



# Focus on **State Water Use Laws: Compliance and Enforcement**

from Ecology's Water Resources Program

Water is vital to our daily activities. How we use water affects all of us – our neighbors, businesses, farms, and the environment. Growth in residential development, business, and agriculture has increased competition for water. Dwindling salmon stocks and their listing under the Endangered Species Act have heightened concern about excessive water use and compliance with water resources laws.

## **Background**

Laws regulating water use are not new. Even when Washington's population was small and water demand low, there was recognition that water use required regulation to reduce conflicts among competing water users and to protect the resource. The legislature established the surface water code in 1917, the ground water code in 1945, and added provisions addressing water for fish and wildlife in 1949.

## **How is water use regulated?**

Water use in Washington state is regulated through a state permit and certificate system, except for smaller exempt ground water withdrawals, usually used for single homes in rural areas. Those applying for and receiving water rights first have priority in water use over those applying later. This tenet of water law is known as "first in time, first in right" or the prior appropriation doctrine.

## **Who must comply with the water code?**

A water right permit or certificate is required for all uses of surface water (lakes, ponds, rivers, streams, or springs) since the surface water code was enacted in 1917. A water right permit or certificate is also required for ground water withdrawals of more than 5,000 gallons per day for domestic or industrial purposes or for irrigation of more than one-half acre of non-commercial lawn or garden if the water use began after enactment of the ground water code in 1945. Under current policy, ground water can also be provided to livestock without a permit or certificate.

Water rights must be maintained by continuing to put the water to beneficial use. Water rights may be lost through statutory forfeiture if the right is not used for five or more consecutive years.

Property owners who began using surface water or ground water before enactment of the surface water or ground water codes, and who continue that use must have filed a water right claim. A water right claim is a claim by the property owner that they put water to beneficial use prior to enactment of the water codes, and that they have continued to use that water without a break of five or more consecutive years. A claim may represent a valid water right if it describes a surface water use that began before 1917 or a ground water use that began before 1945. There are more than 168,000 water right claims in Washington state.



## **What is illegal water use?**

According to the Washington Water Code, it is illegal to:

- Divert or withdraw water without a valid permit, certificate, or water right claim.
- Divert or withdraw water in excess of the amount specified.
- Irrigate more than the number of acres specified.
- Divert or withdraw water for longer than the period or time of use specified.
- Use water outside of the specified place of use.
- Divert or withdraw water from points other than those authorized.
- Use water for purposes other than those specified.
- Use water in a manner that does not comply with permit and/or certificate provisions (such as instream flow restrictions, fish screen requirements, family farming, and others).
- Waste water or not use water beneficially.
- Withdraw or divert water without proper controlling works or measuring devices, and without recording or reporting (if required).
- Use water which has been regulated by a water master or stream patrolman.
- Divert or withdraw water to which another person has senior entitlement
- Willfully interfere with or destroy water works.

## **What is Ecology's plan to gain compliance with water laws?**

The goal of the compliance program is to manage the water resources of the public by encouraging voluntary compliance with state water law, and by taking consistent, fair, equitable and assertive enforcement actions throughout the state.

Compliance work relies on technical assistance, voluntary compliance, and formal enforcement. Efforts are being concentrated in 16 fish-critical basins (see page 4) across the state where low stream flows are known to be a limiting factor to salmon populations. Ecology's compliance plan includes the following actions:

- Detect and act on illegal water use, especially in fish-critical basins.
- Prepare and distribute technical and educational information to assist the public in complying with the requirements of their water rights and applicable water laws.
- Continue the water metering program in the fish-critical basins. Verify meter installation, manage metering data and water use information, follow up on non-reporting water users, and evaluate water use metering data against actual water rights.
- Regulate conditioned water withdrawals when water flows drop below the legally established instream flows (instream flow regulatory response system).
- Enforce court orders, particularly to implement the Yakima adjudication.
- Continue to seek funding for additional water masters. Water masters are currently working in, Walla Walla, Columbia, Garfield, Asotin, Grant, Yakima, Kittitas, Benton, Chelan, and Okanogan counties.

