

WATER CLAIMS

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Scope of Presentation:

The scope of this presentation is intended to provide attendees with a general understanding of what a water claim is and how it differs from a state issued water right.

I. Common Problems

- Misunderstood
- Over Valued
- Under Valued

II. What is a Claim?

- Common law water right asserted on the basis of “first use” occurring prior to adoption of Surface Water Code in 1917 and Ground Water Code in 1945
- Doctrine of Prior Appropriation
 - “first in time, is first in right”
 - Junior water rights may be regulated in favor of senior water rights
 - Water claims represent the earliest water uses occurring in the State

III. Date of “First Use”

- The earliest date of beneficial use that can be attributed to a claim
- Similar but different than a priority date indicated on a state issued right
- Case law allows that surface water claims may be developed as late as 1932 if there is evidence of an intent to apply the water to beneficial use prior to 1917

IV. What Can You Do With A Claim?

- Water claims are attached/appurtenant to the property where they have been applied to beneficial use and transfer with title.
- A valid water claim may be:
 - Bought and sold
 - Changed
 - Transferred
- Extent and validity of a claim will be subject to a tentative determination pursuant to the change authorization statute (RCW 90.03.380)
 - Not equivalent to adjudication

V. How Does a Claim Differ from a State Issued Water Right?

- No Ecology file regarding the development and use of the water right/claim
- Must be registered with the State
- Claims may or may not articulate all the statutory attributes of a right including:
 - Point of Withdrawal or Diversion
 - Annual and Instant Demand
 - Place of Use
 - Purpose of Use
- May not be administratively divided between multiple properties without a tentative determination (DOE POL 1070)

VI. Claim Amendment (RCW 90.14.065)

- Process to correct registered claims
- May amend claims to:
 - Correct errors in estimated quantities
 - Document changes in circumstances (de facto changes)
 - Fix ministerial errors
- Amendments **MUST** be accepted by Ecology and are **NOT** subject to a tentative determination

VII. 1998 Claims

- Last registration period authorized by legislature
- Statute includes language the claims registered under the 1998 authorization are subordinate to all prior water rights, permits, and registered claims
- Statutory language conflicts with doctrine of prior appropriation
 - Not litigated to date
 - Not aware of any instance where a 1998 claim has been regulated in favor of a junior water right

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Marc Marquis is a founding partner at **Peterson & Marquis Law Office** which assists clients with all manner of legal services related to water rights including: water right assessments, water changes & transfers, water right transactions, water use agreements, trust donations and the formation of water & irrigation districts.