



2019 / THIRD EDITION

LANDOWNER'S GUIDE TO WASHINGTON WATER RIGHTS

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Trout Unlimited – Washington Water Project is a nonprofit organization working to create solutions for instream flow, community, and agricultural water needs. We work with private landowners on voluntary projects, and we provide water expertise to NGOs, government agencies, and tribal entities. TU-WWP has offices in Wenatchee, Ellensburg, and Twisp.





THIS STORY IS BASED ON REAL EVENTS THAT ARE UNFORTUNATELY QUITE COMMON, AND 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 were 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 liked best were not currently irrigated. I was told that this parcel had 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, a great building site, and not too far from town. But the property was expensive, so I needed to consider the investment carefully. Eventually, I bought the property.

A couple of months later, I contacted a local well driller to install a new well. I also started talking to a few other folks in town including my next door neighbor. He asked me whether I had a water right for the new well.

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.

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?

This was such a painful, costly process for me. I hope that the Landowner’s Guide to Washington Water Rights will help people get a better understanding of how water rights work, and the questions to ask to avoid big mistakes like mine.”

(The landowner’s name has been withheld and some of the details have been changed to protect the privacy of those involved.)

WORKING TO DEMYSTIFY WATER RIGHTS.

This handbook was developed to provide basic tools for understanding Washington water rights. If you own land with water rights, want to buy or sell land with water rights, or want to transfer water rights, this handbook can help you become more knowledgeable. Water rights are confusing and there is a great deal of misinformation surrounding them—all of which has caused a variety of Washington landowners considerable difficulty and disappointment.

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, and help you know what questions to ask.

Washington's water law is complex. It is based upon state law and interpreted through administrative rules and case law. Each water right's parameters are unique to its location, source, and use.

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, the Department of Ecology, a state certified water rights examiner, an attorney who specializes in water law, and/or staff at the Trout Unlimited – Washington Water Project.





Managing our water is both a challenge, and an opportunity.

Water is a precious, limited resource. Even before Washington passed its water code into law in 1917, there were already more claims to water than many of our rivers and streams could provide.

In recent years, snowpack in the mountains has dropped to lower than normal levels statewide and many predictions are that this will continue to become more common. During the 2015 drought, for instance, water deliveries to farmers in agricultural areas were cut significantly, leading to over \$1 billion in crop losses statewide.

Issues presented by our limited water supply have only become more and more acute as the state's population has grown and demand for water has increased. Between 1950 and 2019, the number of people living in Washington grew from 2.4 million to 7.4 million. In 2040, our population is expected to reach 9.2 million.

Continued population growth coupled with reduced snowpack, water shortages, drought, continuing declines in fish populations, and catastrophic wildfires, will exacerbate existing challenges in managing the state's water resources.

This reality is a challenge, and one that we all must work together to address. We must become more efficient and creative with our water use if we are to sustain our state's agricultural base, recreation industry, power generation, municipal water supply, and fisheries resources for generations to come. Building an understanding of how Washington water rights work will help you become a better steward of our state's water resources.



A WATER RIGHT IS A RIGHT TO USE WATER, NOT OWN WATER.

Water is a public resource, owned by all people of the state in common. When you acquire a water right, you do not acquire ownership of the water. Instead, you acquire a right to use water according to the terms and conditions of your water right.

In general, there are two sources of water rights—surface water 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 your water right documents (except in the case of “exempt” groundwater uses which are described in Chapter 9). Water right documents typically come in the form of certificates, claims, and permits.

Elements on water right documents include:

- where you can take water (point of diversion, point of withdrawal)
- the rate at which you can take water (instantaneous quantity)
- how much water you can use each year (annual quantity)
- how you can use the water (purpose of use)
- where you can use the water (place of use)
- when you can use the water (season or period of use)

A water right is a right to:

A BENEFICIAL USE

OF A REASONABLE QUANTITY OF PUBLIC WATER

FOR A BENEFICIAL PURPOSE

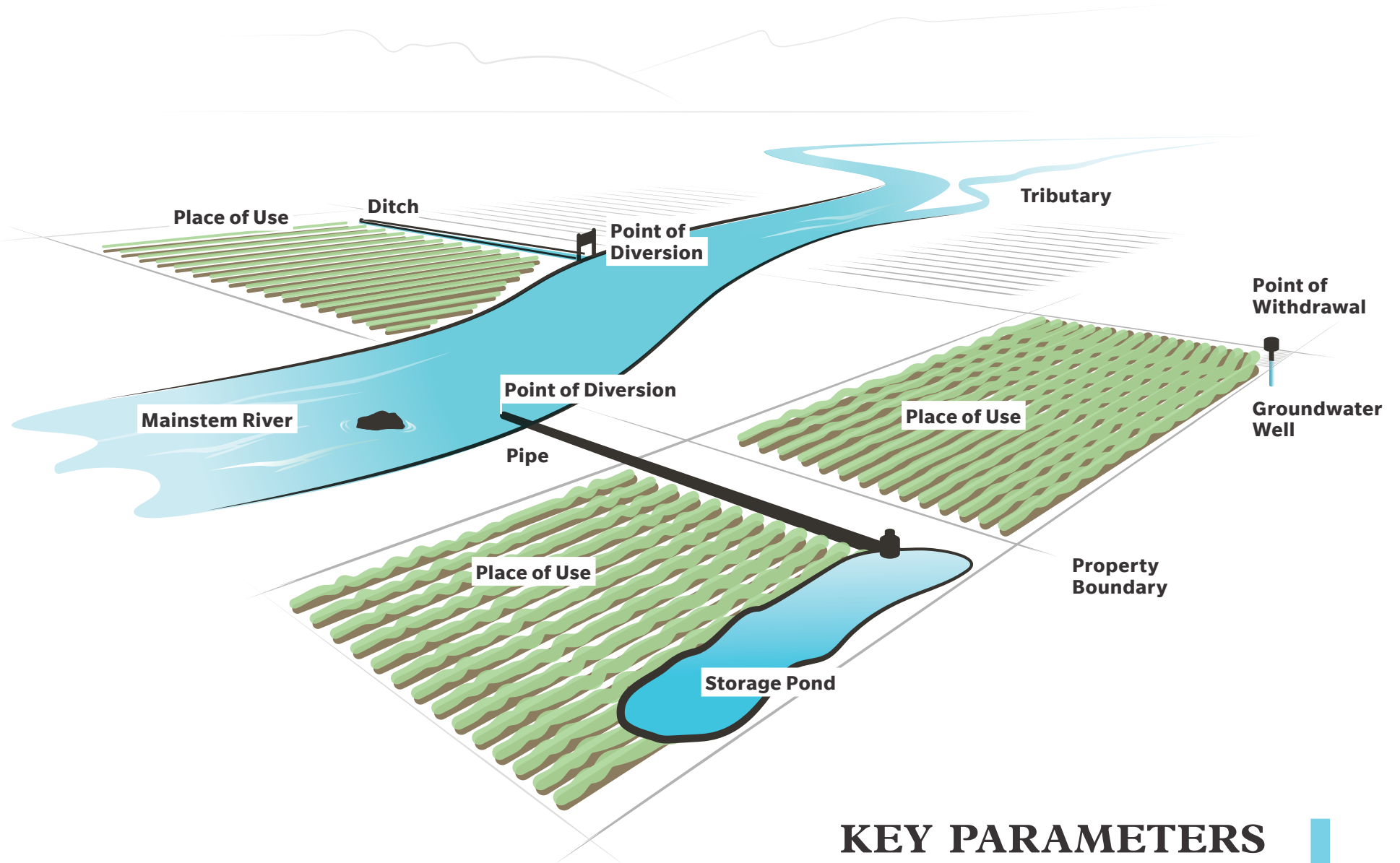
DURING A CERTAIN PERIOD OF TIME

OCCURRING AT A CERTAIN PLACE

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 true, but there are some unique characteristics of water rights.

When 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. A few key water right concepts are explained on the following pages.



KEY PARAMETERS ON THE GROUND

WHAT ARE 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). **1**

Purpose of Use

The purpose for which the water is diverted or withdrawn, e.g., irrigation, stockwatering, municipal use. **2**

Period of Use

The period of time during the year when water can be diverted or withdrawn and put to beneficial use. **3**

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 263, Laws of Washington for 1945, and amendments thereto, and the rules and regulations of the Department of Ecology.)

| PRIORITY DATE | APPLICATION NUMBER | PERMIT NUMBER | CERTIFICATE NUMBER |
|-------------------------|--------------------|----------------|--------------------|
| NAME | | | |
| ADDRESS (STREET) | (CITY) | (STATE) | (ZIP CODE) |
| | Wenatchee | Washington | 98801 |

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.

