



Trust Water Rights

Common Questions

What is a trust water right?

- A water right held by the state for management in the Trust Water Program.
- It can be acquired by purchase, lease, donation, or gift.
- Yakima trust water program refers specifically to water conservation projects and acquisitions.

What statutes govern trust water rights?

- Chapter 90.42 RCW – Statewide program
- Chapter 90.38 RCW – Yakima basin

Are trust water rights only for instream purposes?

- No!
- Trust water rights can be for any purpose.
- Examples of uses other than instream flow include:
 - Wetlands maintenance or enhancement
 - Mitigation credit for out-of-priority use

Is Ecology required to change the purpose of use of a trust water right to instream flow?

- Yes, if we want the purpose of use to be for instream flow protection or enhancement.
- RCW 90.03.380 or RCW 90.03.390 apply to all changes of purpose of use, except:
 - Donations – RCW 90.42.080(5)
 - Acquisition by funding conservation projects – RCW 90.42.040(7)

Are there water rights that cannot be placed into the trust water right program?

- Ground water rights that cannot be related to specific stream reaches.
- Donations that do not benefit instream flows.
- Family farm permits, with some exceptions.
- Rights that did not exist on July 28, 1991.

How does relinquishment apply to trust water rights?

- Trust water rights are exempted from relinquishment:
 - RCW 90.42.040(6)
 - RCW 90.14.140(2)(h)

What is the relinquishment “parking lot” and how does it work?

- The full amount of the temporary donation is accepted into the TWP, subject to reasonable conditions.
- It must be for instream flow purposes.
- Relinquishment does not apply to any right in the TWP, so the right doesn't need to be exercised.
- Public notice is not required to accept the right into the TWP.
- When term of the donation ends, the right is returned in the same amounts as were accepted.

What happens to the water right when the temporary donation ends?

- The water right reverts to the donor in the same amount that was accepted into the TWP.
- The amount accepted into the TWP is not always the same as the amount that was, or could have been, exercised.

What happens to any portion of IEGP or conservation project water savings not conveyed to the TWP?

- IEGP and Ecology funding guidelines require conveyance of the savings to the TWP in the same proportion as the state's share of the project funding.
- The fraction of the water savings not conveyed into trust is not exempt from relinquishment.
- It may be unlawful for the right holder to reinstitute the use of the saved water. Both relinquishment and the reasonable use doctrine would apply.

Is a trust water right application form required to accept a water right into the trust water right program?

- **Yes, except for IEGP.**
- **For the IEGP, the consolidated application fulfills the requirement for a trust water right application form.**
- **In the Yakima basin, any short-term lease requires the court's approval by way of an Order Pendente Lite.**

How is the place of use of a trust water right for instream flows described?

- The place of use is from the point of diversion of the acquired water right downstream to as far as the Pacific Ocean.
- It is divided into a primary reach and a secondary reach.
- The full right can be exercised in the primary reach, the consumptive portion of the right can be exercised in the secondary reach.

What is the meaning of the term “exercise the trust water right”?

- As with all water rights, it means to use it.
- How can use be demonstrated?
 - Not used where it once was.
 - Historic use reduced or eliminated?
 - Not used by anyone else.
 - Regulate during times of short supply?
 - If not used at original location and purpose, and not used by someone else, it must be in the stream.

How are the instantaneous and annual quantities of an instream flow trust water right determined?

- Analysis of historic use

- Tentative determination of extent and validity, RCW 90.03.380 and POL-1120.
- For instream flow donations, the quantity that can be exercised is limited to the maximum of most recent 5 years, less any amount to be used by the donor.

- Calculation of the consumptive amount.

- Secondary reach may be limited to the average of the most recent 5 years (ACQ).

More useful questions?

- We'll review the flip charts and see what we've noted from the workshop.
- Email me at rbar461@ecy.wa.gov with any addition questions .