

# Water Law 101

May 21, 2025

Kait Schilling



OGDEN  
MURPHY  
WALLACE  
ATTORNEYS

2nd Annual Water Law in Eastern  
Washington Conference

# Intro to Washington Water Law

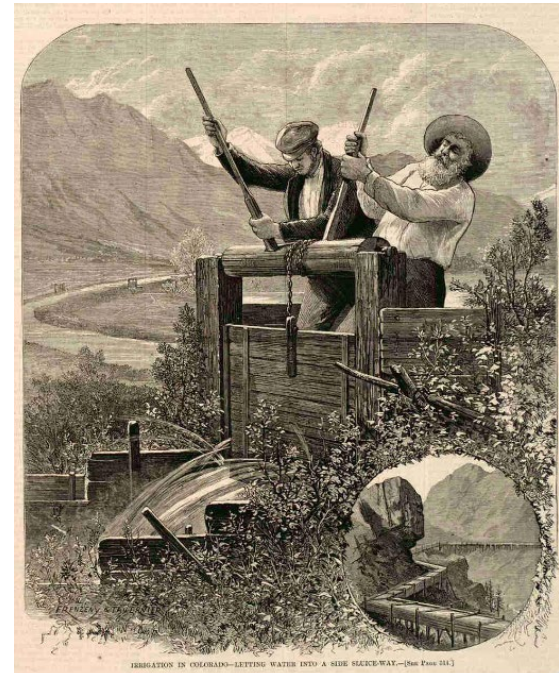
- Historical Perspective and Key Concepts
- Water Law
- Breakdown of Water Rights

Whisky is for drinking; water is for fighting over.



# Water Rights – Historical Perspective

## East vs. West



# Water Rights- Key Concepts

## Public Resource

- Waters of the State—Washington has declared water to be a public resource held in trust for the people. Citizens can obtain “ownership” of this common resources so long as they comply with the processes in state law and put the water to beneficial use.



# Water Rights- Key Concepts

Water rights (that have been put to beneficial use)  
are real property rights.

They are appurtenant to the land.

## AGREEMENT

THIS AGREEMENT, Made and executed in triplicate this 9th day of May, 1968,  
by and between John J. H. Jones and Rosa B. Jones parties of the first part,  
WENATCHEE RECLAMATION DISTRICT, an irrigation district organized under the laws of the State of Wash-  
ington, party of the second part, and Dale W. Eshelman and Jesse Eshelman  
parties of the third part, WITNESSETH:

WHEREAS, the first parties now are or were the owners of the following described real property situate in  
Chelan County, Washington, to-wit:  
Lot 19, Block 3, Garden Home Addition to Wenatchee,

consisting of approximately 0.40 acres, and are now the owners of a water right heretofore appurtenant to  
said land, to-wit, a water right of 40 /10,000ths of one cubic foot of water per second of time from the irri-  
gation system of the Wenatchee Reclamation District, acquired under Water Right Contracts No. 250-4  
of the Wenatchee Canal Company, and



# Water Law

## Title 90 RCW

## WATER RIGHTS—ENVIRONMENT

### Chapters

90.03	Water code.	90.52	Pollution disclosure act of 1971.
90.08	Stream patrollers.	90.54	Water resources act of 1971.
90.14	Water rights—Registration—Waiver and relinquishment, etc.	90.56	Oil and hazardous substance spill prevention and response.
90.16	Appropriation of water for public and industrial purposes.	90.58	Shoreline management act of 1971.
90.22	Minimum water flows and levels.	90.64	Dairy nutrient management.
90.24	Regulation of outflow of lakes.	90.66	Family farm water act.
90.28	Miscellaneous rights and duties.	90.71	Puget Sound water quality protection.
90.36	Artesian wells.	90.72	Shellfish protection districts.
90.38	Yakima river basin water rights.	90.74	Aquatic resources mitigation.
90.40	Water rights of United States.	90.80	Water conservancy boards.
90.42	Water resource management.	90.82	Watershed planning.
90.44	Regulation of public groundwaters.	90.84	Wetlands mitigation banking.
90.46	Reclaimed water use.	90.86	Joint legislative committee on water supply during drought.
90.48	Water pollution control.	90.88	Aquatic rehabilitation zones.
90.50A	Water pollution control facilities—Federal capitalization grants.	90.90	Columbia river basin water supply.
		90.94	Streamflow restoration.