PUBLIC WATERS TO BE APPROPRIATED

| | | |
|---|-----------------------------------|--|
| SOURCE | | |
| Lake Chelan | | |
| TRIBUTARY OF (IF SURFACE WATERS) | | |
| Columbia River | | |
| MAXIMUM CUBIC FEET PER SECOND 1 | MAXIMUM GALLONS PER MINUTE | MAXIMUM ACRE-FEET PER YEAR 4 |
| 2.2 | | 320 |

QUANTITY, TYPE OF USE, PERIOD OF USE

2.2 cfs and 320 acre-feet per year for the irrigation of 80 acres **2** from April 15 – September 15 **3**

LOCATION OF DIVERSION/WITHDRAWAL

| | | | | | |
|--|----------------|--------------------|------------------------------|-----------------|---------------|
| APPROXIMATE LOCATION OF DIVERSION—WITHDRAWAL | | | | | |
| 2200 feet east and 700 feet north from the southwest corner of Section 33 5 | | | | | |
| LOCATED WITHIN (SMALLEST LEGAL SUBDIVISION) | SECTION | TOWNSHIP N. | RANGE (E. OR W.) W.M. | W.R.I.A. | COUNTY |
| SE ¼ SW ¼ | 33 | 28 | 21 E. | 47 | Chelan |

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. **6**

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.

Annual Quantity (Qa)

The total quantity of water that may be diverted or withdrawn in one year. **4**

Point of Diversion or Withdrawal

The location where surface water is diverted from a stream, or groundwater is withdrawn from a well. **5**

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. **6**

Five key concepts we urge you to understand:

- 1 BENEFICIAL USE
- 2 PRIORITY DATE
- 3 INSTANTANEOUS QUANTITY (Q_i)
- 4 ANNUAL QUANTITY (Q_a)
- 5 CONSUMPTIVE USE

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 authorized purpose(s) for which water is used. To keep your water right intact, you must beneficially use the water right, meaning you must apply water to your property as allowed by your water right. Once your water right has been put to beneficial use, you must continue to use the water, or face losing your water right through abandonment or relinquishment. People often call this “use it or lose it.” See p. 25 and Ch. 8 for more information.

People talk about “paper water rights.” What they are referring to is what the water right document says. 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. In addition, paper water rights are not just referring to quantity, it also refers to the point of diversion for the water right and the place of use.

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 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, instream flow, and thermal power production purposes.

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 instream for fish and wildlife, the Washington Department of Ecology and Washington Department of Fish and Wildlife have set 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. For more on instream flows, see p. 32.



**YOU DO NOT OWN
THE WATER ITSELF,
JUST THE RIGHT
TO USE IT.**

Priority Date The priority date of a water right is a critical element in evaluating 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 senior priority and the right to divert all their water before the person with the next junior right (next water right in chronological order). For example, suppose 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, and the second has a water right with a June 15, 1900 priority date. In a low water year, the first farmer would have the right to divert all of his water before the second farmer with the more junior right.

If your water right was established prior to the water codes, the priority date is the date the water was first claimed for a beneficial 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 the Department of Ecology.

Instantaneous Quantity (Qi) and Annual Quantity (Qa)

Confusion commonly arises over 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—your annual quantity.

To understand how the two concepts fit together, 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, on the other hand, 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.

How you choose to use water under your water right is up to you, but your use is limited by both the instantaneous and annual quantities, as well as the purpose of use.

As a water 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.



WATER QUANTITY CONVERSIONS

Rates of Flow—Instantaneous Quantity (Qi)

One cubic foot per second (cfs) is the rate of water that will supply one cubic foot of water in one second.

*1 cfs = 1.98 acre-feet per day
448.8 gallons per minute
646,272 gallons per day*

Volume Measurements—Annual Quantity (Qa)

One acre-foot is the amount of water that will cover one acre to a depth of one foot.

*1 acre-foot = 325,851 gallons
1 million gallons = about 3 acre-feet*

Determining consumptive use by crop and location.

The Washington Irrigation Guide from the Natural Resource Conservation Service can help you determine consumptive use needed for a particular crop. This guide defines water needs for particular crops in different locations across Washington State.

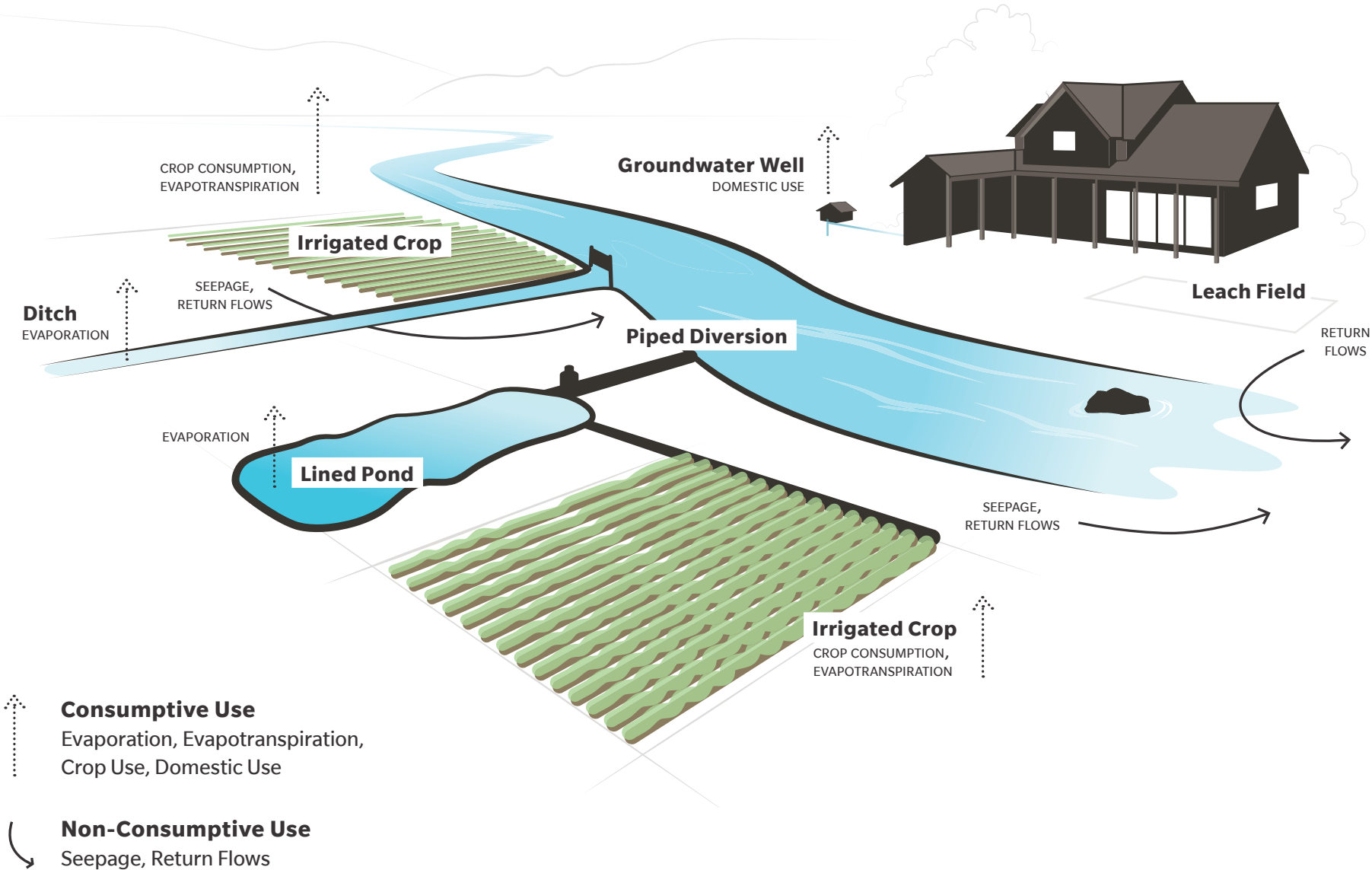
https://www.nrcs.usda.gov/wps/portal/nrcs/detail/wa/technical/engineering/?cid=nrcs144p2_036314

Consumptive and Non-Consumptive Use When water is removed from a stream or aquifer, a certain amount is taken up by plants through their roots, consumed by animals/people, or evaporates to the air, and is no longer available for downstream water users. This is called “consumptive use.” Typically, a smaller portion of the diverted water flows back to the stream or is absorbed into the aquifer. This is known as “return flow” or “non-consumptive use.” Your water right defines how much you are able divert or withdraw, but consumptive use describes the amount of water that is ultimately actually removed from the water source by your water use.

