

## **Responses to Water Rights Presentation Questions from Mike Gallagher Presentation at 2020 IACC Virtual Conference, October 22, 2020**

### **How does the state know when water isn't being used and how does the department enforce relinquishment laws?**

Non-use of a water right usually comes to our attention when a water right is the subject of a change application process, or through an adjudication. We do not have the resources to actively verify whether every water right is being used and only a small percentage of water rights and claims record and report their water use

“Relinquishment” occurs when a water right has reverted to the state because of nonuse for five or more successive years after 1967 without sufficient cause that excuses the nonuse. There can be full or partial relinquishment of a water right. The law relating to relinquishment was created by statute (90.14 RCW)

Only water rights documented by **certificates** and water rights documented by statements of **claims** are subject to relinquishment. In accordance with RCW 90.14.150 and RCW 90.14.180, water rights documented by **permits are not subject to relinquishment.**

When a question about “non-use” or partial use of water comes up, OR when a water right is going through a sale to another party, Ecology investigates historical use of a water right when conducting a tentative determination of extent and validity while processing a change application. During a tentative determination, Ecology may find that all or a portion of a water right has relinquished and is not valid and, therefore, not eligible for change or transfer. In determining the extent and validity of a water right, Ecology reviews power records, metering records, sworn testimony and affidavit statements, and on some occasions, Landsat satellite imagery to document use or time periods of non-use.

### **Do we allow over permitting - for example rights for more than 100% of the water? Colorado River as an example of over committed water**

While Ecology does not allow “over permitting” of a watershed, we do acknowledge this has historically occurred in some of our watersheds, primarily due to poor record keeping, lack of requiring measurement devices on many irrigation water rights, and a general lack of understanding the long term impacts of permitting larger than needed diversions and how this can result in over-appropriation of a river or stream. This has occurred throughout the western US.

Also in some watersheds, some streams and rivers were already the subject of heavy water use before a permitting system was established in 1917 for surface water.

Most if not all of these over commitments occurred before the 1970's and in an effort to correct this, Ecology has adopted instream flow regulations in many of our state's watersheds and have encouraged water users to change from a surface water to ground water source.

### **Is there any regulation on collecting rain water as a property owner?**

While there is no regulation, Ecology does have a rainwater collection policy (Policy 1017 - See: <https://apps.wr.ecology.wa.gov/docs/WaterRights/wrwebpdf/pol1017.pdf>)

This policy applies to collecting rainwater from the rooftops of existing structures on the property which has a “primary purpose” other than the collection of rainwater for beneficial use. Collection of rainwater for generally beneficial uses on a private residence such as watering gardens and small lawns does not require a permit from Ecology.

### **If change applications are submitted for a municipal right, will that jeopardize the inchoate rights?**

Water rights “claimed for municipal water supply purposes” are generally prevented from being relinquished.

**However**, when Ecology processes an application for change, transfer, or amendment of a water right documented by a certificate covered under RCW 90.03.330(3), Ecology may revoke the certificate, or issue a certificate for a quantity less than that on the original certificate.

This revocation or diminishment may occur based on:

- the tentative determination of validity and extent of the water right,
- to prevent impairment of other existing water rights, or
- to prevent detriment to the public welfare (for ground water changes under RCW 90.44.1 00).

Upon determining that a certificate for municipal water supply purposes has been issued with ministerial errors, Ecology may revoke the certificate and issue a superseding certificate containing modifications only to the extent necessary to correct the ministerial errors.

### **How many basins are over appropriated?**

In Ecology’s Southwest Region, only the Dungeness River watershed is considered “over-appropriated” in that there at one time existed more water permitted for diversion than there was available for river flow. This over-appropriation occurred before the surface water law was enacted in 1917. Additionally, over appropriation can also occur due to poor record keeping, lack of requiring measurement devices on many irrigation water right diversions, a general lack of understanding the long term impacts of permitting larger than needed diversions and a lack of awareness that many irrigation canals “need water to convey water” and that much water is lost due to canal or ditch leakage and evaporation. Again, in more recent years, with a greater understanding of the impacts of these past decisions, this has been corrected.

### **Is spring water regulated as groundwater or surface water?**

Spring water is regulated as surface water since it is considered a diversion.

Also, if a well located near the spring shows a direct impact on the spring as a result of the well pumping, it is also considered spring water and regulated as surface water appropriation under 90.03 as opposed to a groundwater withdrawal under 90.44.