service  
[www.nrcs.usda.gov/PROGRAMS/EQIP/](http://www.nrcs.usda.gov/PROGRAMS/EQIP/)

## Current and historical aerial photos

Washington State Department of Transportation – Aerial Photography Branch  
Phone: 360-709-5550  
Fax : 360-709-5599  
Walk in: 1655 South 2nd Ave, Tumwater, WA  
[www.wsdot.wa.gov/MapsData/Aerial](http://www.wsdot.wa.gov/MapsData/Aerial)

## Orthophotos

Each orthophoto covers one township (36 sq. miles). Aerial photo is “map-accurate” allowing for precise distance or area measurements. Source for GIS information. Available on CD or hardcopy.  
Washington State Department of Transportation – Orthophotography  
[www.dnr.wa.gov/BusinessPermits/Topics/Maps/Pages/orthophotography.aspx](http://www.dnr.wa.gov/BusinessPermits/Topics/Maps/Pages/orthophotography.aspx)

## Current and historic topographic maps

US Geological Survey – USGS Topographic Maps  
[http://topomaps.usgs.gov/ordering\\_maps.html](http://topomaps.usgs.gov/ordering_maps.html)  
University of Washington Libraries  
[www.lib.washington.edu/maps/MapResources/topo2.html](http://www.lib.washington.edu/maps/MapResources/topo2.html)

## Land trusts

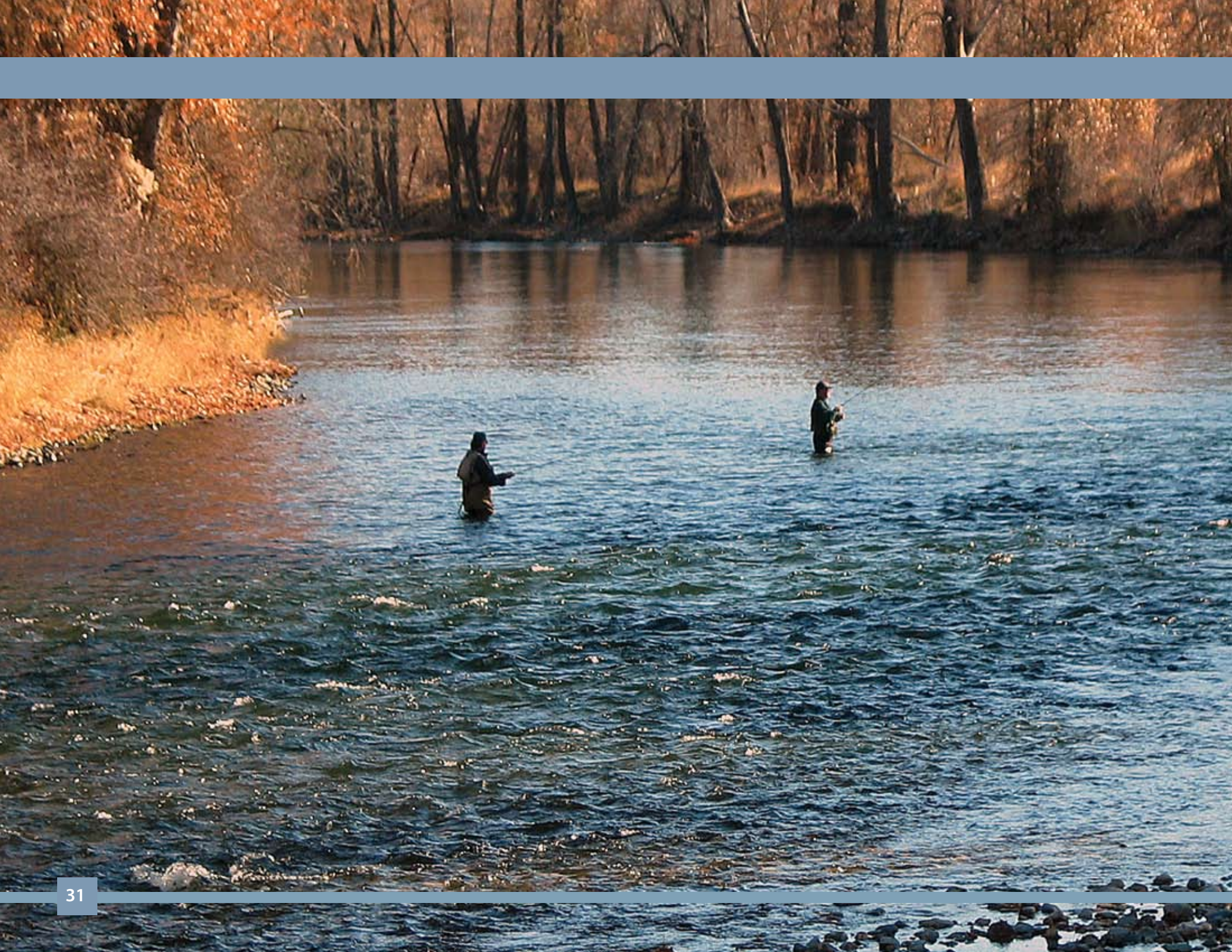
The Trust for Public Land - <http://www.w.tpl.org>  
The Nature Conservancy – <http://www.nature.org>  
For local land trusts in Washington: [www.ltanet.org/findlandtrust/state.tcl?state\\_id=washington53](http://www.ltanet.org/findlandtrust/state.tcl?state_id=washington53)





