

## Water Right Acquisitions

Kelsey Collins  
Trust Water Coordinator/Acquisitions Lead  
Water Resources Program, WA State Dept. of Ecology  
509-575-2640  
[Kesi461@ecy.wa.gov](mailto:Kesi461@ecy.wa.gov)

- Washington water law is based on prior appropriation: “first in time, first in right.”
- Water code established in 1917
- “Water Right” commonly used to describe many things; not all are equal:
  - Tribal right: time immemorial water use associated with reservations
  - Vested right: pre-1917 use that should be documented in a claim
  - Claim: assertion of water use (RCW 90.14)
  - Adjudicated certificate: court determined water right
  - Permit/Certificate
    - State issued rights based on an application that meets the four part test (water is available, a beneficial use, no impairment, in the public interest). If water is put to beneficial use, a certificate can be issued.
- Ecology acquires water rights that are held and managed in the Trust Water Rights Program (TWRP)
  - Ecology has statutory authority to hold water rights for future uses without the threat of relinquishment.
    - Only Ecology can hold a water right in trust:
      - Temporarily or permanently
      - For instream AND out of stream uses
- Mechanisms of conveyance, Ecology holds water rights in the TWRP through the following:
  - Temporary donation
  - Lease agreement with Ecology
  - Purchase documented by a recorded deed in the name of Washington State Department of Ecology
  - Other types of agreements like Trust Water Right Agreements
- Ecology’s water right purchases are contingent upon a water right change to instream flow to provide certainty. The change process is as follows:
  - Change application submitted to Ecology to change the purpose and place of use
    - Public Notice (SEPA?)
    - Investigation of the water right yields:
      - Validity (tentative determination of the extent and validity of the water right); how much water is available to be changed based on historic use. Examples of evidence of water use includes air photos, meter records, power records, crop sales.

- Defined stream reaches that will benefit from a quantified volume and rate of flow being held in stream.
  - If the right is valid, the change authorization is issued, and no appeal is filed, then payment can be made, and the water right is deeded to Ecology.
- Why acquire water rights under RCW 90.94?
  - Offset impacts from new domestic wells, improve streamflow, and achieve NEB in the planning basins.
  - Increase flows and improve water quality for fish and wildlife statewide
- Ecology's Questions to assess potential acquisitions:
  - Would the acquisition improve flows and/or habitat when, and where, ESA listed or threatened species are utilizing them? Provide additional passage or refuge?
  - Are there challenges with changing the water right's purpose of use to instream flow?
    - Has the right relinquished partially or completely?
    - Does the seller own all the parcels contained in the water right's place of use?
    - Are there other water rights overlapping the water right's place of use?
    - Is the water right an alternative or standby/reserve right?
    - Is the right subject to the Family Farm Act (RCW 90.66)?
  - Is the right legally available? Is the priority date/class relatively senior enough to be protected past other diverters?
  - Is the right physically available in dry years?
  - Is the asking price of the water right comparable to local market values?
  - Does the seller have additional expectations beyond holding the right in the TWRP?
  - Has there been consultation with tribal and local governments, and neighboring water right holders? Is there local stakeholder opposition to the project?
- Types of Acquisitions and related projects:
  - Purchase
  - Shortened or shifted season of use
  - Source Switch
  - Storage and release
  - Reclaimed Water delivery to replace stream water right
  - Water right swaps (?)
  - Other?