

Report  
to  
Montana Legislature Interim  
Subcommittee on Water Rights

Representative John P. Scully, Chairman

by  
Laurence J. Siroky  
Chief, Water Rights Bureau  
Water Resources Division  
Department of Natural Resources and Conservation

Approved by  
Ted J. Doney, Director

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## RECOMMENDATIONS TO THE LEGISLATIVE SUBCOMMITTEE ON WATER RIGHTS

### I. INTRODUCTION

During the 1977 legislative session the Department of Natural Resources and Conservation (DNRC) met several times with the legislature and briefed them on the progress of the adjudication of existing rights in the State of Montana. It was estimated then that, with current methods and funding, the determination of existing rights in the state would take over 100 years and more than 50 million dollars to complete the adjudication of an estimated 500,000 water rights. (See Appendix A for basis of estimate.) With adjudication of existing water rights taking this long, the benefits derived from such adjudication, such as water planning, quantifying of water available for appropriation in the Yellowstone Basin for industrial or agricultural development, or determination of those instream flows which are available for appropriation will not be realized. For these reasons, the legislature directed, through House Joint Resolution #81 introduced by Representative Day, that a legislative subcommittee on water rights be appointed to look into the methods and progress in the adjudication of existing water rights in Montana, as well as the methods used in other states and then make a report to the 46th legislature.

### II. REASONS FOR ADJUDICATION

#### GOALS OF ADJUDICATION

The ultimate goal of an adjudication program is to obtain usable information on water rights. This information would be used for the following goals:

- (1) Documentation of current water usage in Montana for protection against demands and lawsuits by downstream states, the federal government, and other interests outside the State of Montana;
- (2) Documentation of existing water rights, which will enable the DNRC to issue or deny water use permits more intelligently in the future;
- (3) Water planning which now is a difficult task without the knowledge of the amount of unappropriated waters;
- (4) Ensuring to water use permit applicants that if they are granted their permits then water will be available for their appropriation, thereby promoting future water development and reducing the monetary risk in appropriation facilities;
- (5) Documentation of individually held water rights which will provide more certainty in real estate transactions and the severing and selling of water rights. This kind of documentation will also allow upstream appropriators to be certain of the extent of prior rights downstream.

### III. STATUS OF PRESENT ADJUDICATION

#### GENERAL

After the passage of the Water Use Act in 1973, the DNRC chose to begin the adjudication of water rights first in the Yellowstone River Basin because of the basin's impending industrial uses of water, its water supply problems, and, of course, its lack of documentation of water usage.

#### POWDER RIVER BASIN

In October, 1973, the DNRC began work toward the adjudication of the existing water rights in the 4,000 square mile Powder River Basin. Upon gathering of all the land ownership of the area, certified individual notices were sent to about 1,000 landowners in the basin. Public notices also appeared in five newspapers in the area. Such notice required that all claimants of water rights in the basin file a declaration of existing water rights during a one-year period ending February 1, 1975. That year claimants filed about 8,400 declarations. A substantial number of those filings were received within the last couple of months of the filing period.

Although there were no specific instructions from the District Court, it was decided in discussion with Judge Martin of the District Court that the DNRC would prepare the facts necessary to arrive at a preliminary decree. A review of the declarations filed indicated that additional field data would be necessary to fully describe the water rights. This was especially true on irrigation claims where there have been sporadic increases in the areas irrigated and additional sources tapped. Claimants, not knowing the details of water law, often made erroneous claims, some not necessarily self-advancing. Also, because of the nature of the irrigation systems called water spreading systems, the claimant was not able to determine or did not claim the amount of water actually appropriated.

Since this legislative committee has spent a considerable amount of its time during a field trip in Miles City last October familiarizing itself with the details of the adjudication procedures, those details will not be discussed at this time.

To date, all pertinent facts have been gathered on 5,000 water right claims, or about 47% of the claims filed in the Powder River basin, and are ready for court review. These claims have not been submitted to the court because of possible modifications initiated by this committee. (See Appendix B for map of Powder Basin.)

