How to Protect Your Water Rights

Kristina Ribellia
Washington Water Trust

Jacquelyn Wallace
Trout Unlimited

Okanogan Conservation District

- Voluntary, non-regulatory services to landowners and land managers to address natural resource concerns.

- Connect landowners with financial and technical assistance
Irrigation Upgrades & Rebates

Save water, and energy on your Okanogan PUD power bill

**Equipment improvements, examples:**
- Pump efficiency testing: $50-$300
- Variable Frequency Drives: $60.00 per hp installed

**Sprinkler repair & upgrades**
- Replace worn nozzles: $4.00 per nozzle
- Replace leaking drain gaskets: $1.00 per drain
- And many more

**Call the Conservation District to start planning: 509-422-0855**

Whitestone Reclamation District Canal piping

On-Farm efficiency assistance

**Call the Conservation District to start planning: 509-422-0855**
How to Protect Your Water Rights

Kristina Ribellia
Washington Water Trust

Jacquelyn Wallace
Trout Unlimited

Today’s Presentation

• About Washington Water Trust & Trout Unlimited
• Washington Water Problem
• Washington Water Law
• Water Rights 101
• Trust Water Rights Program (TWRP)
• Top 7 Ways the TWRP Can Work for You
• Trust Water in Action
• Questions
Washington Water Trust & Trout Unlimited

- Non-regulatory, 501(c)3 nonprofits
- Restore flow-limited streams
- Help people better understand and protect their water rights
- Utilize voluntary, market-based transactions and cooperative partnerships to create win-win solutions
- WWT offices in Ellensburg & Seattle
- TU Washington offices in Twisp, Wenatchee & Yakima

Washington Water Problem

- 80% of Washington water withdrawals for agriculture & systems often inefficient
- Many streams over-allocated
- Late summer water needs in conflict
Washington Water Law

• In Washington State, water is a public resource owned by all the people.

• Individuals and entities who hold water rights have the right to use water but do not own it.

• A water right is a right to use water with certain limitations described in a water right document (permit, certificate or claim).

Washington Water Law

• First in time, first in right: based on seniority (prior appropriation)
• A junior water right cannot impair a senior right
• Use it or lose it: 5 yr+ of nonuse = relinquishment (RCW 90.14)
• Maintain right through “beneficial use”
• Place of use and point of diversion: water rights are appurtenant to land.
• Different elements of a water right can be changed, but Ecology rarely issues new water rights, given most water has already been allocated.
“Paper” Water Right vs. “Actual” Water Right

• Water right certificates and water right claims are “paper water rights.”

• A person’s “actual water right” is the amount of water they have beneficially used over time.

• A paper water right may describe the actual water right, but often it does not.

• In an adjudication of rights, the court determines the actual extent and validity of water rights.

Types of Water Right Documents

• Water right claim
• Water right permit
• Water right certificate
• Irrigation districts
• Exempt wells
Elements of a Water Right

- Point of diversion or withdrawal
- Instantaneous quantity ($Q_i$)
- Annual quantity ($Q_a$)
- Purpose of use
- Place of use
- Season of use
- Priority date

Where Do I Find Information About My Water Rights?

- Check DOE Water Resources Explorer
- Contact DOE records department
Extent & Validity Determination

• Goal is to determine whether “paper” water rights associated with a particular property are “actual” water rights.

• Determine current and historical water use
  • number of acres irrigated + amount of water used

• Methods to determine use
  • Aerial photos/LIDAR images
  • Well logs/metering records
  • Historical photos
  • Affidavits/declarations of landowners/neighbors
  • Water duty calculations

If aerials only show limited irrigation between 2010 and 2017, and water was available, part of “paper” water right has likely been relinquished unless water was placed in WA Trust Water Program.
Instream Flows

- Instream flows (base flows) are minimum stream flows set by rule, intended to protect fish and wildlife
- Instream flows are senior water rights based on date of instream rules

VS

- Instream flow water rights are diversionary water rights that have been transferred to the Trust Water Rights Program to be managed for instream flow purposes
Introducing the Best Kept Secret: The Trust Water Rights Program

Trust Water Rights Program

- Created in 1991 to hold and protect water rights for future uses while enhancing stream flows
  - Key: Stops the clock and protects water from relinquishment while benefiting people and the environment
- Managed by the Washington State Dept. of Ecology
- Retains priority date (seniority) and all other attributes
- Offers flexibility: Temporary, permanent, partial, entire
Top 7 Ways the Trust Water Rights Program Can Work for You

#7

Your community is concerned about water supply – The TWRP can facilitate mitigation (or “water banks”).
#6

You recently bought property and you're still figuring out your water rights – Act now before they're gone!

#5

You're looking to change crops and will be using less water – Don't lose it when you're not using it!
#4

You’re upgrading to a more efficient irrigation system –
Protect the “saved” water just in case!

#3

You need a vacation from irrigating –
And who wants to worry about relinquishment?!
#2

You don’t know what you want to do with your water –
But the clock is still ticking.

#1 (And Our Favorite!)

Your water might have instream flow value –
And can help make a difference.
Creative Solutions

• Purchases and Leases
• Late-season
• Drought years
• Source switches
• POD changes
• Irrigation efficiencies
• Water banking & mitigation
• Storage release
• Off-channel storage
• Downstream transfers
• Land use changes

Key Question: Can we do a project that adds water to a stream when and where fish need it?

Trust Water in Action – Salmon Creek

Salmon Creek – Dry (Photo by Jeff Gersh)

Fish Flows Return to Salmon Creek
Trust Water Incentives

Restoring Stream flows, Respecting Landowners

Basic Agreements

- **Lease** – Flexible incentives for temporary trust water
- **Purchase** – Fair market value for permanent trust water
- **Donation** – Protects beneficial use and gives tax incentives

How to Temporarily Donate

1. Download the donation form from Dept. of Ecology’s website
2. Submit the form to Dept. of Ecology
3. Provide proof that the water right has been used in the last five years
4. Once Dept. of Ecology’s regional office receives the complete form and proof of use, Ecology will send a letter to the water right holder accepting the water rights into the TWRP
5. Ecology will post notice of the water right donation on their website and accept comments
Need Help? Not a Problem.

Resources

- Washington Water Trust & Trout Unlimited (confidential)
- Water right attorneys and consultants
- Ecology staff: Central Regional Office in Yakima
- Ecology’s Water Resources Explorer (online)
- Washington State Water Law: A Primer (online)
- Landowner’s Guide to Washington Water Rights (online)
Okanogan County Water Conservancy Board

- Created by the legislature to reduce Ecology’s water rights processing backlog
- OCWCB processes water right changes in Okanogan County
  - Purpose of use
  - Place of use
  - Point of withdrawal
  - Place of diversion
- Five member board, trained by Ecology

Water Conservancy Board Process

- Change applications are filled without Board along with a $1000 fee
- Public notice of the proposed change is printed
- Public comment period
- Board review of proposal
- Board votes on proposal
- If Board approves change, Ecology gets a review period and makes final decision
Contact Us!

• Meetings are the first Wednesday of the month at 2 PM.
• Contact the Clerk of our Board with your questions

Lisa de Vera, Clerk
(509) 860-7466
ldevera@nwi.net

Questions

Jacquelyn Wallace
jwallace@tu.org
(509) 881-7690

Kristina Ribellia
kristina@washingtonwatertrust.org
(509) 607-3513