WASHINGTON STATE DEPARTMENT OF ECOLOGY

The 1997 Opening of the Water Right Claims Registry

The 1997 Washington State Legislature opened a new filing period for the Water Right Claims Registry. When Governor Locke signed the bill into law, he expressed his hope that opening the new filing period would help clear up the "murky past" of water right claims and put an end to the confusion of who should file.

The need to record water rights

Today water right holders must obtain a state-issued permit before using water for a beneficial purpose. This requirement was enacted by the legislature through Washington's Surface Water Code (1917) and Ground Water Code (1945). Washington's water resources are limited, and each permit request is carefully considered by the state to provide maximum net benefits to everyone.

The fact that some water rights were established before the state began issuing water right permits complicates the water picture further because for many years there was no requirement to record those water rights. These historic water rights are called *vested rights*. The legislature created the Water Right Claims Registry as a place to make records of vested rights. Despite past attempts to record claims to vested water rights, there still remains uncertainty around those water rights which may have been established before the legislature adopted the state's water codes.

The claims registry has been opened several times

The first opening of the registry occurred between 1969 and 1974. The subsequent 1979 and 1985 openings were very small efforts statewide, with little public notice. About 165,000 Statements of Claim are currently recorded on the Water Right Claims Registry.

The 1997 claims legislation opens the registry from September 1, 1997, until June 30, 1998. Forms for filing claims will be available at all Ecology offices starting August 1997. Ecology will not accept claim forms until September 1, 1997.

Registering a claim is one step in the process

Water users who believe they have established and maintained a vested water right should understand and protect those rights. Registering a claim is critical to protecting a vested right, but it is only one step in the process that may lead to obtaining a water right document. Ultimately the validity of claimed water rights will be determined through a Washington State Superior Court proceeding called a *general water right adjudication*. The court may grant a water right and direct Ecology to issue a Certificate of Adjudicated Water Right. Only a small portion of

Washington's 165,000 claims have been adjudicated and there is no current timeframe to adjudicate the remaining claims.

The 1997 legislation describes who is eligible to file

You are eligible to file a Statement of Claim during the 1997 opening if you, or a previous property owner:

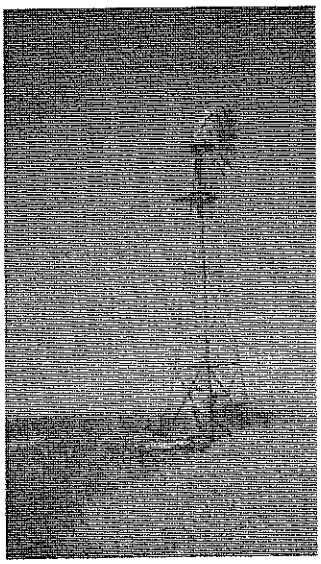
❖ began using surface water before 1917, or ground water before 1945, AND continue to do so, AND have not previously filed a claim or other water right document; or

❖ claim to have used water which is riparian to the natural water course (water use on lands abutting a stream, lake, or watercourse) AND you can prove that the lands upon which water use is claimed were taken out of federal ownership prior to 1917 AND the water was put to beneficial use before 1932, AND you have not previously filed a claim or other water right document.

You are *not* eligible to file a claim during the 1997 opening if you, or a previous property owner:

❖ are exempt from the ground water permit requirement (RCW 90.44 050, *Regulation of Public Waters—Permit to withdraw*) An example of this would be a single or group domestic use of under 5,000 gallons of ground water a day. There is no exemption for surface water;

❖ began using water after 1917 for surface water, or after 1945 for ground water;



❖ use water under an existing water right permit, certificate, or previously filed Statement of Claim;

❖ are subject to a general adjudication during this time period, for example surface waters of the Yakima River Basin. For a list of general adjudications presently filed in this state, write to the Ecology's Headquarters office at the address listed below;

❖ are in an area where a ground water management plan has been adopted by rule, which establishes an acreage expansion program. Currently in this state, this applies to those ground water users within the Odessa Subarea; or

❖ are served by a water company, district, or utility which is operating under an existing state-issued permit, certificate, or previously filed statement of claim. If these water servers need to file a claim, it will be filed on behalf of all their customers.

If you are not eligible to file a claim and your use of water is not exempt, or authorized by a permit, certificate or a previously filed claim, please contact your nearest Ecology office and obtain a water right application (addresses are listed on the final page).

Request a report on existing rights and claims

If you determine that you are eligible to file, your next question is whether a water right document already exists for your property. Ecology can help you determine whether a previously filed claim, water right permit, or water right certificate already exists for your property. Sometimes these water right documents are noted at the time that property is bought and/or sold. However, if you are unsure, Ecology can provide you with a list of registered claims and state issued water rights in the general vicinity of your property. To request this information, do the following:

First, obtain the legal description for your property on which the water is used, and the property on which your well or diversion is located. You cannot make a request without a legal description, which must include at least Township, Range, and Section. The legal description can be found on the property deed, purchase contract, mortgage agreement, title insurance or abstract of title from your county auditor's office.