#### MODIFICATIONS TO SPEED ADJUDICATION IN THE POWDER

Where possible, the program was modified to speed up the adjudication process. The amounts of water used on water spreading systems were unknown until, with the aid of the Soil Conservation Service, Extension Service and some local irrigators, a procedure was established for determining amounts of water which could be beneficially used by the crops in the water spreading systems within that basin. In addition, about a year and one-half ago, through a slight budget and organization modification, the DNRC hired three agriculture engineers who, being knowledgeable in soil, water and crop requirements, have been able to gather facts on irrigation claims at a considerably accelerated rate.

In January, 1975, the DNRC discontinued field checking claims for stock and domestic use. The DNRC found that most facts can be gathered from the claim, aerial photographs and interviews with the claimant. ✓

Each of these measures has helped to speed up the adjudication process. Some measures have not met much success but the DNRC will strive to look for new procedures and evaluate the existing procedures. It appears that by late 1979 all facts pertaining to all water right claims in the Powder Basin will be gathered and submitted to the court for a preliminary decree.

#### STATUS OF ADJUDICATION IN THE TONGUE-BIG HORN BASINS

Work has begun for determination of water rights in the Tongue River Basin, Rosebud and Armells Creek basins and the Big Horn Basin. The adjudication staff has spent considerable time in gathering ownership, updating this ownership, preparing aerial photos, county filings and other data, in these basins. The progress in these basins has been mostly halted and orders for declarations of water rights have been held pending because of litigation in federal court concerning jurisdiction over Indian and federal water rights.

#### IV. RECOMMENDED ALTERNATIVES

Although the adjudication of water rights is a painstaking undertaking that must be done meticulously, the present methods that the DNRC is restricted to appear to take too much time. The DNRC has, however, investigated alternatives which will speed up adjudication and these alternatives are presented below.

##### A. INCREASED BUDGET

Although it would not change the total projected cost of adjudication, doubling or tripling the present adjudication budget of \$180,000 per year would reduce the time required for adjudication by a half to two-thirds. Adjudication could proceed as it does now under the present law or under some modification of the law, such as the adoption of a process using water judges, but even with the increased budget it will still be many years before the water rights in some areas are adjudicated.

Requiring a fee from the claimant or some other method of assessment for the cost of adjudication would reduce the financial burden of adjudication on the general fund of the state. Using the increased funds provided by claimants, the DNRC could accelerate the adjudication program.

##### B. INCREASED BUDGET - EXEMPT DOMESTIC AND STOCK

Increasing the existing adjudication budget and proceeding under the existing statute but exempting adjudication of groundwater domestic and stock rights should be considered. The DNRC estimates that this would reduce the total number of existing water rights perfected prior to July 1, 1973 and needing adjudication from an estimated 500,000 to around 275,000. Postponing adjudication of stock and domestic rights until later or until a time when a controlled groundwater area is specified would eliminate a significant amount of paper work and reduce a large portion of the claimants who are unfamiliar with water rights, but could meet the public and private benefits

of an adjudication of existing water rights. Such modification would have reduced the number of claims by about one-half in the Powder, and subsequently eliminated about 30% of the time required by the adjudication crew there.

A method using a water judge to adjudicate water right claims would certainly speed up the adjudication process under this alternative as would assessing a fee from the claimant.

### C. CLAIMS REGISTRATION PROGRAM

Modification of the existing adjudication statute to require a statewide mandatory claims registration program should be considered as another alternative. This would initiate the state-wide adjudication of existing water rights at once. The advantage to a claims registration program is that further modification of the adjudication statute could be better considered upon completion or near completion of a claims registration program. Also a substantial number of the benefits reached under a completed adjudication would be met by merely completing a claims registration program. A review of the claims registration program in the State of Washington confirms this. Included in these benefits are potential for more accurate water planning, better ability to administrate the permit system under the Water Use Act, perpetuation of evidence, evidence of use to argue against federal claims of water, as well as initiation of the adjudication of water rights in Montana. The State of Idaho has just recently passed legislation (See Appendix C for a copy of this statute.) initiating a claims registration program in their state.

