

ENSURING PROPER SIGNATURE ON APPLICATIONS AND FORMS

- Contact: Program Development and Operations Support Effective Date: 08/10/2009
Revised Date: 10/09/2013
- References: RCW 90.03.260, RCW 90.03.270, RCW 90.03.380, RCW 90.03.390, RCW 90.44.060, RCW 90.44.100, RCW 90.44.105, RCW 90.44.460, WAC 508-12-100, WAC 508-12-130.
- Purpose: To provide guidance to water resources staff when reviewing water right applications, change applications, and other forms and documents for acceptance.
- Application: This guidance applies to any application, form or other document relating to a water right that must be signed to be accepted by the Water Resources Program.

This guidance supersedes any previous guidance, policy, interpretive statement, focus sheet or other stated Department of Ecology (Ecology) or Water Resource Program (program) viewpoint with which it may conflict.

Background and Evaluation

Any application or form that requires a signature must be signed by the applicant and other required parties to be accepted. An unsigned application or form is considered defective and must be returned for correction or completion. An application or form without appropriate signatures cannot be processed.

A signature is the name of a person written with his or her own hand, or a hand written mark or sign intended to authenticate any instrument or writing. The following handwritten marks are acceptable as signatures:

- The name in the same form as it appears on the application or on the certificate of ownership.
- Initials corresponding to the first letters of the given name(s), along with a full last name.
- A given name(s) corresponding to the initials.
- Common nicknames such as Bob for Robert, Jim for James, Betty for Elizabeth, etc. along with a full last name.

A signature memorandum, signature stamp, mark or sign intended to authenticate an application or form is acceptable.

Signing an application or form makes it valid, identifies the applicant, shows informed consent, and constitutes approval, acceptance, or obligation by the person(s) who signs it. Where required

below, a signature may be required to be witnessed by a notary public that the signature is authentic.

Inability of the applicant to obtain all signatures should be evaluated on a case by case basis. If improper signatures are discovered later, then the application will be returned. The applicant will be given a reasonable time to obtain required signatures.

Washington State is a “community property” state, and as such, all real and personal property is generally owned in undivided one-half interests by those in marital relationships. Water right applications, permits, and certificates may be held as community property by spouses. Spouses should sign and date any application, assignment, or form that pertains to water rights, permits, changes or certificates. However, if only one spouse signs the document, that person binds the community unless another exemption applies.

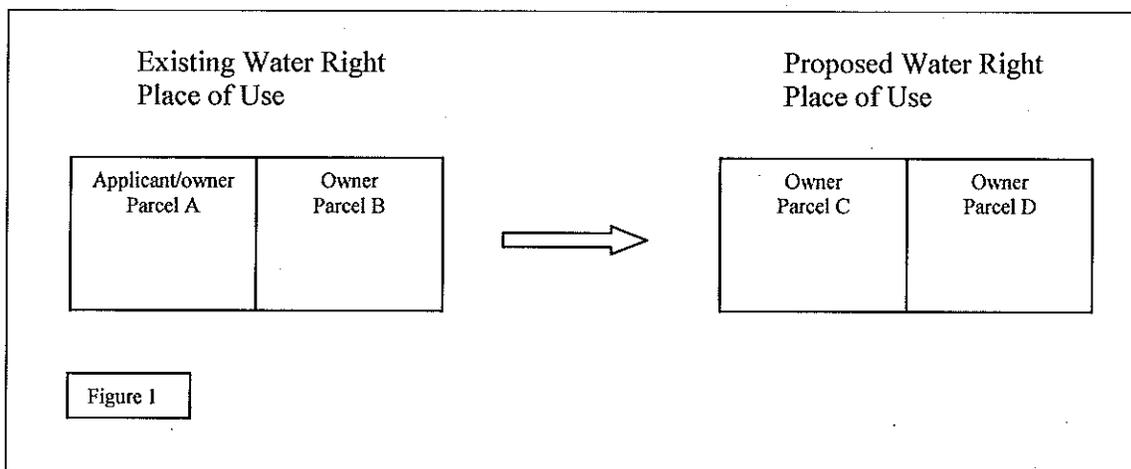
The following signature guidelines apply:

- For a sole proprietorship, the owner must sign the application;
- For a limited liability company (LLC) or professional limited liability company (PLLC), an authorized member or manager must sign the application;
- For a partnership, one or more authorized partners must sign the application;
- For a limited partnership or liability partnership (LLP), a general partner must sign the application;
- For a corporation or association, including nonprofit corporations, an authorized corporate officer must sign the application;
- An attorney, agent or other legally authorized representative may sign the application if so authorized in writing by the applicant or other required party.

