



Washington State's Trust Water Rights Program Frequently Asked Questions

- **What is the Washington State Trust Water Rights Program?** The Washington State Legislature enacted the trust water rights program in 1991 [RCW 90.42] to “develop and test the means to facilitate the voluntary transfer of water and water rights, including conserved water and to provide water for presently unmet and emerging needs”. The 1989 Yakima Basin Trust Water Rights Act preceded the trust water rights program. [RCW 90.38]
- **Are trust water rights only for instream purposes?** Trust water rights can be for multiple purposes including municipal, irrigation, mitigation credit, and wetlands maintenance, among others.
- **What is a trust water right agreement?** This is the document or trust water right form/application that is used to convey the water right to the Department of Ecology for management of a trust water right. It spells out the terms and conditions related to the acquisition and use of the water right in trust and with circumstances under which the water right reverts back to the water right holder.
- **Can I get my water right out of the Trust Water Rights Program?** When a temporary donation or lease ends or expires, the water right reverts to the donor or lessor in the same amounts that were accepted into the trust water right program. [RCW 90.42.080(9) and RCW 90.38.020(7)].
- **What happens to the priority date of my water right?** Trust water rights maintain the priority date of the original water right, unless the water right is split between the original user and the state, in which case the trust water right is inferior in priority.
- **What is “use it or lose it” and what does it mean for a water right holder?** The right to use a water right is recognized as a form of a property right but the water associated with a water right must be used to protect it from losing it OR fall under one of the exemptions for relinquishment. The key to protecting a water right (or claim) is to apply it to a beneficial use such as the trust water rights program. [RCW 90.14.180, RCW 90.14.140]
- **How does relinquishment apply to trust water rights?** Trust water rights leased or donated are exempt from relinquishment. [RCW 90.38.040(6), RCW 90.42.040(6), and RCW 90.14.140(2)(h)]
- **How can the trust water rights program be used to prevent relinquishment of a water right?** The trust water right statutes allow a water right holder to donate all, or a portion of, a water right to the trust water right program for instream flow purposes. Ecology must accept a donation for instream flow purposes provided the donor places reasonable conditions upon the donation. The donated instream flow trust

water right, plus any portion of the right that would continue to be used, cannot exceed the amount of water used in the previous 5 years. Acceptance of a donated water right does not require public notice of the donation for instream flow purposes until the trust water right is exercised, is not subject to an extent and validity review, and is not evidence of the validity or quantity of the water right. [RCW 90.42.080(1)(b),(4), (5), and (9), RCW 90.42.040(8), and RCW 90.38.020(1)(b), (4), and (7)]

- **What review will Ecology perform prior to making a decision to accept a donated water right into the TWRP?** Ecology's review of an application for a donation should include the trust water donation form, available aerial photography, publicly available county assessor's information, and the accompanying supplemental materials evidencing the quantities of water used during the 5 years prior to the donation. The letter accepting the trust water donation will also explicitly notify the donor that acceptance of the water right into the trust water rights program is not evidence of the validity or extent of the water right.
- **How does Ecology quantify the amount of water that can be accepted into the TWRP?** Quantification is determined by the extent and validity review (required if RCW 90.03.380 applies) OR by the highest use within 5 years before the acquisition. In some cases, such as acquisitions by lease under RCW 90.42, both means of quantification apply.
- **What is an extent and validity review?** It is an evaluation of a water right to determine the maximum amounts of water used within the description of the claim, permit, or certificate.
- **How are the instantaneous and annual quantities of an instream flow trust water right determined?** The full instantaneous and annual quantities under the water right or portion of the water right to be acquired may be protected as a trust water right for instream flow purposes against other rights within the primary reach. In the secondary reach, only the consumptive quantities associated with the use of the water right may be protected against other water right holders.
- **What information can be used to show the historical use of a water right?** Historical and current photos, diversion records, meter records, electrical records, district or project assessment fees, personal affidavits, Washington Irrigation Guide, etc.
- **Can I use the trust water rights program if I own shares in an irrigation district?** Yes, but you must have authority from the district.
- **What statutes govern trust water rights?** Primary authority for the Trust Water Rights Program is in RCW Chapters 90.38 and 90.42. Related authorities are in RCW 90.03.380 (Changes/Transfers), RCW 90.03.390 (Temporary Changes), and Chapter 90.66 RCW (Family Farm Water Act).
- **How can I get my water right reviewed?** Washington River Conservancy works closely with conservation districts and others and is more than happy to meet with landowners to do a *confidential*, tentative review of a water right.
- **Can I put my groundwater right in trust?** In 2009 the legislature passed ESSB 5583, which allows groundwater rights to be put in trust.