#### Five Year Claims Registration Program

The DNRC's research and experience suggests that a five-year claims registration program should be considered. Generally, the program would be as follows:

First Year. The DNRC would hire a skeleton staff of experienced personnel and establish rules, policy, and forms to carry out the program. This staff would initiate and conduct public education programs through local field offices, send out individual notices through tax notices, publish public notices in newspapers, and arrange additional notification through T.V. and radio. The DNRC's field personnel would briefly assess the claims to see if they are complete and provide assistance to those claimants requesting help. It is estimated that about 3% of the claims would be submitted the first year.

Second Year. Additional public notice would be provided during the second year. The DNRC's field personnel could continue to provide assistance to claimants and a public education program through workshops, and meetings with Conservation Districts, Extension Service, and other personnel. Claimants would probably file about 10% of the claims. To assist the claimants, additional staff would be hired.

Third Year. The DNRC would continue with assistance, notice, education and collection of the filed claims. An estimated 20% of the claims would be filed. Additional staff would be hired to carry out the program.

Fourth Year. During the fourth year, the DNRC would continue with the notices but concentrate heavily on giving assistance to encourage claimants to file early. The deadline for filing claims would be at the end of the fourth year. The DNRC's

experience on the Powder River basin and the experience of the State of Washington indicates that a substantial amount of the claims would be filed in the closing months and days of the claims registration period.

Fifth Year. This year would be reserved for processing the claims made during the closing months of the program. Incomplete claims would have to be sent back, missing fees would have to be requested and the final recording of the claims would have to be performed.

### Claims Processing

In the processing of claims, claims would first be logged in and checked to see that they are correct and complete and that the filing fee accompanies the claim. Second, the claim should be microfilmed for security purposes and then filed. A claim should also be coded so that interested parties could refer to the information by name, location, and so that an abstract of claims could eventually be completed.

Washington Claims Registration Program. During a five-year registration of claims program in the State of Washington (See Appendix D for a copy of this statute.) from 1970 to 1974, 67% of the total claims were registered during the closing months of the program. In fact, over 50% of the claims received during the last year came within the last two months of the claims registration program. It is expected that the same attitudes would exist in Montana if the registration period were three years or ten years, and that the bulk of the claims would be made within the closing months of the program (See Appendix E for the estimated number of claims received each year.). The public found Washington's registration forms (see Appendix D) requiring data indicating quantities of water, location of diversion points, legal descriptions of land, water right documents and other such technical or legal information difficult to complete. This was especially apparent in the case of water rights using minimal amounts of water. Washington reacted to this problem during the third year of the registration program by obtaining legislative approval for use of a short form for claimed rights of 5,000 gallons per day or less. This form required only the name and address of the claimant, source of supply, purpose of use and legal description of the benefited lands. The short form still did not prove satisfactory, and Washington now recommends not requiring claims to be filed for domestic groundwater use.

### 1962 Montana Groundwater Code

A similar claims program with the exception of the extensive public notice under this proposal was initiated in Montana for groundwater use starting in 1962 when the Groundwater Code was adopted by this legislature. Although it was not mandatory claimants could file a Declaration of Vested Groundwater Rights with the appropriate county clerk and recorder for a water right to groundwater used prior to January 1, 1962.

### Filing Fee for Claims Program

The State of Washington recommends requiring a filing fee to offset the total costs or a portion of a claims registration program. The State of Washington required a nominal filing fee of \$2.00 which cost more money to obtain than it provided. Advice from the State of Washington does not encourage requiring a \$2.00 fee. Under the claims registration program in Idaho, the filing fee was specified by statute (42.221, Idaho Code) and varied with the quantity claimed at rates of \$10.00 for 0.2 cubic feet

per second or 20 acre-feet of storage, \$25.00 for one cubic foot per second to 20 cubic feet per second or 100 acre-feet to 2,000 acre-feet of storage, etc. If a fee is to be specified by statute it should be kept simple and be limited to no more than one or, perhaps, two different fee amounts depending on the amount claimed. One simple fee amount has merit in that the cost for claims registration is not related to the amount of water claimed but rather the cost of processing those claims. The DNRC recommends that the decreed water right claims be filed but that the filing fee NOT be required.