Photo by Jeff Gersh









## ACKNOWLEDGEMENTS

*Washington Rivers Conservancy thanks the generous funders who provided financial support for this project. They include Brainerd Foundation, Bullitt Foundation, Cascadia Conservation District, Cascadia Law Group, Icicle Fund, Key Bank, Laird Norton Foundation, Mountaineers Foundation, and Washington Department of Ecology. We also thank Skillings Connolly, Inc. and the Columbia Basin Water Transactions Program for their support.*

*Washington Rivers Conservancy thanks the primary author of this document, Mary McCrea who brings a shared passion for those who work on farms and ranches and an appreciation for Washington rivers and streams. WRC staff relies on her knowledge of Washington water law on a daily basis and we are grateful for her guidance on this handbook and on all of our work.*

*We extend a very special thanks to Pam Jenkins for her help in creating the handbook, her beautiful photographs, and especially for her fundraising skills.*

*We thank those who took the time to review and comment on our many drafts of the handbook: Katharine Bill, Dan Haller, Stan Isley, Sherry Malotte, Aaron Penvose, Meghan Lena, Szilvia Rideg, Cathy Schaeffer, John Thoren, Solveig Torvik and Nancy Warner. Each person brought his or her own experience and expertise to the job and improved the document immensely by comments and suggestions. The reviewers' words of support that the guide serves an important purpose continually energized us during the project.*

*The text was enlivened and enriched by photographs of Washington and we sincerely thank those who offered their work. Dennis O'Callaghan and Jeff Gersh, professional photographers who generously donated the use of their photographs for the guide. Anne Fritzel and Kristin Hyde shared family pictures that show the joy that water brings to children. Pam Jenkins and Growing Washington also provided photos of fish and farms.*

*If you are drawn to this document it is largely due to its layout and presentation. We were so fortunate to work with Wendy Valdez; her creative skills brought the normally dry subject of water rights to life in this document. Her patience in helping us complete this document is a model we all aspire to.*



SECOND EDITION

## Why should you read this handbook?

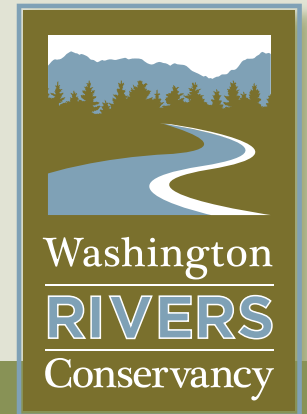
If you own land with water rights, want to buy or sell land with water rights, or want to transfer water rights from one piece of property to another, this handbook is for you. This guide will not make you a water rights expert, but it will provide you with sufficient background to understand the following topics:

- What is a water right?
- How is a water right established?
- What are the key elements of a right?
- How is a water right maintained?
- How can a water right be changed or transferred?

Water is one of our most precious public resources. We used to have the luxury of thinking that water was an unlimited resource but we have come to understand that our water supply is limited. As a water user, each of us has the responsibility to use water carefully, to avoid polluting it, and to ensure that there will be adequate water resources for our grandchildren, and future generations.

Water rights and water law are complex subjects. I hope you find this handbook to be a very useful reference.

*Lisa Pelly, Director  
Washington Rivers Conservancy*



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