If you have an older water right, it may not clearly limit the total quantity of water you can divert or withdraw each year. The water right may specify only the instantaneous quantity. If that is the case, your water right is still limited to the total annual quantity needed for the beneficial use of the water. This annual quantity you need is determined by the “consumptive use” plus your irrigation systems’s withdrawal needs.

For example, if you irrigate apple trees, your right will be limited by the consumptive use needs of your apple trees (i.e. the amount of water used by the apple trees during the growing season), 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. ($3.0 \text{ af/a} \times 20 \text{ a} = 60 \text{ af}$ / $.75 = 80 \text{ afy}$)

Using substantially more water than is required for a given beneficial use is referred to as waste, which is prohibited under Washington Water Code. In the example given above, use of substantially more than 80 acre-feet per year is illegal.



HOW IS A WATER RIGHT ESTABLISHED IN WASHINGTON?

Understanding how water rights were historically established can help you determine 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.

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

Washington Water Code Conflicts between water users, a lack of information regarding beneficial use, and other problems led to passage of the Washington Water Code. Since adoption of the water code in 1917 (surface water) and 1945 (groundwater), you must file an application with the Department of Ecology and obtain a permit to develop a water right. Once you have put the water to full beneficial use, the water right is considered “perfected.” Once you fully “perfect” your water right, you can obtain a water right certificate from Ecology for the quantity of water put to beneficial use.

If you have a surface water right that was established before 1917, or a groundwater right that was established before 1945, your water right will 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.

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. However, if you do not use your water for a period of five consecutive years, the water right may expire or be subject to relinquishment.





IS A WATER RIGHT CLAIM A WATER RIGHT?

The short answer is maybe. 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.

Irrigation Districts & Ditch Companies If the water you use is supplied by an irrigation district formed under Chapter 87.03 RCW, your right to use the water is tied to your land, but the water right itself is typically held by the irrigation district. How you beneficially use your portion of the district's water right defines your portion of the overall water right.

In such situations, irrigation districts have the right to divert, distribute and convey water for you and all the water users within the district. In addition to any other required approvals, a change in water use within the district boundaries is done according to the District's by-laws.

Ditch and canal companies were historically formed in one of two ways: in one scenario, a few individuals who owned land and water rights would organize a company to deliver water through a common distribution system. The company acquired ownership of the water rights and issued shares to individuals, who were delivered water based on the number of shares they owned.

The second way was for a larger group of water right owners to form a company solely 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 and find out specifically whether you or the ditch company owns the water rights for your property. You should request a copy of the company's articles of incorporation and bylaws.

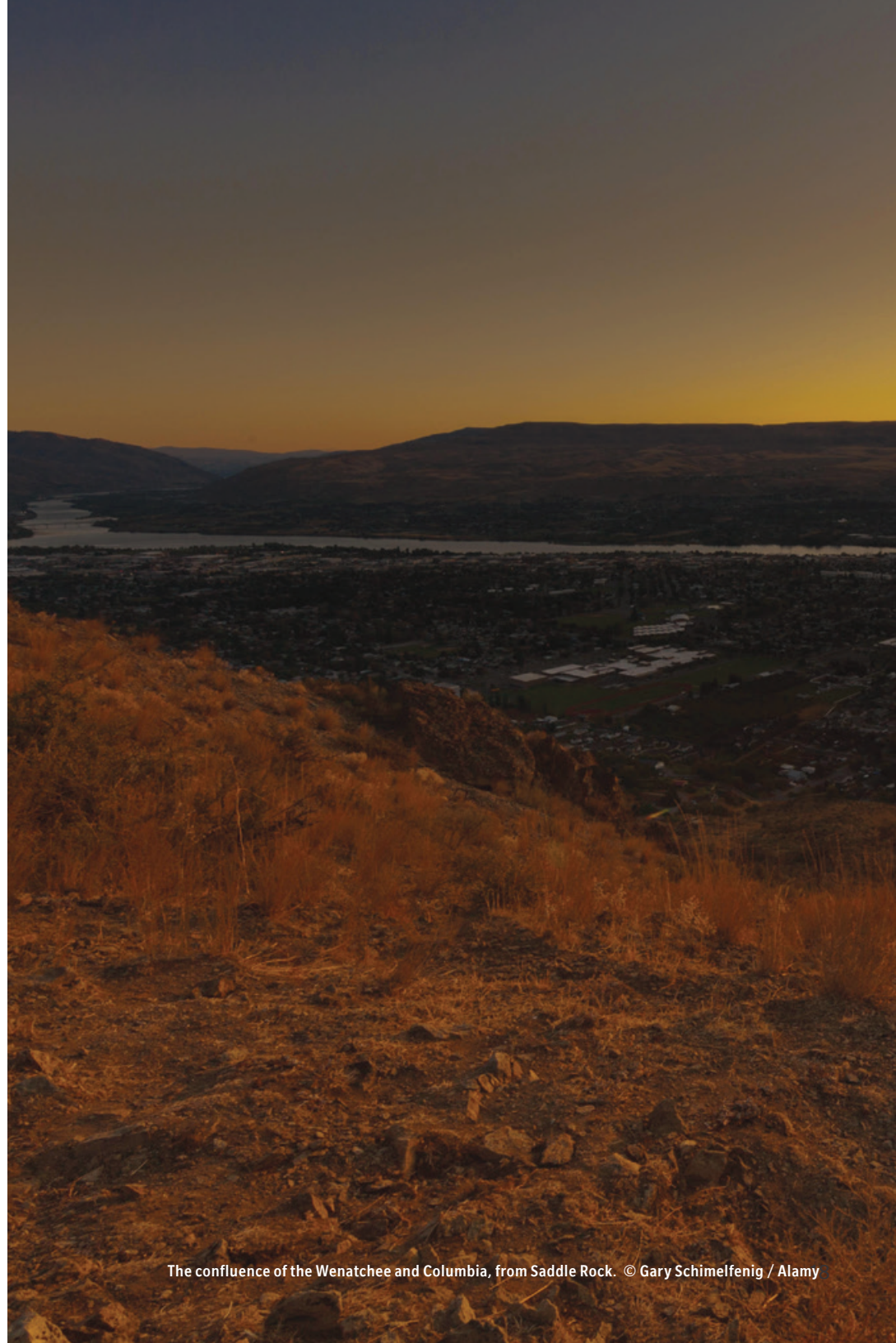
Your water right is a valuable asset.

Just as you keep track of your real property, it is important to understand your water right and ensure it remains valid.

If you want to understand your water right, you may complete due diligence on the historic use of the water. This will help you understand the amounts of water you actually have a right to use and on how much land. Both of these could be different from the amount of water written on your paper water rights.

Conducting a “due diligence” investigation is extremely important if you are considering buying property with a water right or buying a water right itself. In Washington, a water right is sold with the property unless it is specifically reserved from the sale.

You can investigate your water right on your own. However, we recommend you consult a water right expert for a thorough investigation if you want to fully understand your water right.





LEARN MORE, START HERE.

Completing the tasks
described on pages 19-23
will help you understand and
evaluate your water right.

OBTAIN COPIES OF YOUR PAPER WATER RIGHTS.

The easiest way to obtain copies of your water rights is to visit the Department of Ecology's Water Rights Explorer website, located here:

[https://fortress.wa.gov/ecy/waterresources/
map/WaterResourcesExplorer.aspx](https://fortress.wa.gov/ecy/waterresources/map/WaterResourcesExplorer.aspx)

You can enter the parcel number of the parcel of interest and pull up the Department of Ecology's records on water rights associated with that parcel or use the interactive map to search for the water right.

You can also 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 of this handbook).



LOCATE EVIDENCE OF CURRENT AND HISTORICAL WATER USE.

A critical step in understanding your actual water rights is to determine how many acres you are irrigating now, and how much land was irrigated in the past. The most common method is to examine current aerial photos and calculate how many acres you are currently irrigating.

