



Focus on Assessing Your Water Right

from Ecology's Water Resources Program

Assessing the validity and extent of your water right may be necessary for a number of different reasons. Property owners may want to verify a water right prior to purchasing land, or water users may seek to change or transfer an existing right. Sometimes the assessment is a step taken in a water right adjudication, a Washington State Superior Court proceeding. The following information provides guidance on *how to research a water right permit or certificate*. (A discussion on water right claims is included at the end of this document.)

There are two avenues you should explore to fully investigate your water right. The water right file is the place to begin. Equally important is to make an independent evaluation of the historical use of water on your property.

The water right file

The water right file and associated documents describe the limits of the right, as well as the provisions governing the use of that water. Copies of water right documents may be obtained from the Department of Ecology. (Please note that Ecology cannot guarantee the validity of water right claims, permits or certificates. The validity of water rights can only be determined in Superior Court.)

The following water right elements are described on most water right documents:

- A priority date (effective date of the right)
- A fixed point of withdrawal (ground water) or diversion (surface water)
- Quantities (both instantaneous and annual)
- A defined place of use
- Period of use
- Purpose(s) of use
- Provisions which govern the use (such as installation of a metering device or fish screen)

You will need to reconcile both the past and current water use with these elements of the water right. A water right may not be enlarged, but water rights are sometimes reduced through actions taken by previous property owners (such as periods of non-use). Conducting this assessment may help protect your property interests.

Historical use of water

Washington's water law contains a principle that a water right is perfected (that is, all the conditions of the permit have been met), defined, and maintained through beneficial use. "Beneficial use" refers to a reasonable quantity of water applied to a non-wasteful use. At a minimum, there are some basic questions you should ask before making plans that rely on an existing water right:

1. When did the water use first begin on the property?
2. Who were the previous owners and how did they use the water?
3. Is the water use today consistent with each element described on the water right document?



4. Have there been five or more successive years of non-use (for either a part of the water right, or for the water right in its entirety)? If so, what was the reason? (Note: These questions are tied to the legal concept of “relinquishment:” that is, a water right may be wholly or partially lost through extended periods of non-use. Relinquishment is examined in a separate Ecology publication, *Water Right Relinquishment*, #98-1812-WR).

Don't rely on a water right document for decision-making until you have made this evaluation. (See “Changes to a water right may affect your water availability” section below.) Answers to these questions can come in many forms and from many places. Most of it will be old and historic in nature.

Examples to document how, when, or where a water system was developed and used include:

Newspaper clippings (referring to the property or water system)

Photographs (establishing a date and water use)

Maps

Letters (indicating water use or development)

Books (describing the area)

Historical documents (describing the property and/or water system: homestead documents, notices of appropriations, easements for ditches, etc.)

Tax statements

Receipts for materials (showing property and water use)

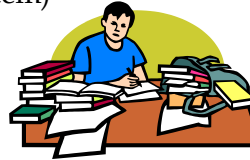
County and state records, and federal archives

Land use records (documenting crops, irrigation company/districts, diversions)

Deeds (showing chain of ownership for water rights and any civil restrictions that might affect the statutory provision that “the water goes with the land”)

Affidavits (attesting to personal historic knowledge of the water system and water uses; commonly referred to as “Old Timer Affidavits”)

Direct testimony (providing evidence of personal knowledge of the development of water use in the vicinity)



The following locations may prove useful when searching for historical evidence:

Family scrapbooks or bibles

Attics or basements

Local museums or historical societies

State archives

County auditor's office (to track property ownership)

County engineer's office (for maps of early roads that show ditches and streams, etc.)

U. S. Bureau of Reclamation (for water records that may include historic maps and surveys)

Ecology's regional offices (for copies of existing water right certificates or claims)

Local courthouse (copies of civil suits dealing with the water and/or property use)



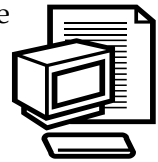
Changes to a water right may limit your water availability

Under certain circumstances, changes can be made to the point of withdrawal or diversion, purpose(s) of use, season of use and place of use by obtaining prior approval from the state. These changes or transfers would be noted in Ecology's files and reflected in a Report of Examination, although at times there are inevitable delays before these actions are reflected in the state's records.

Other types of changes may not be documented in Ecology's files, but nevertheless could limit the availability of water for your use. Examples of changes in use which would not necessarily be reflected in Ecology's records include: subdividing property, developing formerly irrigated lands, changing crop types or irrigation methods, or switching over to public water supply systems. Each of these changes could affect your legal entitlement to water.

