

Transfer Headaches:

Issues faced in water right disputes & changes

May 16, 2024

Overview of Presentations

- My Presentation
 - Notice
 - Water Right Ownership: Legal Descriptions, Place of Use and Necessary Signatures
- Amy Sumner, Spokane County
 - Grant Funding for Projects
 - Water Right Acquisition Complications
- Eric Weber, Landau Associates
 - Changing a Supplemental Water Right
 - Changing a Point of Withdrawal

Notice

RCW 90.03.280 states:

“ Upon receipt of a proper application, the department shall instruct the applicant to publish notice thereof in a form and within a time prescribed by the department in a **newspaper of general circulation published in the county or counties in which the storage, diversion, and use is to be made**, and in such other newspapers as the department may direct, **once a week for two consecutive weeks**. Upon receipt by the department of an application it shall send notice thereof containing pertinent information to the director of fish and wildlife.”

*30 day protest period after the second publication

Notice

RCW 43.21B.230, states:

- (1) Unless otherwise provided by law, any person with standing may commence an appeal to the pollution control hearings board by filing a notice of appeal with the board within **thirty days from the date of receipt** of the decision being appealed.
- (2) The appeal is timely if it is filed with the board and served upon the state or local agency whose action is being appealed within the same thirty-day period. Proof of service must be filed with the clerk of the hearings board to perfect the appeal.
- (3) The appeal must contain the following in accordance with the rules of the hearings board:
 - (a) The appellant's name and address;
 - (b) The date and docket number of the order, permit, license, or decision appealed;
 - (c) A copy of the order, permit, license, or decision that is the subject of the appeal;
 - (d) A clear, separate, and concise statement of every error alleged to have been committed;
 - (e) A clear and concise statement of facts upon which the requester relies to sustain his or her statements of error; and
 - (f) A statement setting forth the relief sought.

Notice



Ecology Eastern Region Office (ERO)

(Serving: Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grant, Lincoln, Pend Oreille, Spokane, Stevens, Walla Walla, Whitman counties)

Help Desk: 509-329-3490

Northwest

Southwest

Central

Eastern

Water Right Documents: Review or Comment

Welcome to the Water Resources Program Eastern Region Office (ERO) public posting portal. Your input is valuable to our decision-making process. To view documents posted in other regions, use the links above.

Documents are posted here for a review or comment period. If a document is posted here for review, there may be an associated statutory appeal period. If there is no statutory appeal period or the appeal period has ended, the document is posted for public awareness only. If a document is posted here for comment, we are currently accepting public comments and our comment form is linked in the document table. To comment, you need the water right file number associated with the document you are interested in.

To receive a notice when we post documents, join our [GovDelivery](#) email list subscription. If you do not already have an account, an email address is all you need. As a new user, you will see a list of subscription topics to choose from. If you already have an account, click on "Subscriber Preferences", then "Add Subscriptions". Once you submit your preferences, you will receive emails from us as documents are posted. To change how often you receive email notifications for all subscriptions, click on the "Preferences" tab, then "Email Delivery Preference".

Water Right Applications

+ Applications for New Water Rights and Reservoirs

+ Applications for Water Right Change



Water Right Ownership

RCW 90.03.380(1) reads, in pertinent part:

“The right to the use of water which has been applied to a beneficial use in the state shall be and remain appurtenant to the land or place upon which the same is used”



Water Right Ownership

Place of Use & Ecology's Signature Policy

Washington Department of Ecology requires:*

- Ownership disputes must be addressed by the parties
- Any application or form that requires a signature must be signed by the applicant and other required parties to be accepted.
- Including:
 - “Parties with an ownership interest in the parcel(s) of land constituting the proposed place of use area also to sign, if not already signing as an applicant or owner(s) of the water right.”

*Washington State Department of Ecology, Water Resources Program
Guidance, Ensuring Proper Signature on Applications and Forms, Publication
21-11-002 (Oct. 9, 2013)

Water Right Ownership

Water Right Change Application Signatures

Water Right Certificate for Irrigation Purposes

- Water Right authorizes the irrigation of 40 acres
- Place of Use area is hundreds of acres, currently owned by multiple parties
- Water Right User needs to apply for a change for the water right
- Ecology states that all parties that own property within the place of use need to sign the change of use application

Title Research Back to the Timing of the Water Right Application for entire place of use

- At the time of the Application the place of use was owned by multiple owners
- Title research confirmed water right user was successor-in-interest to original applicant
- Other owners within the place of use contacted
 - Affidavit of non-use
 - Quit Claim Deed
 - Quiet Title Action

Water Right Ownership

Dispute Example

Water Right Claim For Multiple Domestic Water Uses

- Claim was filed properly under RCW 90.14.041
 - Water use for six parcels
- Claim states that the water use was established in 1903
- One parcel owner claims ownership and seeks to exclude others

Quiet Title Action

- Title research back to common ownership in 1903
- Title research confirms that predecessors-in-interest identified proportionate ownership
- Summary Judgment

Water Right Ownership Dispute Example

Mrs Anne Kennedy)
 to)
 Angus Lutherland)
Warranty Deed. No. 78296
This Indenture, made this 10th day of February in the year of our Lord
 one thousand nine hundred and three
 between Mrs Anne Kennedy of Delberton Snohomish County
Wash the part of the first part, and
Angus Lutherland of the same place the part of the second part.
WITNESSETH, That the said part of the first part, for and in consideration of the sum of
Five hundred Dollars
Gold coin of the United States, to her in hand paid by the said part of the second part, the receipt
 whereof is hereby acknowledged, do by these presents **GRANT, bargain, sell, convey and CONFIRM** unto the said
 part of the second part, and to his heirs and assigns the following described tract or lots or parcel of land, ~~containing~~
 lying and being in the County of Snohomish, in the State of Washington, and particularly bounded and described as follows: to-wit:

Lots (1) one and (2) two (both (3) eight acres and
 First Plat of the Town of Delberton Snohomish County State
 of Washington recorded in Vol. (6) of Plat (1) of 1901
 Also one dwelling house a frame building situated on
 and undivided (4) one sixth interest in the Delberton water
 Association.

Water Right Ownership Dispute Example

401636

County Auditor By



Deputy Auditor

NOTICE OF LOCATION.

NOTICE IS HEREBY GIVEN: That the undersigned citizens of the United States hereby locate, appropriate and claim three and five-tenths (3.5) cubic feet of water per second of time to be taken and diverted from the waters of a Spring, where this Notice is posted, which is about 1800 feet northerly from the Northeast Corner of Anderson's Amended Plat of Silverton, Wash.

It is intended to divert and conduct the water by means of a pipe line from an intake, or dam to be constructed at the point where this notice is posted on a FLOWING SPRING, running

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