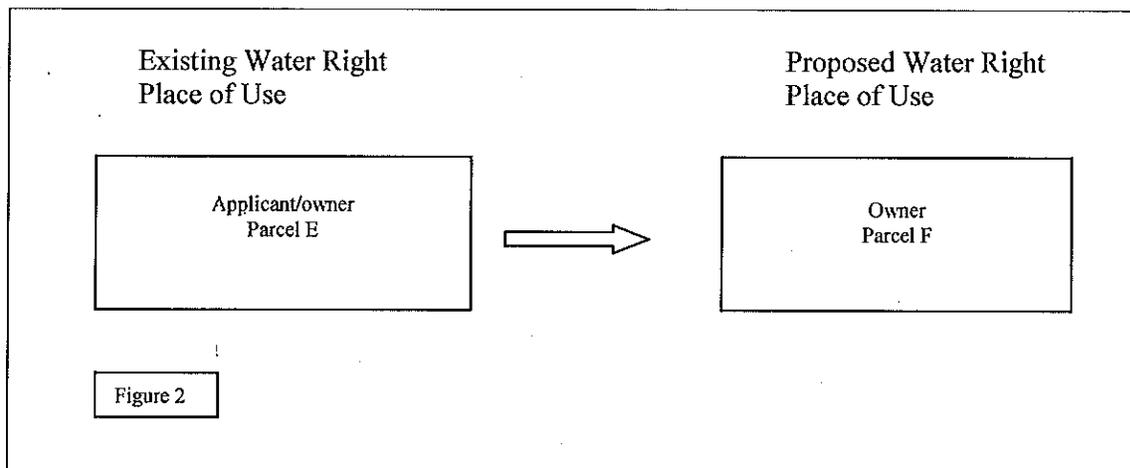
This list is intended as internal guidance only. This guidance does not supersede current law on agencies, partnerships, corporations or the internal bylaws or other agreements between partners or organizations. Ecology may request documentation of signature authority but is not required by this policy to do so.

To determine what signatures are required, it is necessary to determine who holds an interest in (1) the water right(s) involved and (2) the parcel(s) of real property involved. If there is more than one party with a controlling interest in the water right, all of the parties should sign as the applicant. Parties with an ownership interest in the parcel(s) of land constituting the proposed place of use are also to sign, if not already signing as an applicant or owner(s) of the water right.

For example, in Figure 1 below, the applicant holds a water right and is applying to change it from the current place of use (Parcels A and B) to a new place of use (Parcels C and D). The applicant holds the entirety of the water right and owns Parcel A. Another party owns Parcel B, within the current place of use, but is not a holder of A’s water right. The applicant would need to secure the signatures of land owners for Parcels C and D in order to file the application for change. If the owner of Parcel B has no interest in the portion of the water right subject to the application, the owner of parcel B does not need to sign.



If the water right holder does not own either parcel of property, only the water right holder and owner of the proposed place of use are required to sign the application or form. For example in Figure 2 below, the applicant (within Parcel E) proposes to change the place of use of a water right to Parcel F. The applicant would need to secure the signature of the land owner of Parcel F in order to file the application for change.



The best practice is to attempt to identify and acquire signatures of all landowners early in the the application process. If after submission of the application other landowners are identified, however, notice can be made to the additional landowners via certified mail.

The names and addresses provided by applicants and other signatories should be entered into the Water Right Tracking System (WRTS) under "Last Known Contact" and in some cases will supersede addresses in the application or permit record, provided legal interest in the application or permit is demonstrated.