#### Cost of Claims Registration Program

The preliminary analysis of the cost of a claims registration program in this state suggests that a fee of \$25.00 per claim would offset the costs of the program if claims were to be filed for each of the estimated 500,000 claimed water rights (See Appendix G for cost detail.) while a fee of \$27.00 would cover the estimated 275,000 water rights other than stock and domestic groundwater claims (See Appendix H for cost detail.). If less than the estimated claims are filed then the full cost of the program would not be covered. These estimated fees would offset the cost of the claims registration program only, and would not offset any costs associated with the adjudication of the claims. The costs of final adjudication and the methods for sharing those costs between the state and the claimant can be evaluated when the full nature and number of claims is known.

#### Notice Required for Registration Program

An extensive notice and public awareness program is a vital and legal necessity during the claims registration period. Not only does the DNRC have to meet the legal requirements of sending individual notices to all landowners and publishing public notices in a newspaper, but there also has to be an attempt to bring the registration requirement to the attention of the public through public meetings with Conservation Districts, and other organizations, as well as through public service announcements over radio and T.V. The legal advertisement, although necessary, cannot be relied on solely to get the word out to file claims. An extensive amount of grass roots assistance, workshops, and meetings are still a must to encourage individuals to file claims. The State of Idaho is also pursuing a claims registration program and is proposing a budget of \$270,000 for public advertisement through contracts with advertising agencies.

#### Budget Allocations

The number of claims filed each year cannot be easily estimated. The budget considerations and allocation may be better estimated on a five-year program basis rather than a specific budget each year. In the State of Washington, of the 167,000 claims filed, 3% were filed during the first year, 10% the second, 20% the third, and 67% the fourth year. Because the major share of the claims would be received in the last year of the claims program, the expanded revenue from fees would not be expected to offset the costs incurred in administering the claims registration program for at least the first three years. In the last year, however, the revenue received would be far in excess of the actual cost of administering the claims registration program during that year (See Appendix E for the expected revenue from fees.). A filing fee which increases throughout the claims period may encourage earlier filing of some claims.

### Claims as Prima Facie Evidence

If the State of Montana adopts a claims registration program, the statute should specify that the claims are prima facie evidence until a preliminary decree is adopted. The Idaho Code states:

The filing of a claim does not constitute an adjudication of any claim to the right to use of the waters as between the water use claimant and the state or as between one or more water use claimants and another or others. A statement of claim filed pursuant to Section 42.243 Idaho Code shall be admissible in a general adjudication of water rights as evidence of the times of use and the quantity of water the claimant was withdrawing or diverting as of the year of the filing, if, but only if, the quantities of water in use and the time of use when a controversy is mooted are substantially in accord with the times of use and quantity of water claimed in the claim. A claim shall not otherwise be evidence of the priority of the claimed water right. (42.246, Idaho Code)

The Washington statute, section 90.14.081 R.C.W., reads substantially the same.

### Existing Decrees as Prima Facie Evidence

The claims statute should also specify that the existing court decrees and all evidence gathered thereof is prima facie evidence. This is already understood and assumed by most lawyers but if the statute includes this, it will be apparent to the decree holders and it might subdue their fears. This does not mean, however, that these decrees are not subject to other water rights which were not considered in the original decree.