## **Why care about compliance?**

While Washington has a long history of regulating water use, compliance with water use laws has become increasingly urgent to:

- Protect legal water users from impairment or loss of water by those using water without a right, or beyond the terms of their right.
- Protect those with senior (older) water rights from harm by those with junior (newer) rights. Keep enough water in streams to protect the environment and restore fish runs.
- Keep enough water in streams for other instream uses including recreation, aesthetics, production of electricity, and assimilation of waste discharges.
- Ensure that water being used without authorization is returned to the stream for allocation to others who are waiting in line for new water rights, and to assist in restoring stream flows.
- Ensure that water use can be sustained for the long term.
- Create awareness about the importance of water use and the need for wise use of our limited water resources.

### **How does Ecology's compliance and enforcement process work?**

When Ecology determines that a violation has occurred or is about to occur, we first attempt to achieve voluntary compliance. As part of this first response, we offer information and technical assistance in person, by phone, or in writing. Our technical assistance efforts are focused on identifying one or more means to achieve compliance and helping meet the person's needs within the framework of the law.

If education and technical assistance do not achieve compliance, we move to a formal enforcement action. First a *notice of violation* and/or a formal *administrative order*, (RCW 43.27 A190) is issued. If the violation continues, we can assess a *civil penalty* (RCW 90.03.600). Ecology can also seek court injunctions or criminal prosecution to achieve compliance with Washington's water right laws and regulations.

- *A Notice of Violation.* Officially informs the recipient that they have violated, or pose the potential to violate, the water code.
- *An Administrative Order.* Directs violators to take certain actions within a specified time frame. An example of a directive contained in an order may be to "immediately cease and desist unauthorized use of water." Failure to comply with the directives of an administrative order may result in civil penalties.
- *Civil penalty.* The maximum penalty for violating water rights law was increased during the 2003 legislative session from a maximum of \$100 per day (set in 1917) to a range of \$100 to \$5,000 per day for each separate violation based on the seriousness of the violation.
- *Appeal process.* Administrative orders and penalty notices issued by Ecology can be appealed to the Washington Pollution Control Hearing Board. Information concerning the appeal process is provided in the order or penalty document.
- *Disagreements regarding private water use may be a civil matter.* For example, if you believe your neighbor's water use is interfering with yours, the matter may need to be settled in a civil court, especially if one or more uses are based on claimed rights that have not been confirmed in a water rights adjudication.

### **How does Ecology determine the seriousness of a violation?**

The following criteria are considered during the process of assessing penalties for violating water use

laws or regulations:

- Did the violation result in public health risk, or property damage?
- Was it a willful or knowing violation?
- Was the violator unresponsive after being notified?
- Did the violator have an enforcement history?
- Did the violator benefit economically from non-compliance?

Ecology's goal is to ensure that water users comply with the state's water laws so that other legal water users are not impaired, water use remains sustainable over the long term, and the environment is protected for the benefit of people and nature.

### **Fish-critical basins**

These are the 16 basins across the state where low flows are a known limiting factor to salmon populations. They have been identified by the statewide salmon recovery strategy. In Eastern Washington, the basins are: Lower Yakima, Methow, Middle Snake, Naches, Okanogan, Upper Yakima, Walla Walla and Wenatchee.

In Western Washington, the basins are: Cedar-Sammamish, Chambers-Clover, Elwha-Dungeness, Green-Duwamish, Nooksack, Puyallup-White, Quilcene-Snow and Snohomish.

### **For more information**

All of the authorizing laws and regulations plus additional information on water rights can be found online at: [www.ecy.wa.gov/programs/wr/wrhome.html](http://www.ecy.wa.gov/programs/wr/wrhome.html)

For more information, contact the Department of Ecology's Water Resources Program at:

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