POL-1070 WATER RESOURCES PROGRAM POLICY

ADMINISTRATIVE POLICY FOR RECORDING THE AGREED DIVISION OF WATER RIGHTS AMONG MULTIPLE PROPERTY OWNERS

Resource Contact: Policy and Planning Section

Effective Date: July 3, 2003
Revised: New

References: RCW 90.03.380(1); RCW 90.54.030(1) and (4); RCW 90.14.010; RCW 43.21A.090(7); and WAC 508-12-200.

Purpose: To document generally applicable procedures that the Department of Ecology uses to track and record the agreed division of a water right where multiple property owners own land to which the water right is appurtenant.

In Ecology's 2002 Report to the Legislature "*Improving the Administration of Water Right Records*", the Department of Ecology identified a need to correlate water right ownership information with real property information. Benefits of this correlation include increased efficiency when notification is required for proposed actions, facilitation of water marketing, improved access of water right information by the public, and increased certainty in vested property rights. The referenced statutes provide that a water right is appurtenant to the land on which beneficial use occurs, and that Ecology is authorized to track and provide records of such appurtenancy.

Application:

This policy and the procedures below generally apply to water right certificates where beneficial use has occurred and the water right has become appurtenant to the land on which beneficial use occurs. This policy does not apply to the following types of water rights:

- Water right permits and water right applications. Generally, permits and applications for water rights are not perfected property rights subject to RCW 90.03.380. However, ownership and interest in these documents may be assigned pursuant to RCW 90.03.310 (see also WAC 508-12-200).
- Water rights where there is a shared character to the right, including but not limited to those issued to municipalities, irrigation districts, and partnership ditches. Nothing in this policy prevents a water right holder from seeking a change via RCW 90.03.380, RCW 90.44.100 or other applicable statutes, which may, in addition to a change, clarify the right's ownership among multiple property owners.
- Water right claims, certificates of change on claims, and certificates of change on vested rights for which no original certificate exists, unless there is an active change application pending on the water right claim. Nothing in this policy prevents a water right holder from seeking a change via RCW 90.03.380, RCW 90.44.100 or other applicable statutes, which may, in addition to a change, clarify the right's ownership among multiple property owners.
- Water rights where division of property has occurred in a manner not consistent with

historic water use, or in which historic water use has not been consistent with the original right. Nothing in this policy prevents a water right holder from seeking clarification as to the apportionment of the water right among multiple property owners via RCW 90.03.380, RCW 90.44.100 or other applicable statutes.

Evaluation:

Where multiple property owners own a portion of land to which a single water right is appurtenant, said property owners may apply and receive from the Department of Ecology, a superseding document describing their share of the original water right. These superseding documents will clarify the apportioning of said rights as agreed to by all the property owners who own the subject property within the authorized place of use of the original right. Agreement of this apportioning shall reflect the historic beneficial use of water on the property, and it shall be the responsibility of each property owner to verify that his or her "share" of the original right reflects the historic beneficial use of water on the property.

Requests to confirm the division of a water right may be made at the time the change in ownership of the property occurs (effective on the property closing date), or may be after such property transfer has occurred. The administrative issuance of superseding documents reflecting this division does not authorize a change pursuant to RCW 90.03.380, RCW 90.44.100, or other applicable statutes, including changes that may have occurred in the past but outside the terms and conditions of the original water right.

The following steps summarize how the Department of Ecology will document the division of water rights covered by this policy.

1. All property owners owning land to which the original water right is appurtenant must agree as to how the water right is to be divided based on historic beneficial use. Confirmation of a division of a water right in a manner other than historic beneficial use is not covered by this policy.
2. Such agreement will be documented by said property owners' signatures on Ecology's standard *Request for Administrative Confirmation of Division of a Water Right (Form ECY 070-88)*. In the event that all property owners' signatures are not provided, but where clear documentation by court decree, property transfer deed, or other document establishes the division of such rights, Ecology may at its sole discretion waive this comprehensive signatory requirement. In this event, Ecology shall notify the property owner for which signature is absent by certified mail, and will not issue superseding documents pursuant to this policy until thirty (30) days from receipt of the notice. In the event that a response to said letter is provided within this timeframe, Ecology will consider such response in its decision to issue superseding documents.
3. The *Request for Administrative Confirmation of Division of a Water Right* form shall be accompanied by property transfer deeds, county tax parcel identification records, and any additional information needed to demonstrate ownership of the lands within the authorized place of use of the original water right.
4. Upon receipt of clear documentation as required by this policy, Ecology will issue superseding documents to each property owner consistent with the agreed division of the right on the request form. Where certificated water rights are divided, superseding certificates shall issue. Where certificates of change on adjudicated or certificated rights are divided, superseding certificates shall issue. Where certificates of change on water

right claims or vested rights are divided, the file shall be amended and the signed *Request for Administrative Confirmation of Division of a Water Right* form shall be included in the file to serve as the superseding document.

5. Ecology's confirmation of the division of a water right is administrative in nature, and will not include an evaluation of the extent and validity of the water right to be divided. A water right is valid to the extent that it has been put to beneficial use consistent with the terms and conditions of the authorization. Language to this effect will be included on each superseding document; said language shall remain on a superseding document until the extent and validity of the right embodied by the superseding document is determined. Example language is provided below:

   "The division of Certificate S1-123456C into Superseding Certificate S1-123456(A)C, S1-123456(B)C, and S1-123456(C)C shall not be construed as validation as to the extent of Certificate S1-123456C as originally authorized. The amounts provided on the superseding portions of said water right reflect agreement among the owners of the described place of use, but are not confirmed by Ecology in this recording of the division of said right. The actual amounts authorized by the superseding certificates are subject to the historic beneficial use of Certificate S1-123456C."

6. Ecology will not update or add new conditions to a water right as a part of the administrative documentation of the division of that water right.

7. If following the division of the right, a property owner seeks to use water in a manner other than that authorized by the superseding water right document; said property owner shall file a change pursuant to RCW 90.0.380, RCW 90.44.100, or other applicable statutes.

8. As part of an evaluation for change or transfer, Ecology will make a tentative determination as to the extent and validity of the portion of the original water right proposed for change and embodied by the superseding water right document issued in accordance with this policy.

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