### Forfeiture of Unclaimed Water Rights

Another important aspect to a claims registration program is to provide some finality to the filing of claims. Both Idaho and Washington specify in their statutes that water rights which are not claimed during the specified claim period are forfeited. Such a statute will hold up only where there is extensive individual and public notice. This has been the subject of litigation in Texas and was upheld and is also currently in court in the State of Washington between Hudsmith vs. Department of Ecology. The Idaho statute is as follows:

Any person claiming the right to divert or withdraw and use waters of the state who fails to file a claim as provided in section 42.243, Idaho Code, shall be conclusively deemed to have waived and relinquished any right, title or interest in said right. (42.245, Idaho Code)

### Water Measurement

Another suggestion for the claims registration program is to specify in the statute that water measurement records accompanying the claims are prima facie evidence of the diversionary requirements. Although claimants in Montana usually do not provide measurement of the water that they divert, this would provide some incentive for them to do so. There may be some abuses but the benefits of the claimants being able to claim a realistic amount would offset these. Some erroneous measurements could be minimized by having a qualified registered engineer certify that each measuring facility is properly installed and measures reasonably accurately.

## Duties and Responsibilities of the DNRC

The claims registration statute should clearly specify the duties and responsibilities of the DNRC. To be consistent with the existing Water Use Act, the claims should be submitted to the DNRC. The DNRC should be responsible to accept the claims and incorporate them into their existing records system. At the end of the claims registration program the DNRC should compile an abstract of the claims specifying such pertinent facts as the source, point of diversion, place of use, use, and date of priority of each claimed water right. The statute should specify that the DNRC is not responsible for checking the claims for validity of additional facts to determine the water right until actual adjudication but rather to review the claims filed ensuring that they are completed and the proper filing fee is attached. Further, the statute should specify that the DNRC should develop standard water use requirements for irrigation throughout the state. Because the claimants will have problems in substantiating the amounts of water they have diverted, or will not take the time and effort to find out, the statute should specify that the claim be made for the standard established amount of use for the area, unless the claimant can actually show he uses more. Such a standard, which would aid in making the amount claimed more valid, cannot be specified in the statute since it varies with geographical location.

## Grass Roots Assistance

Although it would not be specified by statute, an extensive local assistant program operated by the DNRC at the grass roots level is important to assure maximum compliance with the program and acceptability by the public to the program. Such assistance will encourage earlier filings and more valid claims. If the claims program is initiated then such direction and financial assistance must be provided.

## Claims for Stock and Domestic Groundwater Uses

If claims are required for all uses including stock and domestic groundwater uses then a short form should be developed. The short form would require the claimant's name, his address, the source of supply, the purpose of use, a description of the benefited lands, and a map, and would be limited to all stock and domestic claims where the use is less than or equal to 25 gallons per minute and 1.5 acre-feet per annum per household of five or per 100 head of stock. The DNRC recommends, however, that these claims for stock and domestic groundwater use not be required at this time.

## Alternatives Ensuring Accurate Claims

The claims filed under a claims registration program will only be as valid as the thoroughness of the claimants allows them to be. Although the DNRC does not recommend it and strongly discourages requiring it for domestic and stock claims, requiring the certification of a claim by a registered professional engineer and attorney knowledgeable in water law or an on-site field investigation, an interview and research of available data by qualified DNRC personnel would result in the most valid claim. Such claims would most closely resemble the final decreed water right. Besides such certification or detailed assistance there are some other means of making the claims as valid as possible. Without certification or assistance, however,

the amount of water diverted and used per annum or the priority date will not likely be accurate on most claims. Part of this could be mitigated by requiring only measured amounts to be claimed.

The actual point of diversion, place of use, and location of conveyance could best be identified by requiring up-to-date aerial photographs of four or eight inches to the mile that could be required to accompany the claim. Copies of the aerial photographs used in compiling the water resources survey could be made available to claimants at the cost of copying them (See Appendix F for typical copies.). The Highway Department, also having aerial photographs that could be made available to claimants, has charged \$4.00 per square mile for photographs of the Prickly Pear drainage scaled at eight inches to the mile. Another alternative would be to require a copy of the appropriate section or sections of a U.S.G.S quadratic map showing the development. Some detail would be lost, however, if the U.S.G.S. quadratic maps, or older existing photographs were used. The advantage of up-to-date photographs of the eight or four inches to the mile scales is that if the claimants can easily locate their water developments, they will be less likely to error in indicating which lands they irrigate, the locations of their point of diversion and other physical features of their developments. Scales of one-half inch to the mile or one inch to the mile would probably be sufficient for claims from the U. S. Forest Service and the Bureau of Land Management since their developments are in sparsely developed areas.