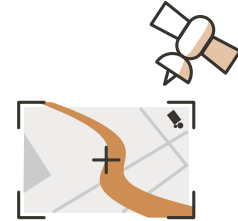
Then, you will need to review aerial photos and satellite imagery from the past to determine if there was a five-year period where fewer acres were irrigated than are currently being irrigated.

If there was a five-year period where fewer acres were irrigated, then you will need to explain this period of non-use or be subject to relinquishment. See Chapter 4 for more information.

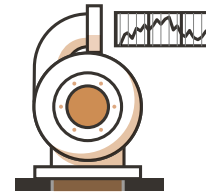
In addition to aerial photos, you can also use LANDSAT imagery, well logs, metering records, historical photos, and affidavits of landowners to prove current and historical water use.



AERIAL PHOTOS



LANDSAT IMAGERY



WELL LOGS



METERING RECORDS



HISTORICAL PHOTOS



LANDOWNER AFFIDAVITS

THE IMPORTANCE OF AERIAL PHOTOGRAPHY

The top image from 2015 shows a fully irrigated field, while the bottom image from 2005 shows only a partially irrigated field. As a landowner or prospective buyer, it is critical to know whether there were five or more years between 2005 and 2015 when the field was irrigated less than is shown in the 2015 image.

If so, then part of this water right may have been relinquished.

These example images were accessed with Google Earth. At the time of publication, Google Earth can be downloaded free of charge at google.com/earth





QUANTIFY WATER USE.

Also called “water duty,” the amount of water you own as part of your water right is determined by how much water you can actually use for your intended purposes.

Irrigation water rights are quantified by 1) calculating how much water it takes a certain crop to grow in a specific location in Washington State (also called the “crop irrigation requirement,” and then 2) determining how much water your particular irrigation system needs to irrigate (also called “irrigation efficiency”).

To calculate your water duty, follow the instructions on Ecology’s Guidance 1210 form, or contact a water rights expert.

<https://fortress.wa.gov/ecy/wrdocs/WaterRights/wrwebpdf/guid1210.pdf>



VERIFY OWNERSHIP OF YOUR PLACE OF USE AND YOUR POINT OF DIVERSION.

It is important to understand the place of use associated with your water right, and whether your point of diversion or withdrawal is on your property.

To do so, carefully review the current deed to your property. Compare the legal description of the place of use and point(s) of diversion with the legal description of the land that you own. (See Appendix B - Legal Descriptions).

If the point of diversion is not on the land you own, you should determine 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.



CONFIRM THE PRIORITY DATE OF YOUR 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. 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.



CHECK WHETHER YOUR WATER RIGHTS ARE INTERRUPTIBLE RIGHTS.

Some water rights are subject to interruption when flows in the source stream or river fall 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.



DETERMINE IF YOUR WATER RIGHT IS INDEPENDENT OR PART OF AN IRRIGATION DISTRICT.

If your 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 your shares.



ENSURE YOUR WATER RIGHT IS "PERFECTED."

For a water right to be valid, the water must 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.

BUYING LAND

If you are considering buying land with water rights or buying water rights separate from a piece of land, you should understand the property's water rights. In addition to conducting the due diligence steps described in Chapter 3, here are a few additional suggestions.


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.

Carefully review the 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. 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 water rights.

Interview the 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

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.





ONCE YOUR WATER RIGHT HAS BEEN PERFECTED BY BEING PUT TO BENEFICIAL USE, YOU MUST CONTINUE TO USE THE WATER, OR RISK LOSING YOUR WATER RIGHT DUE TO NON-USE.

People often talk about water rights and the “use it or lose it” principle. This principle comes from both statutory and common law doctrines of relinquishment and abandonment.

Abandonment This is a common law doctrine that says you may have abandoned your water right if you intentionally fail to use it. Historically, a person could lose a water right only through abandonment.

Relinquishment The more common way a water right is lost is through relinquishment. Relinquishment applies when you voluntarily fail to use all or a portion of your water for five consecutive years. The portion of the right not used is then subject to being lost. State law provides relief from relinquishment if you have a “sufficient cause” to explain why your water has not been used. According to the law, there are certain conditions that may impact water use and can shield you from relinquishment. These conditions include years where there is a drought, circumstances where water is not available such as a damaged diversion, variations in weather that reduce crop water requirements, and other conditions that are beyond the control of the water right holder.

The doctrine of relinquishment has caused unintended consequences, including wasting water. To fend off relinquishment, some people have diverted water and run it through their delivery system without applying the water to beneficial use. Others have applied substantially more water than needed in a given year to avoid relinquishment. 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. One alternative to relinquishment is to place your water rights 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. It may also be possible for you to receive payment for water while it is in trust.

Refer to Chapter 8 for more information about this program.

Relinquishment Exceptions

In general, five or more consecutive years of non-use leads to relinquishment unless there is “sufficient cause” to explain the non-use, such as:

- Drought, or other unavailability of water
- Military duty
- Reduced use of irrigation water due to crop rotation
- Leases with a federal or state agency
- Temporarily reduced water use for irrigation due to varying weather conditions

A complete list of relinquishment exceptions can be found in RCW 90.14.140, and a thorough explanation can be found here:

<https://fortress.wa.gov/ecy/publications/documents/981812wr.pdf>



**MEASURING
YOUR WATER USE
IS A VALUABLE WAY
TO MANAGE
YOUR WATER
RIGHTS.**

Depending on your water source and use, you may or may not be required to meter. Not all water right holders are required to report metering data, but a sound best practice is for water right holders to maintain five years of metering records.

Metering is required by state law in many situations, particularly the following:

- Diversions for all new water rights, or after a water right has been changed
- All surface water uses greater than 1 cfs
- All new water right permits issued in the 16 fish-critical watersheds
- Water uses in water short areas

Metering can be a valuable strategy for documenting the value of your water right. Possessing solid information about how much water you are using is extremely important for economic valuation of your water right. Metering also provides information to quantify your water right if you want to change or modify the right.

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 manage water across Washington.

CHANGES AND TRANSFERS

Modifying an element of a water right is called a change. 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. For example, you own and irrigate 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 this change could be made without injury to any other water rights, Ecology could approve the change. Your right would still be limited to the irrigation of 10 acres within the new 12-acre place of use. If it approves the change, 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 automatically transferred to the buyer. If you kept your property, but sold your water right to someone else, the water right would be transferred to the water right buyer and changed to a different place of use. This type of transfer requires Ecology approval. The determination of whether a transfer will be allowed requires analysis by Ecology to determine whether any other water right might be impaired.

When evaluating a request to change or transfer a water right, Ecology also makes a tentative determination of the extent and validity of the water right. That is, Ecology investigates the legal basis and historical use of the right. If Ecology finds that the change or transfer can be made without impairing 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 formed county Conservancy Boards. 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 at which time Ecology 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.



VALUING AND SELLING YOUR WATER RIGHT

Your water right has value. But how much is it worth? Putting a price tag on the use of a public resource can be done, but it is very challenging. Like other types of real estate, water rights carry a wide range of values. Real estate values are often determined by looking at comparable sales in a geographic area. The most common way to value a water right is to document comparable sales, and when comparable sales can be found, they provide the best indication of value. However, because there are relatively few sales of water rights, finding a sale that is truly comparable can be difficult.

Another method that can be used to value a water right is to examine the potential income that could be generated from ownership of the water right. For example, how much value does irrigating a property add instead of dryland farming on that same property? A third method is to evaluate the replacement cost if the water right were not available. For instance, if a landowner did not own a surface water right, what would it cost to develop a new groundwater well?

Despite their complexity, water markets in Washington tell us the price of water varies considerably depending upon the location, reliability of the water right, and the buyer's intended use. For a formal assessment of your water right's market value, you can secure a written valuation. Informal assessments can also be done by contacting a water rights expert.

You may be able to lease or sell your water right to an interested buyer. In Washington State, buyers include private individuals and corporations, municipalities, public and private water banks, and organizations interested in buying water for instream flow purposes.

Leasing your water involves temporarily transferring your water right to a buyer, which requires establishing a lease agreement with a buyer. Many types of leases can be structured, including full season leases, or split-season leases, which means irrigating for part of the season and leasing for the remainder. In contrast, selling your water right involves permanently selling all or part of your water right, and will necessitate a more in-depth purchase and sale agreement. Because leases and sales of water rights typically involve transferring a water right from one property to another, they must go through a change process with Ecology or a county Water Conservancy Board. Because such change processes take time, make sure that your water right is protected from relinquishment during this waiting period.

