

GUIDANCE FOR AMENDING WATER RIGHT CLAIMS

Contact: Policy and Planning Section Effective Date: April 15, 2008

Reference: [Chapter 90.14 RCW](#)

Purpose: Provide clear and consistent guidance about processing requests for water right claim amendments.

The purpose of a claim amendment is to clarify the statements and descriptions, provided on the original claim form, consistent with the intent of the original claimant. The amendment process is not a means to change or transfer an aspect of the water right claim, or to otherwise modify or enlarge the claim.

Adjudication is the only method to determine the extent and validity of a water right asserted by a water right claim. The water right confirmed through adjudication may vary from the statements provided on the water right claim.

Application: This guidance applies to all requests received under RCW 90.14.065 for amendments to water right claims.

Case law: Knight et al v. Ecology & RD Merrill Co
Packwood Canal v. Ecology (partially overruled)
Willowbrook Farms, LLP v. Ecology
Papineau v. Ecology (partially overruled)
Moeur v. Ecology
McMeans v. Ecology
Sweet Grass Investments LLC v. Ecology

Definitions:

Ministerial error:

- A typographical or clerical error that occurred in the act of filling out the original claim form. These types of amendments are ministerial because they correct errors that are obvious, based solely on review of the claim form itself.
- A change to an item of information on the original claim form that conflicts with the other information on the form, and by amending that item will eliminate that inconsistency. Such an amendment is allowed only if the amendment is not changing or transferring an aspect of the water right or the amendment does not involve an actual expansion of the quantity of water used or of acres irrigated.

Unforeseen circumstances: A change in circumstances not foreseeable at the time the original claim was filed. The change in circumstances must relate only to the manner of transportation or diversion of the water, and not to the use or quantity of the water.

Background

The Washington Department of Ecology (Ecology) is responsible for the Water Rights Claims Registry (Registry) and amendments to water right claims within the Registry, administered under Chapter 90.14 RCW. [RCW 90.14.065](#) states that any person or entity, or their successor, who has a statement of claim on file with the Water Rights Claims Registry on April 20, 1987, may request an amendment. The request must be based on:

1. An error in estimating the quantity of the water claimed as described in [RCW 90.14.051](#). The claim amendment applicant must provide reasons for the error in the original claim.
2. A change in circumstances not anticipated when the original claim was filed, as long as it relates only to the manner of transportation or diversion of the water and not to the use or quantity of the water.
3. An amendment that is ministerial in nature. The claim amendment applicant must show that the information provided on the claim form was contrary to the intent of the claimant.

If the requested amendment meets any of the three criteria, Ecology's Water Resources Program must accept the request and file the amendment in the Registry. If the program concludes that the amendment does not meet subsections (1), (2), or (3) of RCW 90.14.065, they issue the determination through an Administrative Order and reject the request.

Filing Amendments

Any person or entity, or their successor, with a water right claim on file by April 20, 1987, may submit an amendment to their claim. Ecology is not authorized to amend claims filed after April 20, 1987.

Applicants should submit requests on the Amended Claim for Water Right form, [ECY 040-6](#). Ecology may also accept the request as long as the applicant provides a copy of the original claim and the following information:

1. Applicant name, address, zip code, and phone number.
2. Original claimants name and address.
3. Reason for the amendment to the claim form.
4. Whether the claim is for surface water or groundwater, and the name of the source if known.

5. Quantities of water and times of use claimed, including:
 - a) Cubic feet per second or gallons per minute.
 - b) Acre-feet per year.
 - c) Acres currently irrigated (if irrigation is claimed) and times during the year when water is used.
6. Date when water was first put to beneficial use.
7. Location of point(s) of diversion or withdrawal (north – south and east – west distances from nearest section corner, $\frac{1}{4}$ $\frac{1}{4}$ section, section, township, range, or Lot and Block and name of plat or addition).
8. Legal description of property where water is used (metes and bounds property description, $\frac{1}{4}$ $\frac{1}{4}$ section, section, township, and range, or Lot and Block and name of plat or addition, as known).
9. Purpose(s) of use.
10. Legal doctrine on which the claim is based (riparian or prior appropriation).

The applicant must sign and date the request and submit it with a \$50 filing fee to:

Department of Ecology
Cashiering Unit
PO Box 47611
Olympia WA 98504-7611

The cashiering unit forwards the request to the Water Resources Program's Policy and Planning Section. The Policy and Planning Section notifies the appropriate regional office of the request, identifying who is conducting the review and sharing information and documents as requested.

Evaluation

Ecology evaluates each amendment request in respect to the three conditions in RCW 90.14.065. Legislation requires Ecology to approve the amendment unless, in a written declaration, Ecology finds the request fails to meet any of the following conditions:

Error in estimation

The original estimate of the instantaneous or annual quantity did not accurately reflect actual water use.

Change in circumstances

There has been a change in circumstances not foreseeable when the original claim was filed. This change in circumstances may relate only to the manner of transportation or diversion of the water, and not to the use, quantity, or source of the water. Ecology will review the change of circumstance, but will not quantify the amount of water claimed.

Ministerial Error

The original claim form contained a typographical or clerical mistake and the requested amendment is consistent with the original claimant's intent. Ministerial errors can also consist of amending an item on the claim or clarifying information that conflicts or is contrary to the original claimant's intent.