The experience of other states indicates that claimants have made inaccurate and often made excessive claims. A certification program or a detailed assistance program from the DNRC -- neither of which the DNRC recommends -- would ensure more accurate claims but the high cost of either of these methods is prohibitive to the claimant on one hand and the state on the other. The DNRC has considered alternatives to the certification and detailed assistance program. One alternative would have the DNRC spot check the claims but this would require a substantial staff. Another alternative would be to provide penalties for claimants making excessive claims but the penalties would be difficult to enforce. The State of Idaho has given public notice of claims and accepted objections which become a matter of record and this would be considered an alternative.

The claims gathered by a claims registration program will not provide enough facts in the detail necessary to settle disputes between individuals over water rights. This sort of detail can only be settled after adjudication.

Since excessive and erroneous claims are less likely to be challenged as time goes on, adjudication of the claims must follow the registration program in a timely manner.

### Water Judges

Since district judges are too busy to take on such a large project, the selection of water judges would accelerate the adjudication of water rights. The selection of a water judge should be done after the claims registration period ends. The jurisdiction of a water judge would be confined exclusively to water rights adjudication in specified drainage basins. The statute should specify the qualifications of such water judge. The water judges would be selected for the Powder River Basin first within the next one to two years. An advantage to this would be that a water judge could not only complete the adjudication in that basin but could give direction to the DNRC in completing its work in the Powder River basin and in identifying any

particular problems which might be corrected by statute or administrative rule before water judges are selected for the whole state. An alternative to a water judge would be a water master who would be directly responsible to a district judge and would function much the same as a water judge. If the water judge is to be appointed, it is requested that the DNRC be a member of this selection panel for water judges. The DNRC recommends that the water judge serve a specific term that could be renewed if the work is satisfactory until the adjudication is completed in the basins within his jurisdiction.

#### Future Modification of the Adjudication Statute

Upon completion of the claims registration program, a committee such as this would be able to evaluate more realistically whether domestic and stock claims should be included in further adjudication, what the cost of that adjudication might be, and whether to appoint water judges, water masters, or administratively adjudicate those rights. The DNRC would recommend that during the claims registration period additional study be done to look into ways and means to accelerate and fund the adjudication process within the State of Montana. Without such claims program, the DNRC can only speculate on the number of water judges, the size of their staffs and the size of the DNRC staff that would be necessary to complete the adjudication.

#### Effect on Permit Program

It was the experience of the people in the State of Washington that people became more conscious of water and water rights during a claims registration program. The number of applications for water use permits in that state increased three-fold during their claims registration program. Some applications were made where existing water rights were questionable and may not have been held valid when adjudicated. Other applications resulted from an increased awareness of the permitting procedure. Any increased activity in the adjudication of water rights will make people more water right conscious and there will be more permit activity.

#### D. VOLUNTARY CLAIMS PROGRAM HAVING NO DEADLINE

Another alternative to consider is to accept declarations on a continuing basis and administratively adjudicate each of those claims as they are filed. The State of Idaho has done this since the early 1900's, although this has not been satisfactory in that state since there is always an uncertainty as to how much water is committed. Such program in this state would not meet the benefits derived from a mandatory claims registration program.

#### E. ADJUDICATION OF WATER RIGHTS INITIATED BY INDIVIDUALS

Another alternative to consider would be to modify the existing adjudication statute so that individuals can initiate adjudication of water rights through the appropriate court. This alternative may be considered in conjunction with the alternative calling for claims registration. Adjudication could still be initiated by the state but it would be optional.

If this alternative were adopted, several things would have to be determined. The statute should specify whether the DNRC will be a party to each suit, and if it is, what role it will play. It will have to be determined who will be responsible for providing public notice to file claims. This alternative may be complicated by the facts that suits will be immediately filed on the Milk, Teton and Sun rivers and in other areas of water controversy, and that these adjudications may not be final. This alternative does have some advantages in that adjudications could proceed on a basis of need. This alternative merits further specific analysis since water rights in those controversial areas could be settled immediately.