Special Circumstances for Signature Requirements

In certain circumstances, the following guidance may assist in determining how to apply the signature requirements:

- The party's legal representatives, trustee, or power of attorney may sign provided that authority to act as the legal representative is provided. For example, if an attorney is acting on behalf of a property owner, the attorney may sign the application. Ecology staff may supplement the file with documentation that the attorney is acting in that capacity.
- Where there is clear documentation by court decree, property transfer deed, or other document (e.g. a divorce decree) showing a property owner's interest in the water right (or lack thereof), Ecology should consider this in identifying parties required to sign as water right holder and/or property owner.
- A statement in a property deed such as "along with any water rights" is generally not sufficient to fully relinquish all interests in a water right such that signature is not required on any application relating to that water right. The program at its sole discretion may waive the signature requirement when clear documentation is provided as to ownership interest in water rights. In this event, staff will attempt to contact those whose signatures are absent. A decision on whether to proceed with the application without all signatures will not be made until thirty days after such an attempt to contact. Ecology will consider any response in its decision.
- Be aware that problems can arise when there is an ownership dispute; Ecology has no authority to resolve ownership disputes. If it is uncertain if all parties with equity interest in a water right are informed and support the action, then staff should not proceed until the uncertainty is resolved.
- An exception is made to the signature requirement in cases where water is conveyed to the trust water program. RCW 90.03.030 provides that water right holders may convey water rights downstream. Signatures of property owners who own land under rivers or streams (e.g. the proposed place of use for trust water rights) shall not be required.

In the case of any special circumstances or exception to the signature requirement, the exception must be clearly described and all accompanying documentation must be included in the file, including the steps taken to obtain signatures.

Reviewing Water Conservancy Board Decisions

Ecology recognizes that water conservancy boards operate under their own statutes and rules. Boards must follow the law, but are not subject to Ecology's policies, guidance, and interpretive statements, as described in Attorney General Opinion 2006 No. 17¹ (AGO), citing the Administrative Procedures Act (APA). The APA encourages agencies "to advise the public of

¹ AGO 2006 No. 17 - September 25, 2006. Extent of Department of Ecology's discretion in reviewing decisions of local water conservancy boards.

its current opinions, approaches, and likely courses of action by means of interpretive or policy statements.” The AGO also recognizes that interpretive and policy statements are advisory only.

However, Ecology will use its own policies when reviewing board decisions and act consistently with Ecology’s own interpretation of water law in deciding how to act on such decisions.

As such, the following guidance applies to staff when reviewing a board’s record of decision.

- Program staff will not use this signature guidance as a sole basis for reversing or modifying a board’s decision.
- Staff will apply existing water law and regulations to make decisions on appropriate signature authority for water right change applications and other legally required forms.
- RCW 90.80 requires a board to use Ecology’s change application. Boards need to ensure that all parties are notified and sign the application as required by Washington State water law.

The above guidelines apply to specific documents as follows:

New Water Right Applications

The applicant (or authorized representative) must certify that the information in the application is true and accurate, and print their name, and sign and date the application.

If the applicant is not the legal owner of the entirety of the land where the water will be used, the application must include a dated signature and the address of all such legal owners of the proposed place of use.

Water Right Change Applications

The applicant must certify the information in the application is true and accurate, print their name, and sign and date the application.

In addition, when the applicant does not own the land where the water right is proposed to be used when a change of place of use is requested, the application must include the signature and address of the legal owner of the land comprising the proposed changed place of use (WAC 508-12-130). When the applicant holding the water right does not own the land comprising the existing place of use and requests a change of place of use to other land, then the signature of the owner of the land comprising the existing place of use is not required.

Seasonal Change Applications

The applicant must certify that the information in the application is true and accurate, and sign and date the application. Signatures are required in the same manner as for change applications. At the end of the period authorized by the seasonal change, the water right reverts back to the original place of use.

Reservoir Applications

The applicant must sign and date the application. If the applicant is not the owner of the property, the property owner’s name, signature and address must be included.