Second, make your request to us in writing (Ecology addresses are listed on the last page of this document). Alternatively, you may call 1-800-468-0261, and ask for a Request for Existing Water Right Information form. After filling out the request form, mail it to any Ecology office (addresses on last page of this document).

Ecology will respond to your written request within ten days, and provide you with a list of registered claims, permits, and certificates in your area. You will need to research the names of all previous property owners in order to compare records. After reviewing the information, if you see a recorded document that

appears to be associated with your property, Ecology can then provide you with copies of specific water right documents. If your research does not reveal a water right document that relates to your property, you must file a claim in order to protect your vested water right.

The process for filing a claim

To obtain a copy of the Statement of Claim form, call 1-800-468-0261 and leave a message containing your name and complete mailing address. Forms are also available at any of the Ecology offices listed below.

On the form, you will be asked to describe your water use in detail. One item you should think about ahead of time is the quantity of water you are using. You will be asked to state the rate in which you use water (instantaneous quantity), as well as the amount you pump each year (annual quantity). Unless you have specifically measured your water use, you will need to estimate those quantities as accurately as possible. General guidelines are provided in the instructions to the form.

Your form must be filed with Ecology's Headquarters' office in Olympia. A nonrefundable $2.00 filing fee (checks or money orders only) needs to be attached to the Statement of Claim form. Please do not return your completed form to any of the regional Ecology offices. The legislature specified that the forms must be filed in Olympia, where the Claims Registry is currently archived.

A Word of Caution: It is important that you provide accurate and complete information on the form. Accurate information will help protect your claim during a general water right adjudication. Incomplete information may result in the form being returned to you for more work. The legislature intended that the claims record be complete and truthful. RCW 90.14.121, *Water Rights—Registration—Waiver and Relinquishment, Etc.—Penalty for overstating claim*, states that overstating a claim is a misdemeanor, punishable by fines and/or imprisonment.

It is important to document historic use of water under your claim. Examples used in past adjudications include: county records, family photographs, old receipts, city records, written testimony from people with historic knowledge, and/or utility records. These documents should be recorded with the county auditor as a permanent record.

Impairment issues and priority dates

The legislature included the following language in the 1997 claims legislation: "This reopening of the period for filing statements of claim shall not affect or impair in any respect whatsoever any water right existing prior to the effective date of this section. A water right embodied in a statement of claim filed under this section is subordinate to any water right embodied in a permit or certificate issued under chapter 90.03 or 90.44 RCW prior to the date the statement of claim is filed with the department and is subordinate to any water right embodied in a statement of claim filed in the water rights registry before the effective date of this section."

Informational materials pertaining to the claims reopening can be accessed through Ecology's home page on the World Wide Web. The address is: http://www.wa.gov/ecology/

The Department of Ecology is an equal opportunity agency and does not discriminate on the basis of race, creed, color, disability, age, religion, nation origin, sex, marital status, disabled veteran's status, Vietnam Era veteran's status, or sexual orientation. If you have special accommodation needs or require this document in alternative format, please contact Felicia Curtis at (360) 407-6199 (Voice) or (360) 407-6006 (TDD).

For copies of related publications

To order any of the related publications listed below, call Ecology's Publications Office at (360) 407-7472.

- Q&A: *Water Rights in Washington*, Publication # 96-1804-S&WR
- Q&A: *Water Right Claims*, Publication # 97-2022-S&WR
- Focus sheet: *Water Right Relinquishment*, Publication # 97-1805-WR
- Focus sheet: *Assessing Your Water Right*, Publication # 97-1804-WR
- Focus sheet: *Washington's Water Resource, The Water Right Permit Exemption*, publication # F-WR-92-104

For More Information

Call **1-800-468-0261** to obtain forms for filing a claim, or to request information about previously filed claims or existing water right permits and certificates. You may also write or visit any of these Ecology offices:

Department of Ecology
Water Resources Program
PO Box 47665
300 Desmond Drive
Olympia, WA 98504-7665
Telephone: (360) 407-6738
TDD: (360) 407-6006

Department of Ecology
Central Regional Office
15 West Yakima Avenue,
Suite 200
Yakima, WA 98902-3401
Telephone: (509) 575-2597
TDD: (509) 454-7673

Department of Ecology
Southwest Regional Office
PO Box 47775
300 Desmond Drive
Olympia, WA 98504-7775
Telephone: (360) 407-6300
TDD: (360) 407-6306

Department of Ecology
Northwest Regional Office
3190 160th Avenue SE
Bellevue, WA 98008-5452
Telephone: (425) 649-7000
TDD: (425) 649-4259

Department of Ecology
Nooksack Project
616 Cornwall, Suite 201
Bellingham, WA 98225
Telephone: (360) 738-6250
TDD: (425) 649-4259

Department of Ecology
Eastern Regional Office
North 4601 Monroe, Suite 100
Spokane, WA 99205-1295
Telephone: (509) 456-2926
TDD: (509) 458-2055