WATER RIGHTS ADJUDICATIONS

As previously discussed, if you apply to change your water right, Ecology will investigate your water right and make a “tentative determination” of the water right’s “extent and validity.” However, the true extent and validity of your water right can only be confirmed through a court. This court process is called “adjudication.”

Historically, adjudications arose from landowners fighting over water rights to a particular stream. When a landowner thought someone else was getting more water than they should, they would demand that the water rights be adjudicated.

A water rights adjudication is a Superior Court proceeding to settle title to all water rights within the area of the adjudication. In an adjudication, the court determines 1) the extent and validity of all water rights in the area, and 2) how they fit together by priority date.

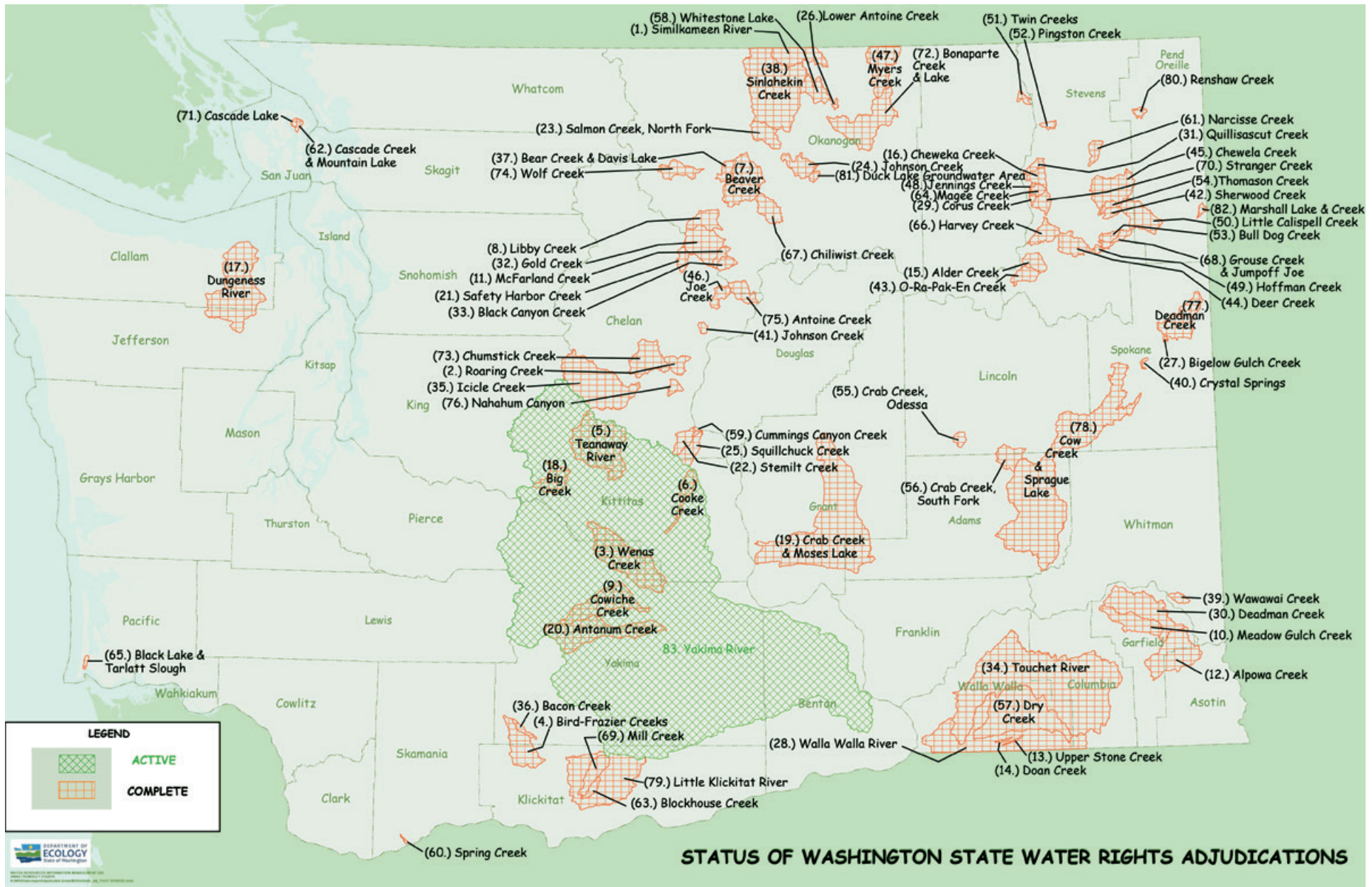
Once all the water rights in an area are adjudicated, Ecology assigns a water master or stream patrolman to the area to regulate water use based upon the adjudication.

If an adjudication occurs in your area, you will be required to file a claim to your water right in court 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. However, the court can find that a water right is not valid or reduce the right based on its historical use.

When the adjudication is complete, 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.”

There have been 82 water right adjudications in the state of Washington. The earliest was in 1918, and the latest finished in 2019.

See map on next page.



At the time of publication in June 2019, the Yakima adjudication was close to complete.

Understanding instream flows.

MANY STREAMS IN WASHINGTON ARE OVER-APPROPRIATED. THIS MEANS MORE WATER HAS BEEN ALLOCATED TO OUT-OF-STREAM WATER RIGHTS THAN EXIST IN THOSE STREAMS MOST YEARS, PARTICULARLY IN LATE SUMMER MONTHS.

Over-appropriation has led to many problems. In some basins, it has led to streams drying up completely. Sufficient stream flows are needed to support fishing, stock watering, and recreation, and to support groundwater recharge and good water quality. Low stream flows also put fish and wildlife at risk. Agriculture, industry, domestic water supplies, and functioning ecosystems can be harmed by low stream flows.

Washington has implemented several legal mechanisms designed to protect stream flow, including setting minimum instream flows, closing over-appropriated basins to new water rights, and conditioning new permits on certain flows being available before water may be withdrawn.

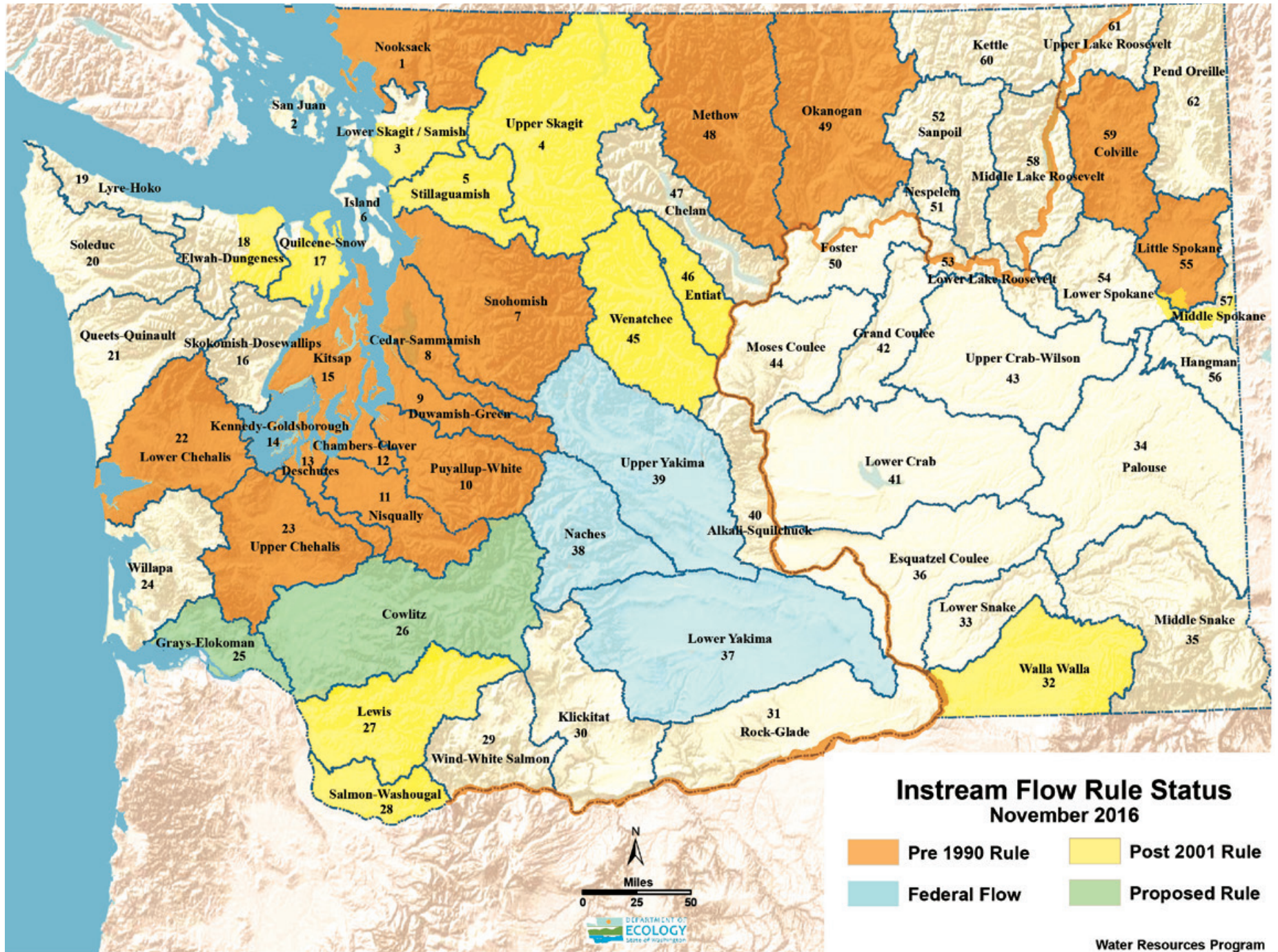
Instream Flows Instream flows are minimum stream flows set by rule, intended to protect fish and wildlife. An instream flow is essentially a water right for the stream and the resources that depend on it. An instream flow identifies a specific stream flow at a specific location on a stream. Once Ecology sets a flow level to protect instream flows, that flow level legally defines how much water must be kept instream and how much water is available for others to appropriate.

