

Water Rights 101

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Introduction

The scope of this presentation is intended to provide participants with an overview of the history, attributes, and general issues associated with water rights such that attendees gain an improved ability to identify potential issues that may be associated with the acquisition, change, and transfer of a water right.



I. History

- Riparian Use Doctrine
 - Originated in Europe
 - Still common in Eastern United States
 - Right to water contained on, adjacent to, or which flows across property
 - May not impair other riparian owners
- Doctrine of Prior Appropriation
 - Developed in response to limited water availability in Western United States
 - First in time, first in right

II. Washington Water Law

- Surface Water Code Adopted 1917 and Ground Water Code 1945
- Code identified water as a resource of the People
- Water codes confirmed prior appropriations (common law claims)
- Introduced application process to obtain a certificate of water right
- Authorized a process to change water right attributes
- Introduced relinquishment statute

III. Types of Water “Rights”

- Claims
- Permits
- Certificates
- Exempt withdrawals
- In-stream flows

IV. Attributes of a Water Right

- Water User's/Applicant's Name
- Date of First Use/Priority Date
- Source (Ground Water/Surface Water)
- Volumes of Water (Instant & Annual)
- Type and Period of Use
- Place of Use

V. Claims

- Pre-code common law water right
- May not specifically articulate all statutory attributes
- Water Code Requirements
 - Claims must be filed with the State
 - Claims must assert a date of first use prior to 1917 or 1945
 - Surface water claims may be perfected as late as 1932
Dept of Ecology V. Abbott 103 Wn 2nd 686, 694 P2d 1071 (1985)
- May use change application process to change attributes of a claim
 - Tentative determination required to validate claim

VI. Issue Spotting

- Date of first use?
- Has a claim been filed with the state?
- Is actual water use consistent with claim?
 - Claim Amendments
 - Error in estimated quantities
 - Change in circumstances
 - Typographical errors
- Relinquishment or Abandonment?

VII. Water Permits

- Application process to acquire a water certificate
- Applicants apply to State and request authorization to “beneficially use” water
- Permits issued subject to water availability
 - Permits held as personal property and may be assigned
 - Provisions may restrict where and how water is used
 - Include inchoate quantities until perfected
 - Subject to proof inspection
 - Development Schedule

VIII. Issue Spotting

- Is permit in compliance with development schedule?
 - Extensions may be possible
 - Due diligence required
- Is perfected water use consistent with attributes of permit?
 - Ground water permits “manner of use” may be changed within the scope of publication
 - Surface water permits require perfection prior to change
- Relinquishment or Abandonment?

IX. Certificates

- Issued following proof inspection
- Priority date determined by application date
- Describes some attributes of a water right including provisions
- Water certificates are a property right appurtenant to land
- Attributes may be altered via a water right change application process

X. Issue Spotting

- De facto Changes?
- Changes to Property Ownership?
- Relinquishment or Abandonment?

XI. Exempt Withdrawals

- Exempt from permitting process, but not water code
- Unlimited stock watering
- 5000gpd for domestic use and 0.5ac non-comm. irrigation
- 5000gpd for industrial uses

XII. Issue Spotting

- Closed basins?
- Impairment?
- Documentation of use?
- Relinquishment?
- One exempt withdrawal per project

Irrigation Shares



Irrigation purveyor holds title to the water and users hold a contractual or equity interest in the purveyor

The Water Right is appurtenant to the land via a license from the property owner

What is the value of water rights separate from land?



Permits are personal property until perfected

Book value of developed land probably includes the costs of obtaining a change permit coupled with land cost, easement cost, project permitting, project construction, finance costs, plant acquisition and planting, time to maturity

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