

Resource Contact: Coordination
& Hydrology Section

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References: Chapter 90.14 RCW

RECISION AND RELINQUISHMENT OF WATER RIGHTS

Purpose: To ensure statewide consistency in the relinquishment of water rights and use of recision orders.

Application: This policy applies to all show cause orders and relinquishment declarations issued pursuant to Chapter 90.14 RCW and all administrative recision orders.

Definitions:

Relinquishment, an administrative procedure pursuant to Chapter 90.14 RCW used when a water right has reverted to the State because of nonuse without sufficient cause or due to voluntary action of the property owner.

Recision, an administrative procedure to rescind all or a portion of a certificate of water right or change certificate, where the perfected right is not in agreement with the state issued certificate of water right.

1. RELINQUISHMENT AFFECTS PERFECTED WATER RIGHTS ONLY

Relinquishment is pursued on perfected water rights only and the water right has been diminished or extinguished because use has lapsed without sufficient cause for a period of five consecutive years or the water right has been abandoned.

Abandonment is an indication of intent to relinquish a water right coupled with non-use of the water. Within an abandonment, the non-use of water does not have to last five years, rather a shorter time period may indicate the non-use. When a water right is to be relinquished based on abandonment, the burden of proof to demonstrate abandonment is on the Department.

When a water right is to be relinquished based on non-use for five consecutive years without sufficient cause, the burden of proof to show sufficient cause for non-use is on the water right holder.

If the documented right, in whole or in part, was never perfected, an order of recision is issued. See number 4 below.

2. SUFFICIENT CAUSE FOR NON-USE OF A WATER RIGHT

Sufficient cause for the non-use of a water right for a period of five or more consecutive years is limited to those causes listed in RCW 90.14.140.

3. VOLUNTARY RELINQUISHMENT

Voluntary relinquishment by the right holder should be pursued for water rights which have been diminished or extinguished because use has lapsed without sufficient cause for a period of five consecutive years or the water right has been abandoned prior to initiation of an involuntary relinquishment. Use Ecology form ECY 040-1-100.

4. INVOLUNTARY RELINQUISHMENT

Involuntary water right relinquishment is a two step procedure.

First a show cause order is issued stating it appears a water right has reverted to the State because of nonuse without sufficient cause or due to voluntary action of the property owner and that the right will be declared relinquished upon failure to show cause as to why the right should not be relinquished.

The show cause order must contain a description of the water right, including the point of diversion, place of use, the amount of water involved, the purpose of use, the apparent authority upon which the right is based, a statement that unless sufficient cause can be shown on appeal the water right will be declared relinquished and that the order is appealable to Pollution Control Hearings Board.

A copy of the show cause order must also be posted at the point of diversion referenced in the show cause order.

Secondly, if the show cause order is not appealed or upheld on appeal, a relinquishment declaration is issued. The relinquishment declaration shall declare the right relinquished and shall specifically reference the show cause order.

5. WATER RIGHT HOLDER TO BE ADVISED TO APPEAL SHOW CAUSE ORDER

The water right holder's opportunity for appeal is when the show cause order is issued. In those cases where an amicable settlement of the issues appears feasible, the applicant shall be advised to still file an appeal of the show cause order with the PCHB to preserve appeal rights should settlement efforts fail.

6. RECISION ORDERS FOR STATE DOCUMENTS

Recision is used to achieve conformity between the perfected right gained through beneficial use and the state issued document. In situations where Ecology can prove that a right was never developed to the extent documented by a state issued certificate of water right, relinquishment would be inappropriate, as no right existed to be relinquished. The Attorney General's Office advises that Ecology could issue orders which rescind a presumed right, i.e., one which is not fully developed and thus was never perfected.

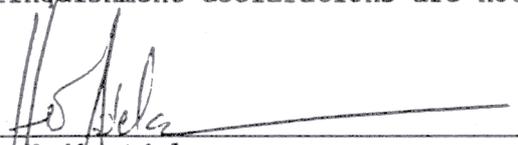
Recision orders are not mentioned in Chapter 90.14 RCW.

Recision does not apply to claims filed pursuant Chapter 90.14 RCW.

7. FORMAT OF RELINQUISHMENT AND RECISION DOCUMENTS

The show cause orders, and recision orders are formal orders issued by the Department and are appealable actions.

Relinquishment declarations are not appealable actions.



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