Instream Flow Rules The Department of Ecology has set instream flow rules in basins highlighted in the map on the following page. Instream flow rules developed in the 1970s and 80s are simpler than rules developed since 2000.

How will instream flows affect my water right? The first step to answering this question is determining if your property is in a basin where instream flow rules exist. If so, compare the priority date on your water right to the date the instream flow rule was set.

Water rights that are “senior” to instream flows are not affected by instream flow rules. However, people who receive water rights after the instream flow rules are set are “junior” to the instream flow water right, and are required to stop using water when flows fall below instream flow levels.

Interruptible Rights 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. Interruptible water rights are junior to other water rights, including instream flows, and cannot be used year-round.



Washington Trust Water Rights Program

In 1991, the Washington State Legislature created the Trust Water Rights Program, a mechanism for allowing water rights to go unused in their historic form without being subject to relinquishment or abandonment, and thereby made available for other uses. Ecology manages this statewide program that allows water right holders to transfer their water rights to the Trust Water Rights Program (TWRP), either temporarily or permanently. The TWRP is a superb tool for anyone who has a water right but is not using it.

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 or mitigation. When a water right is placed into the TWRP, the water right holder may designate the purposes for which the right may be used while it is in trust. A water right is protected from relinquishment as long as it is in the TWRP. In addition, the right maintains its original priority date.

How can the TWRP benefit me? As a water right owner, there are several ways in which you may benefit from the TWRP. 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 about “using it or losing it.”

Using the TWRP to augment stream flows also enables you to generate positive results for water resources and local communities. Low stream flows have been identified repeatedly as a problem for groundwater recharge, good water quality, and healthy fish runs. Increased stream flows lead to water storage, improved drinking water quality, healthier fish populations and boost the economies of areas where fishing and boating are important activities.

Another bonus is that permanent donations to the TWRP receive a federal tax benefit for the value of the right.

How can I access the TWRP? Landowners can transfer surface or groundwater rights to the TWRP, and the transfer can be temporary or permanent. If you find yourself not using your water right, consider using the state’s Trust Water Rights Program. You can complete an application, located here:

<https://fortress.wa.gov/ecy/publications/documents/ecy070488.pdf>

Staff with Trout Unlimited – Washington Water Project or any water rights expert can help you submit an application.

Remember the aerial images on page 21?

A potential buyer of this property sees that this field was only partially irrigated from 2005 – 2015. Because this buyer understands Washington water law, he is concerned about relinquishment and researches why there was a lapse in full irrigation for this field.

Luckily, he finds out that the former landowner planned to fallow his field for several years, and placed the majority of his water right into the Trust Water Rights Program from 2005 – 2015.

Due to his foresight, this property’s water right remains fully intact and no part of the water right was lost.



EXEMPT WELLS

State law allows the withdrawal of groundwater for certain uses without applying for a water right and receiving a permit from Ecology—these uses are essentially “exempt” from the Ecology permitting process. When the State Legislature established the Groundwater Code, it identified certain small withdrawals of water that should be should not be required to go through the formal permitting process required for larger uses of water. There is no similar exemption for small diversions of surface water.

An exempt well may be constructed and used to withdraw groundwater without a water right for the following uses:

- Domestic uses of less than 5,000 gallons per day
- Industrial uses of less than 5,000 gallons per day
- Irrigation of a lawn or non-commercial garden one-half acre or less in size
- Stock water

Although an exempt well can be constructed without first obtaining a permit from Ecology, use of groundwater through an exempt well is still subject to the same prior appropriation doctrine as a water right under a permit, certificate or claim. The doctrine of “first in time, first in right” still applies to exempt wells.

Although exempt wells as described above are allowed across Washington, several Washington Supreme Court decisions in the early 2000s and a 2018 law passed by the Washington legislature commonly called the Streamflow Restoration Act impact new domestic permit-exempt wells in certain watersheds across the state.

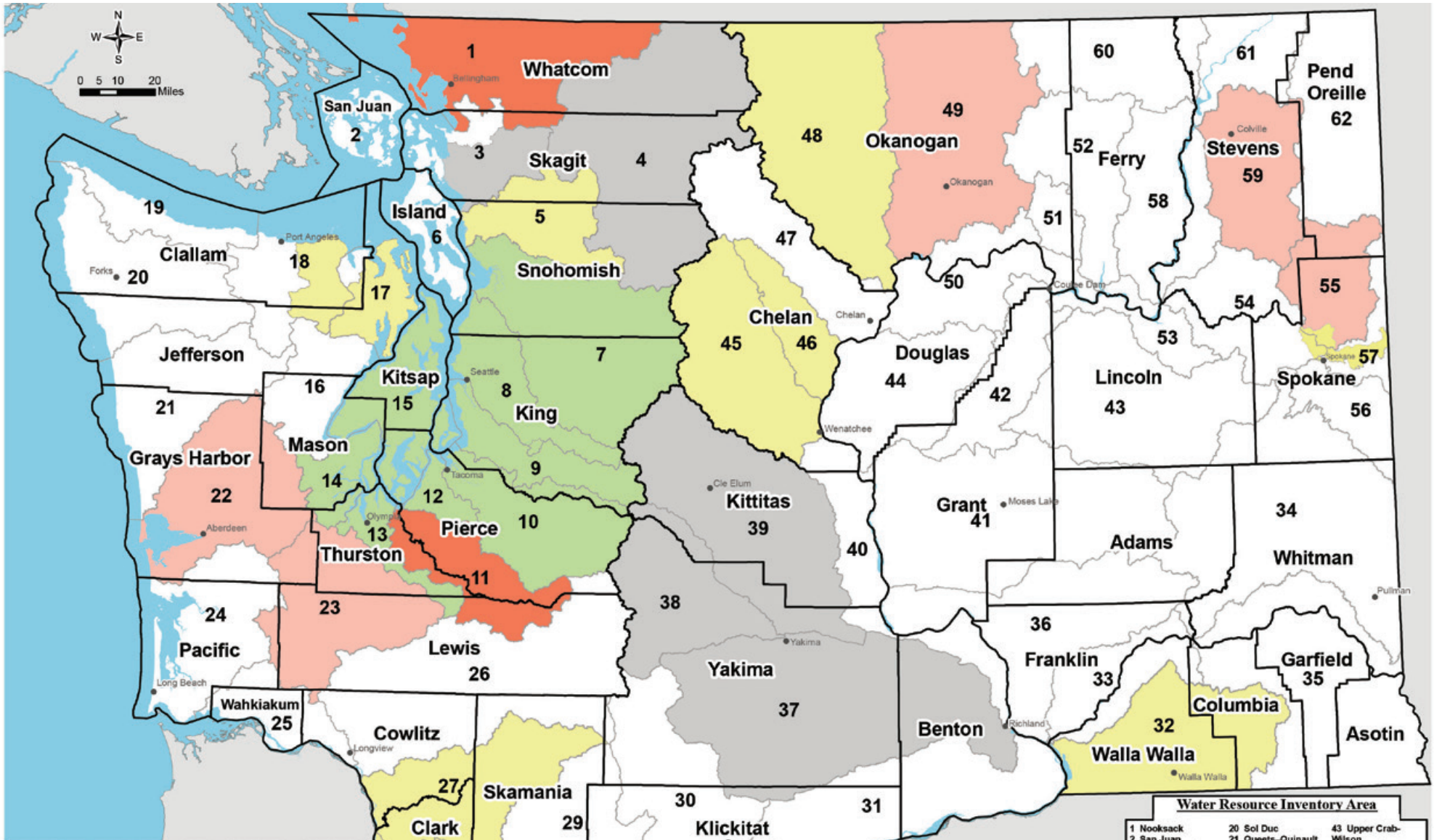
The map on the next page shows that different rules apply to permit-exempt wells in certain watersheds.