- The purpose or place of use, or the point of diversion or withdrawal may be amended if the amendment corrects a ministerial error.
- The amendment cannot change or transfer an aspect of the claimed water right, or increase the quantity of water used or the acres irrigated.

If the requested amendment does not correct an error in estimation or a ministerial error, or requests a change in circumstances other than to the manner of transportation or diversion, Ecology notifies the applicant that they must request a change through [RCW 90.03.380](#) or [RCW 90.44.100](#). We will also provide information on filing an Application for Change/Transfer of a Water Right.

Process

Ecology documents the evaluation of each amendment request through an Administrative Order. The evaluation includes background information, evaluation of the proposed amendment, and details of the approval or rejection of the amendment. The Order must include a docket number whether the amendment was approved or rejected.

Amendment Decision

Once complete, the Water Resources Program Manager signs the Order and cover letter. The documents are then sent to the applicant by certified mail, together with information on how to file an appeal of the decision.

If the amendment is approved, the applicant should be informed that acceptance of the amendment does not constitute an adjudication of the water right claim.

Processing Documentation

The Policy and Planning Section will coordinate record keeping of the request and decision. To ensure we have properly documented the decision:

- The entire claim record is scanned and sent to the appropriate regional office. This information is entered into the Water Right Tracking System (WRTS).
- The paper files are microfilmed and stored in Central Records.

Appeals

The Administrative Order is an appealable action. Applicants may appeal the Order to the Washington State [Pollution Control Hearings Board](#) (PCHB). To appeal, the applicant must file their appeal with the PCHB and serve notice to Ecology within 30 days after receipt of the Order.

The Water Resources Program, Policy and Planning Section, represented by the Attorney General's Office, will defend the decision.

Guidance for Amending Water Right Claims

For reference, this guidance generally follows the format of the Water Right Claim Long Form.

1. Name: Any water rights preserved under a registered water right claim are appurtenant (attached) to the lands claimed as the place of use. The original name on the water right claim can be amended only if it is a correction of a ministerial error.

Address: The address on the claim form is the place of residence of the original claimant and is not relevant to the nature of the water right claim. The original address on the water right claim can be amended only if it is a correction of a ministerial error.

2. Source from which the right to take and make use of water is claimed: The source description can be amended through the "ministerial" provision of the statute under either of the following circumstances:

- The name of the source has changed since the original claim was filed. Documentation should accompany the request.
- The source is known by more than one name (for example "also known as . . ."). Documentation should accompany the request.

The applicant must clearly show that the original point of diversion has not changed since the original claim form was filed. (See #5, below.)

- 3A. Quantity of water claimed: An amendment to the instantaneous quantity is allowed by [RCW 90.14.065](#)(1), which states that an amendment can be sought if there was "An error in estimation of the quantity of the applicant's water claim . . . if the applicant provides reasons for the failure to claim such a right in the original claim."

Presently used: "Presently used" refers to the instantaneous quantity of water in use at the time the original claim form was filed, and can be changed by a claim amendment only if it corrects a ministerial error.

- 3B. Annual quantity claimed: [RCW 90.14.065](#)(1) allows an amendment to annual quantity when there was an "error in estimation of the quantity of the applicant's water claim . . . if the applicant provides reasons for the failure to claim such a right in the original claim."

Presently used: "Presently used" refers to the annual quantity of water used at the time the original claim was made. It can be changed by a claim amendment only if it corrects a ministerial error.

- 3C. If for irrigation, acres claimed: The number of acres claimed can be changed by a claim amendment only if it is a correction of a ministerial error. A claim amendment may only

change the number of acres claimed if it does not increase the quantity of water used or acres irrigated.

Presently irrigated: "Presently irrigated" refers to the acreage irrigated at the time the original claim was made. It can be amended only if it corrects a ministerial error.

- 3D. Time(s) during each year when water is used: The time or period of use can be amended only if it corrects a ministerial error.
4. Date of first putting water to use: This date can be amended only if it corrects a ministerial error.
5. Location of the point(s) of diversion/withdrawal: The description of the location can only be changed through a claim amendment if it corrects a ministerial error.

The location of the point(s) of diversion/withdrawal may be changed to a new location under [RCW 90.03.380](#), [90.03.390](#), [90.03.395](#), [90.03.397](#), [90.44.100](#), and [90.44.105](#).

6. Legal description of lands on which the water is used: A claim amendment may only change this information if it corrects a ministerial error.

The amendment cannot involve an expansion of the quantity of the water used or the acres irrigated, or any other aspect of the original water right claim.

The place of use may be changed through the provisions of [RCW 90.03.380](#), [90.03.390](#), and [90.44.100](#).

7. Purposes for which water is used: A claim amendment may only change the description of the purpose of use if it corrects a ministerial error.

The amendment cannot increase the quantity of water used or acres irrigated, or any other aspect of the original water right claimed.

The actual purpose of use may be changed through the provisions of [RCW 90.03.380](#), [90.03.390](#), and [90.44.100](#).

8. The legal doctrine(s) upon which the right of claim is based: Legal doctrine is a fundamental component of a water right. It can be changed by a claim amendment only if it corrects a ministerial error.



Ken Slattery, Program Manager

4/15/2008
Date