# Water Law

## Washington Water Code

CH. 117.]

SESSION LAWS, 1917.

### CHAPTER 117.

[S. B. 127.]

#### WATER CODE.

AN ACT relating to the use of water in the State of Washington and the right to the use thereof, providing penalties for its violation, and for the exercise of the power of eminent domain in certain cases, making an appropriation and repealing certain acts and parts of acts.

# Water Law

## Washington Water Code



# Water Law

1967 Water Rights Claims Registration (Chapter 90.14 RCW)

# Water Law

## Instream Flows

- 1969 Minimum Water Flows and Levels (Chapter 90.22 RCW)
  - Ecology may establish instream flows
  - Ecology shall establish minimum flow levels to protect fish, wildlife, water quality, and instream resources at WDFW's request
- The Water Resources Act of 1971 (Chapter 90.54 RCW)
  - Requires Ecology to adopt instream flow rules sufficient to preserve wildlife, fish, scenic, aesthetic, and other environmental values

# Water Law

## Growth Management Act (Chapter 36.70A RCW)

# Water Rights – The Basics

## What is a Water Right?

- Property interest in the USE of water
- Appurtenant to the land  
(transfers with the land)
- Use must be beneficial:
  - A reasonable quantity of water used for any public benefit including use for irrigation, domestic water, industry, power generation, agriculture, recreation, or environmental preservation.



# Water Rights – The Basics

## Types of Water Rights in Washington

- Claims
- Permits
- Certificates
- Adjudicated Rights
- Exempt withdrawals
- In-Stream Flows



# Water Rights – The Basics

## Attributes of a Water Right

- Priority Date
- Place of Use
- Source & Point of Diversion or Withdrawal
- Type and Season of Use
- Annual & Instantaneous Quantity (Qa and Qi)
- Provisions

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

**CERTIFICATE OF WATER RIGHT**

☐ Surface Water (Issued in accordance with the provisions of Chapter 117, Laws of Washington for 1917, and amendments thereto, and the rules and regulations of the Department of Ecology.)  
☒ Ground Water (Issued in accordance with the provisions of Chapter 202, Laws of Washington for 1945, and amendments thereto, and the rules and regulations of the Department of Ecology.)

PRIORITY DATE <b>September 13, 1977</b>	APPLICATION NUMBER <b>04-25331</b>	PERMIT NUMBER <b>04-25331P</b>	CERTIFICATE NUMBER <b>04-25331C</b>
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NAME  
**WILLIAM R. WALKER**

ADDRESS (STREET)  
**P. O. Box 728**

CITY  
**Tyler**

STATE  
**Washington**

ZIP CODE  
**98564**

This is to certify that the herein named applicant has made proof to the satisfaction of the Department of Ecology of a right to the use of the public waters of the State of Washington as herein defined, and under and specifically subject to the provisions contained in the Permit issued by the Department of Ecology, and that said right to the use of said waters has been perfected in accordance with the laws of the State of Washington, and is hereby confirmed by the Department of Ecology and entered of record as shown.

**PUBLIC WATER TO BE APPROPRIATED**

SOURCE  
**A well**

QUANTITY OF USE (SURFACE WATERS)

MAXIMUM CUBIC FEET PER SECOND	MAXIMUM GALLONS PER MINUTE	MAXIMUM ACRE-FOOT PER YEAR
	<b>330</b>	<b>203</b>

QUANTITY, TYPE OF USE, PERIOD OF USE  
**To be used from April 1 to October 1, for the irrigation of 50 acres.**

LOCATION OF DIVERSION/WITHDRAWAL  
**1673 Feet north and 1452 Feet east from the southeast corner of Section 10.**

SECTION  
**10** TOWNSHIP N. **22** | RANGE E. **22** | S.E. 1/4 **48** | COUNTY **Chelan** |

RECORDED PLATED PROPERTY  
LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED  
**See Exhibit "A" attached.**

ECY 3480-0 (Rev. 4-77) (SEE REVERSE SIDE) CERTIFICATE

# Water Rights Claims

## Do I have the right?

- Pre-code water rights
- May lack specific attribute information
- May only become a certificated right through adjudication
- Must be filed with the State and assert a priority date that predates the Surface or Groundwater Codes