The rules vary among watersheds, but in general, the watersheds highlighted in pink, red, and green must limit residential permit-exempt wells to 3,000 gallons per day, and all new permit-exempt wells are subject to a fee. The watersheds highlighted in yellow have existing rules that regulate permit-exempt uses.

An interactive map is available here:

<https://ecology.wa.gov/Water-Shorelines/Water-supply/Streamflow-restoration>

If you are interested in constructing an exempt well, you should contact your county’s planning department for up-to-date information about current rules and regulations.



- County Boundary
- WRIA Boundary
- Watershed plan: update due 2019
- Watershed plan: update due 2021
- Watershed restoration and enhancement plan: due 2021
- Existing rule that regulates permit-exempt uses
- Other requirements apply
- No Instream Flow Rule (See page 2 for details)

Streamflow Restoration Domestic Permit-exempt Withdrawals: New Regulations (2018 Legislation: ESSB 6091)

Water Resource Inventory Area

| | | |
|--|---|--|
| <ul style="list-style-type: none"> 1 Nooksack 2 San Juan 3 Lower Skagit-Samish 4 Upper Skagit 5 Stillaguamish 6 Island 7 Snohomish 8 Cedar-Sammamish 9 Duwamish-Green 10 Puyallup-White 11 Nisqually 12 Chambers-Clover 13 Deschutes 14 Kennedy-Goldsbrough 15 Kitsap 16 Skokomish-Dosewallips 17 Quilcone-Snow 18 Elwha-Dungeness 19 Lyre-Hoko | <ul style="list-style-type: none"> 20 Sol Duc 21 Queets-Guinault 22 Lower Chehalis 23 Upper Chehalis 24 Willapa 25 Grays-Elochoman 26 Cowlitz 27 Lewis 28 Salmon-Washougal 29 Wind-White Salmon 30 Klickitat 31 Rock-Glade 32 Walla Walla 33 Lower Snake 34 Palouse 35 Middle Snake 36 Esquatzel Coulee 37 Lower Yakima 38 Naches 39 Upper Yakima 40 Alkali-Squilchuck 41 Lower Crab 42 Grand Coulee | <ul style="list-style-type: none"> 43 Upper Crab-Wilson 44 Moses Coulee 45 Wenatchee 46 Entiat 47 Chelan 48 Methow 49 Okanogan 50 Foster 51 Nespelem 52 Sanpoil 53 Lower Lake Roosevelt 54 Lower Spokane 55 Little Spokane 56 Hangman 57 Middle Spokane 58 Middle Lake Roosevelt 59 Colville 60 Kettle 61 Upper Lake Roosevelt 62 Pend Oreille |
|--|---|--|

Feb. 2, 2018



What win-win looks like.

COWICHE CREEK IN THE YAKIMA RIVER BASIN



To help solve Washington’s water scarcity problem, and create win-win solutions for fish, agriculture, and communities, Trout Unlimited and partners are working to provide voluntary opportunities for landowners to increase irrigation efficiencies and get paid to leave water instream. Many success stories exist where win-win solutions have been implemented that benefit landowners, towns, and fish simultaneously, such as our recent work in Cowiche Creek.

Cowiche Creek originates in the mid-elevation mountains near Mt. Adams and feeds the Naches River in Yakima, Washington. Historically, Cowiche Creek provided outstanding habitat for salmon and steelhead. In the recent past, however, overallocation of water in Cowiche Creek led to portions of lower Cowiche Creek drying up in the summer. This led to an unreliable water source for irrigators on Cowiche Creek as well as serious problems for steelhead and salmon, which migrate and rear in Cowiche Creek.

An innovative partnership between agricultural landowners on Cowiche Creek, the Yakima-Tieton Irrigation District (YTID), Trout Unlimited, and many other partners produced a win-win solution. Partners worked to improve YTID’s water delivery infrastructure so that irrigators on Cowiche Creek could be served by this system. YTID improvements, including installation of a new headgate structure and waterproofing approximately 1200 feet of previously leaky canal, greatly improved the efficiency of the system.

Agricultural landowners on Cowiche Creek then shifted from directly diverting from Cowiche Creek to being served by YTID. As a result, more water was diverted from the Tieton River, which has far more flow capacity than Cowiche Creek. Cowiche Creek flows and passage were restored for salmon and steelhead habitat, and Cowiche Creek no longer dries up in the late summer.

This project was a win for the YTID because it upgraded to an efficient, state-of-the-art water delivery system. It was a win for individual agricultural landowners on Cowiche Creek because they now receive more reliable water via new on-demand, pressurized distribution lines that increase irrigation efficiency and save water. Finally, it was a win for fish because water now flows abundantly in Cowiche Creek year-round, enabling migration and rearing for salmon and steelhead.

Please contact the Trout Unlimited – Washington Water Project if you have a particular water challenge that needs a solution—our staff and partners are available to work with you.

Happy farmers, happy fish.



Bottom left - Community members watch a sprinkler irrigate a Cowiche Creek field with water from a fish and farm-friendly project.
Top right - A landowner and North Yakima Conservation District employee open the valve to deliver water to Cowiche Creek irrigators.
Bottom right - Water flows over a diversion structure outside of the irrigation season. © Trout Unlimited - Washington Water Project

Abandonment - A common law doctrine that provides a water right is perfected when there is an intent to not use the water; excessive periods of non-use create a presumption of abandonment.

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.

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.

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

Appropriation - The action of diverting or withdrawing water for a beneficial use. Proof of appropriation is required to establish and perfect a water right.

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.

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.”

Certificate of change - The document issued by Ecology that officially authorizes a modification of one or more elements of an existing water right.

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, purpose of use, and season of use.

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.

Consumptive use - A calculated quantity of water that represents the amount used by a crop during the growing season, or by a municipal population, that reduces the source of supply.

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.

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.

Due diligence - The process of investigating the extent and validity of a water right, including determining the legal basis of the right, the historical use of water, the point of diversion, when the water was used, and other related information.

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.

Non-consumptive use - A use of water that does not result in any reduction in quantity. For example, water used to produce hydropower is non-consumptive as long as water is not diverted out of the stream.

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 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 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 must be 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.

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 underground to the aquifer.

Riparian water right - 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 property 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 water 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. A trust water right is not subject to relinquishment as long as it remains in trust.

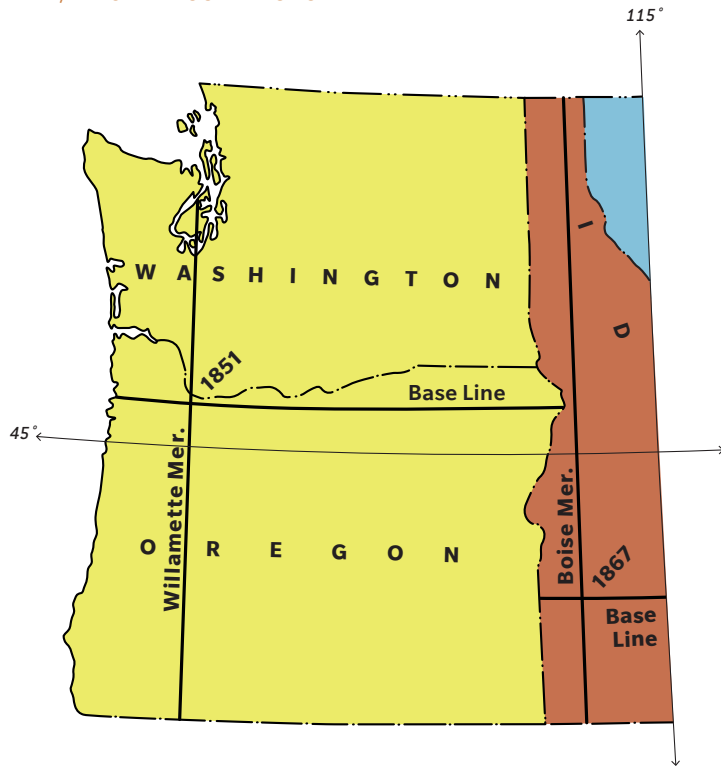
Waste - A portion of a diverted flow that is not put to beneficial use. For example, if an irrigator puts an excess amount of water on his field, causing some of the water to flow off his land onto the county road, that surface flow is considered waste.