Application for an Amended Water Right Claim

The applicant must affirm the information is true and accurate, and sign and date the application. If the Amendment involves any new parties whose signature is required, such signatures must be added.

Voluntary Relinquishment and Voluntary Partial Relinquishment of Certificate of Water Right

This form requires the printed name(s), Water Right number, priority date, purpose(s) of use, attachment of the legal description, and affirmation of several statements. All holders of the certificate wishing to relinquish their interest in the water right must sign and date the form in the presence of a notary.

Voluntary Abandonment of a Water Right Certificate

The signers of the form must declare that the statements made are true and correct. This form requires the printed name, signed name, and date, of all persons holding or claiming to hold an interest in the water right certificate. All holders of the certificate wishing to voluntarily abandon their interest in the water right must sign and date the form in the presence of a notary.

Voluntary Abandonment and Voluntary Partial Abandonment of a Water Right Claim

This form requires the printed name, signed name, date, and where signed, by all persons holding or claiming to hold an interest in the claim.

Construction Notice

The applicant must certify that it is the holder of the permit or change/transfer authorization and are the authorized representative as described above. The form requires the printed name, signed name, date, address and telephone number (if available).

Proof of Appropriation and Project Completion

The permit holder must certify that the appropriation of water for the authorized beneficial use is complete, that the notice and documents are true and accurate, and that the use of water is in compliance with the terms and provisions on the permit or change authorization. The permit holder must sign and date the notice in the presence of a notary.

Request for a Conforming Municipal Supply Document

The person filing the request must print their name and phone number, indicate their title and authorization or interest in the water right, and sign and date the request.

By filing this request, the person acknowledges they are requesting a Superseding Water Right document to reflect the municipal status of the water right (RCW 90.03.560).

Showing of Compliance with RCW 90.44.100(3)

The water right holder filing the Showing of Compliance must complete the affidavit certifying that the new or replacement well complies with both the statutory criteria and provisions within the water right. The person filing must sign and date the notice in the presence of a notary.

Assignment of Application or Permit

Rights to groundwater and surface water, under a permit, belong to the applicant and not to the land. Property rights associated with the use of water do not attach to the land until perfection. Regardless of whether title to the land is transferred, applications and permits are personal property and must be assigned to transfer ownership. In order to transfer, the holder(s) of the

application or permit and the person(s) it is being assigned to must provide their address, telephone number (if available), and sign and date the form in the presence of a notary.

In the event that the applicant or water right permit holder is deceased, the program will accept signature of the authorized representative such as an estate executor, through heirs as indicated in probate documents, or a surviving party with a remaining controlling interest in the application. The program may require evidence of testamentary or probate documents (e.g. a will or order/deed from the probate court). If the applicant or authorized representative cannot be located, or no evidence of controlling interest in an application or permit is provided, staff will attempt to return the application as defective to the last known property address.

Request for Administrative Confirmation of Division of a Water Right

Each property owner holding a portion of a water right certificate must complete and sign and date the request. The signatories agree to divide the water right certificate consistent with the apportioning detailed on the form and consistent with historic beneficial use. Each party is responsible for paying associated fees. All fees must be received before a superseding certificate can be issued. Water right permits are required to be assigned.

Application to Enter a Water Right into the Trust Water Rights Program

The applicant, water right holder(s) and property owner(s) at the existing place of use must each sign and date the application. If the water right is in an irrigation district, the application must be signed by a representative with signature authority for the irrigation district.



Thomas Loranger
Program Manager
Water Resources Program

Special Note: These policies and procedures illustrate existing law and encourage consistency to guide water resources program staff in administering laws and regulations. These policies and procedures are not formal administrative regulations adopted through a rule-making process. Therefore, while this policy provides general guidance, it is not intended to supersede the applicable statutes and rules or control in all situations where staff may exercise discretion as to how best to apply the law.

The policies indicate Ecology's practices and interpretations of laws and regulations at the time they are adopted and may not reflect later changes in statute or judicial findings. If you have any questions regarding a policy or procedure, please contact the department.