# Water Rights Permits

## Development of a Water Right

- Application to acquire a water right certificate
  - Applicant must follow a development schedule to perfect the water right
  - Until the water is put to beneficial use, the water right is inchoate (or unperfected)
- Permits are personal property rights & may be assigned
- Ecology issues permits if:
  - Water is available for beneficial use
  - Appropriation will not impair existing uses (including instream flows) or be detrimental to public welfare

# Water Rights Certificates

## The Perfected Right

- Ecology will issue a certificate upon proof of appropriation (that the water has been put to full use)
- Priority date is the date the application for permit is filed
- Subject to relinquishment if not put to continuous beneficial use

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

*Receipt # 73288*

**CERTIFICATE OF WATER RIGHT**

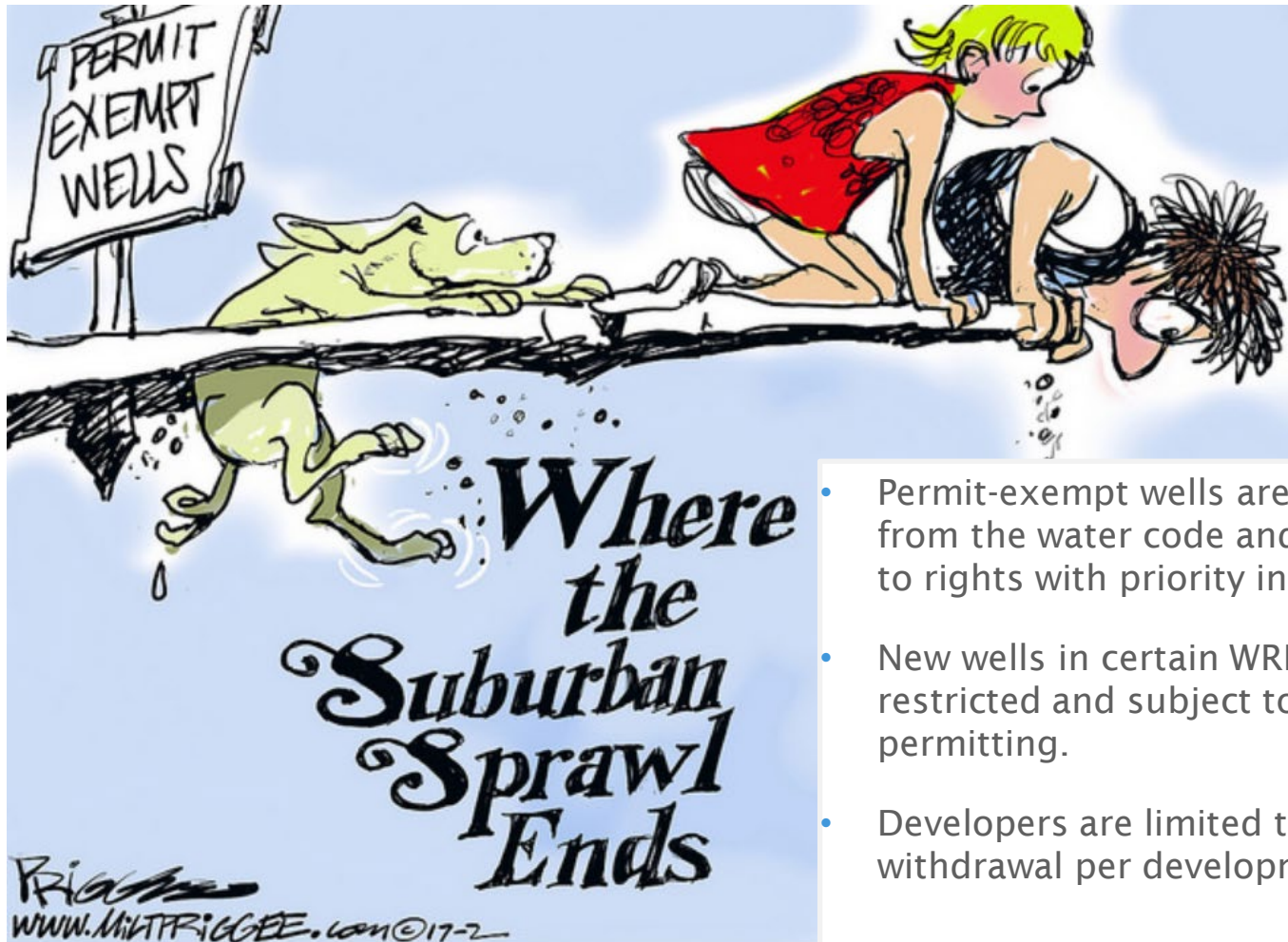
☐ Surface Water (Issued in accordance with the provisions of Chapter 117, Laws of Washington for 1917, and amendments thereto, and the rules and regulations of the Department of Ecology.)