Validity of water rights

For all the reasons described above, Ecology **cannot guarantee that the elements described on a water right document reflect a valid water right and are available to you.** A water right document may be of no value due to non-use of water, unauthorized use, or lack of perfection. Ecology cannot guarantee the validity of water right claims, permits or certificates; validity can only be determined in Superior Court. That is why a water right assessment should include an independent evaluation of the historical use of water under your water right. It is important to make sure that the actions or inaction of a previous owner have not affected the water right.



Water right claims

Assessing water right claims can be more complicated than evaluating a permit or certificate because a claim is not a water right, but is a statement filed by a property owner that a water right may exist. Ultimately the validity of claimed water rights will be determined through a *general water right adjudication*, which is conducted by a Superior Court. In an adjudication the court will either deny or confirm a water right, and direct Ecology to issue a Certificate of Adjudicated Water Right for rights confirmed.

Only a small portion of Washington's approximately 166,000 claims have been adjudicated and there is no current timeframe set for adjudicating the remaining claims. If you are researching a claim document, ask the same questions that are listed in the historical use section above. It may be particularly important to document when the water was first put to use, that the water has been used continuously, and the quantities of water used at the time of perfection. The county auditor's office allows you to record documentation of historical water use.

For more information

If you have additional questions, please contact the Ecology office nearest you:

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Bellevue, WA 98008-5452
(425) 649-7000

Central Regional Office

1250 W Alder St
Union Gap, WA 98902-3452
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Department of Ecology

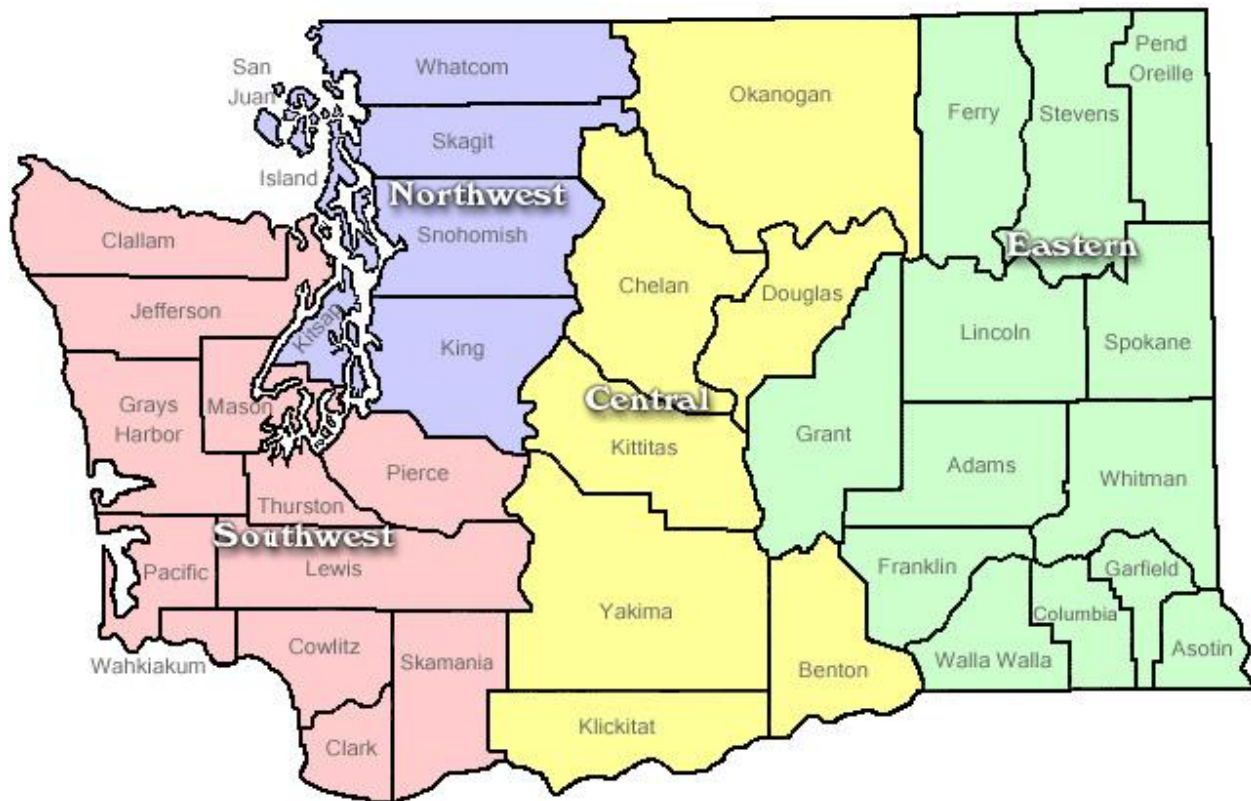
300 Desmond Drive
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If you need this publication in an alternate format, please call the Water Resources Program at (360) 407-6600. Persons with hearing loss can call 711 for Washington Relay Service. Persons with a speech disability can call (877) 833-6341.