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.



Map. Willamette Baseline and Willamette Meridian

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 above, the Willamette Meridian and Baseline intersect at a point near Portland, Oregon.

| | | | | | | | | |
|----|-------|----|----|----|----|----|----|----------|
| 36 | 31 | 32 | 33 | 34 | 35 | 36 | 31 | 32 |
| 1 | 6 | 5 | 4 | 3 | 2 | 1 | 6 | TOWNSHIP |
| 12 | 7 | 8 | 9 | 10 | 11 | 12 | 7 | |
| 18 | 18 | 17 | 16 | 15 | 14 | 13 | 18 | |
| 24 | 19 | 20 | 21 | 22 | 23 | 23 | 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 |

Figure 1. Section Numbers Within a Township

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 36th section in the southeast corner of the township.

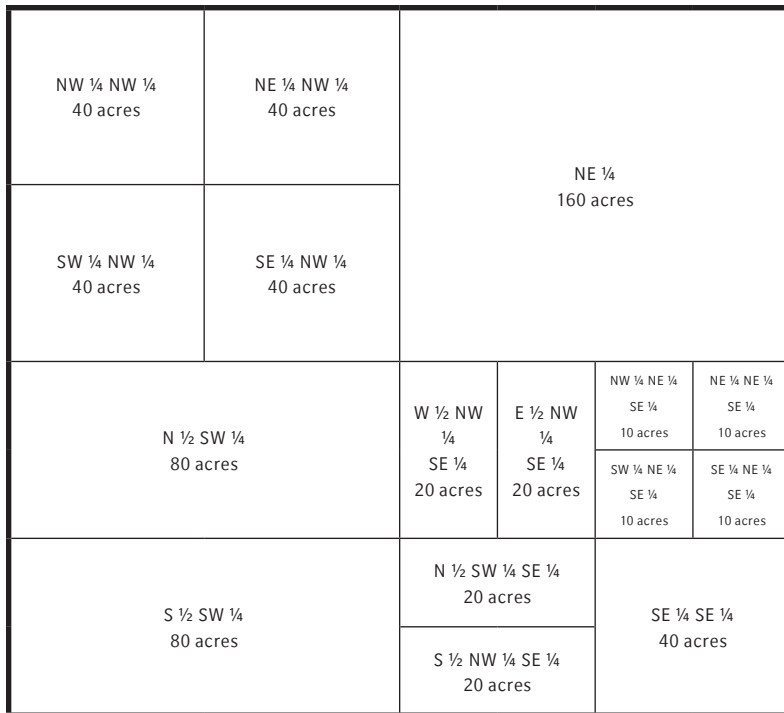


Figure 2. Fractional Divisions of a Section

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 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.

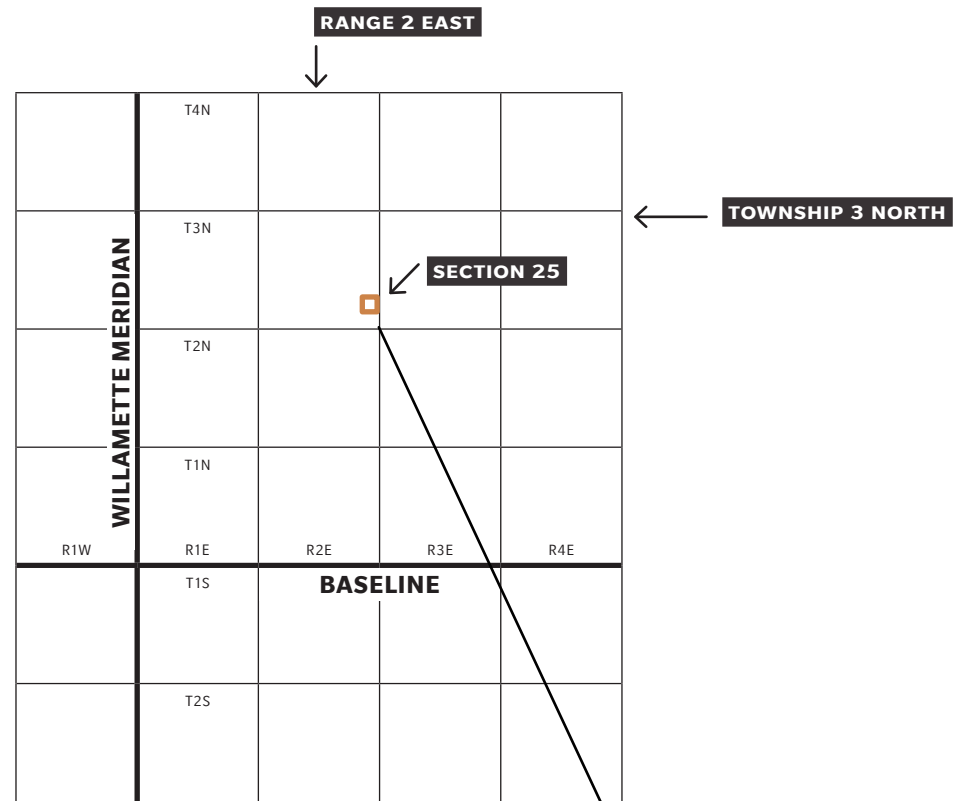
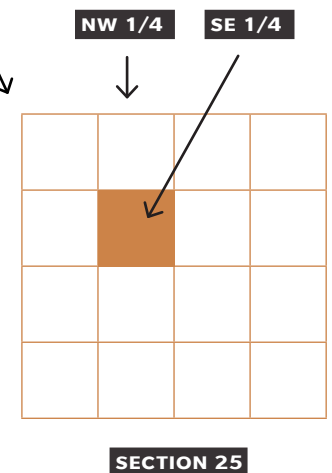


Figure 3. Example 40-Acre Parcel Location

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 brown in Figure 3.

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



WATER RIGHTS RESOURCES

Department of Ecology – Water right information

<https://ecology.wa.gov/Water-Shorelines/Water-supply/Water-rights>

Department of Ecology – Groundwater well information

<https://ecology.wa.gov/Water-Shorelines/Water-supply/Wells>

Department of Ecology – Water right applications, water right changes and other related forms

<https://ecology.wa.gov/Regulations-Permits/Permits-certifications/Water-rights-permits>

Department of Ecology – Water Resources Explorer

<https://apps.ecology.wa.gov/waterresources/map/WaterResourcesExplorer.aspx>

Department of Ecology – Streamflow Restoration Program

<https://ecology.wa.gov/Water-Shorelines/Water-supply/Streamflow-restoration>

Department of Ecology – Regional Offices

Useful to request a copy of a water rights or other related documents: <https://ecology.wa.gov/About-us/Get-to-know-us/Contact-us/Regional-contacts>

Irrigation Efficiency Information

Washington State Conservation Commission: www.scc.wa.gov

Washington Irrigation Guide

Natural Resources Conservation Service: https://www.nrcs.usda.gov/wps/portal/nrcs/detail/wa/technical/engineering/?cid=nrcs144p2_036314

Washington State Water Law – A Primer

<https://fortress.wa.gov/ecy/publications/documents/98152.pdf>

Water Conservancy Board Contact Information

<https://fortress.wa.gov/ecy/wrdocs/WaterRights/wrwebpdf/pcf.pdf>

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TROUT UNLIMITED WASHINGTON WATER PROJECT

Wenatchee Office 103 Palouse St, Ste 14, Wenatchee, WA 98801

Ellensburg Office 119 West 5th Ave, Ste 201, Ellensburg, WA 98926

Twisp Office PO Box 1128, Twisp, WA 98856

Email info@waterrightshandbook.com

Facebook facebook.com/WA.water.project.TU