☒ Ground Water (Issued in accordance with the provisions of Chapter 263, Laws of Washington for 1948, and amendments thereto, and the rules and regulations of the Department of Ecology.)

PRIORITY DATE <b>July 3, 1974</b>	APPLICATION NUMBER <b>64-23402</b>	PERMIT NUMBER <b>64-23402P</b>	CERTIFICATE NUMBER <b>64-23402C</b>
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# Water Rights-Permit Exempt Wells

## Post-Hirst Status



- Permit-exempt wells are not exempt from the water code and are subject to rights with priority in time
- New wells in certain WRIA's are restricted and subject to local permitting.
- Developers are limited to one exempt withdrawal per development project

# Water Rights Changes & Transfers

## Moving a Water Right

- Some attributes of a water right may be changed (type of use, point of diversion, etc.) though the quantity may not be increased, and the priority date does not change
- Ecology approves or denies changes
  - Looks at the extent & validity of right
  - Water must be withdrawn or diverted from the same body of water (hydraulic continuity)
  - Change must not impairment existing rights

# Relinquishment & Abandonment

## Forfeiture of a Water Right

- Relinquishment – 5 or more years of nonuse (can be voluntary)
- Abandonment- intentional nonuse of water
  - *Okanogan Wilderness League, Inc. v. Twsip*, 133 Wn.2d 769 (1997)
- To avoid forfeiture, consider:
  - Trust donations
  - Determined future developments

778563 //

Update  
0319-D

STATE OF WASHINGTON  
Nov 1 10 28 AM '85

RELINQUISHMENT OF  
Certificate Record No. 1, Page No. 319-D  
State of Washington, County of Grant  
CERTIFICATE OF GROUND WATER RIGHT

1. The Undersigned, Weiler-Martin Tract Water Association, holder of a Certificate of Ground Water Right No. 319-D, issued by the Department of Ecology or one of its predecessor agencies.

2. Said Certificate authorizes withdrawal of public waters of the State of Washington for use for irrigation of 20 acres.

3. The Undersigned has no further requirement for the rights to withdraw, utilize and put to beneficial use the waters embodied in said Certificate.

4. The Undersigned has not assigned or otherwise transferred the rights embodied in said Certificate.

5. The Undersigned, therefore, relinquishes all rights embodied in said Certificate of Ground Water Right No. 319-D to the State of Washington.

6. It is understood this document shall be recorded by the State of Washington in the county or counties wherein the lands affected by said right are located.

Dated this 23 day of August, 1985.

Arthur J. Peterson  
(Authorized Agent for Weiler-Martin Tracts Association)

State of Washington  
County of Grant ) ss.

On this day personally appeared before me Arthur J. Peterson described in and who executed the within and foregoing instrument, and acknowledged that he signed the same as free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and official seal this 23 day of August, 1985.

Notary Public in and for the State of Washington  
Residing in Eschscholtz

# Sample Cases:

- Ecology v. Yakima Reservation Irr. Dist., 121 Wn.2d 257 (1993)
- Ecology v. Acquavella, 131 Wn.2d 746 (1997)
- R.D. Merrill Co. v. Pollution Bd., 137 Wn.2d 118 (1999)
- Ecology v. Campbell & Gwinn, 146 Wn.2d (2002)
- Five Corners Family Farmers v. Ecology, 173 Wn.2d 296 (2011)
- Swinomish v. Ecology, 178 Wn.2d 571 (2013)
- Foster v. Ecology, 184 Wn.2d 465 (2015)
- Cornelius v. Ecology, 182 Wn.2d 574 (2015)
- Whatcom County v. Hirst, 186 Wn.2d 648 (2016)
- Rettkowski v. Ecology, 122 Wn.2d 219 (1993)



# Questions?



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