Water Right Acquisitions

# Contact information:

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# Overview:

* 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?