Although an individual may bring a suit calling on a court to settle a dispute between involved parties, under the present statute only the DNRC can initiate a general stream adjudication by obtaining an order from the court. Since the budget and manpower allocation has been limited, further commitments to adjudicated water rights have had to be denied.

#### V. CONCLUSION

Having thoroughly considered and researched preceding alternatives, the DNRC recommends the adoption of a claims registration program having the following features:

- (1) Mandatory filing of any claimed water rights within four years and a fifth year to record and process the claims;
- (2) Exemption of domestic and stock watering groundwater rights;
- (3) Filing fees established to offset the cost of the program, with a graduated scale to encourage earlier filing but no fees would be required on claims to decreed water rights;
- (4) Claims required to supply all necessary information concerning the water right including maps of all physical features but not required to have the certification of engineers and other professionals;
- (5) Recognition of claims as prima facie evidence;
- (6) Forfeiture of any water rights not claimed;
- (7) Provisions for publication of claims and for filing objections to those claims;
- (8) Exemption of water use permits, certificates, and reservations obtained under the provisions of the Water Use Act;
- (9) An extensive public education program; and
- (10) An extensive local assistance program provided by the DNRC at the grass roots level.

The DNRC does not recommend the creation of special water judgeships at this time but the DNRC does recommend the following:

- (1) Allowing the DNRC to initiate general stream adjudications where they are needed as it can under the present law;
- (2) Allowing, although within statutory guidelines, private individuals to initiate general stream adjudications; and
- (3) That the Legislature provide encouragement and funds to the district court in the Powder River basin to appoint a special water master as soon as possible to adjudicate the water rights in that basin.

A state-wide adjudication program will probably never be fully completed and its benefits never fully realized because the huge cost of adjudication. The DNRC feels, however, that if its recommendations for a properly managed and funded claims registration program are implemented, they will provide many of the benefits and achieve many of the goals of an adjudication program. The compilation of the claims will be useful in water planning, administration of the permit system under the Water Use Act, perpetuation of evidence by the claimant, providing evidence of use to argue against federal claims of water, establishing a record of the claims based upon use rights, and reduction of the speculation and uncertainty over new investments for water development in this state.

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Appendix A

ESTIMATION OF THE NUMBER OF WATER RIGHTS IN MONTANA

A. Estimate Number One

There were 10,800 water rights claimed in the Powder River basin of 4,000 square miles.

This is approximately 2.7 water rights per square mile.

There are 143,100 square miles in Montana.

$$143,100 \times 2.7 \text{ water rights per square mile} = \underline{386,400} \text{ water rights}$$

This would be a conservative estimate since the basin is more sparsely settled than most basins.

B. Estimate Number Two

In the Powder River basin about 30% of the rights are based upon filings while 70% are use rights.

According to the county Water Resources Surveys taken from 1942-1970, there are:

65,406	surface water filings
56,763	ground water filings
<u>7,863</u>	decreed rights
130,032	Total

Assuming that 130,000 represents the 30% filings in the whole state, it is estimated that there are about:

$$130,000 / .30 = \underline{433,300} \text{ water rights in Montana}$$

C. Estimate Number Three

Following are some know numbers:

Surface water county filings	65,406
Ground water county filings	56,763
Certificates issued for ground water use less than 100 gallons per minute (1/78)	11,045
Provisional Permits issued (1/78)	5,275
Well Logs - No filings (1973-1978)	<u>14,000</u>
TOTAL	152,489

D. Some Other Numbers

Soil Conservation Service cost shared on 70,000 pits and reservoirs

Soil Conservation Service cost shared on 350,000 acres water spreading systems

About 1600 reservoirs were inventoried in the Department of Natural Resources

Dam Safety Program. These are those having storage greater than 50 acre-feet and arc greater than 25 feet in height.

Bureau of Land Management - 10,000 estimated

United States Forest Service - 25,000 estimated

**POWDER RIVER BASIN  
LAND AREA**

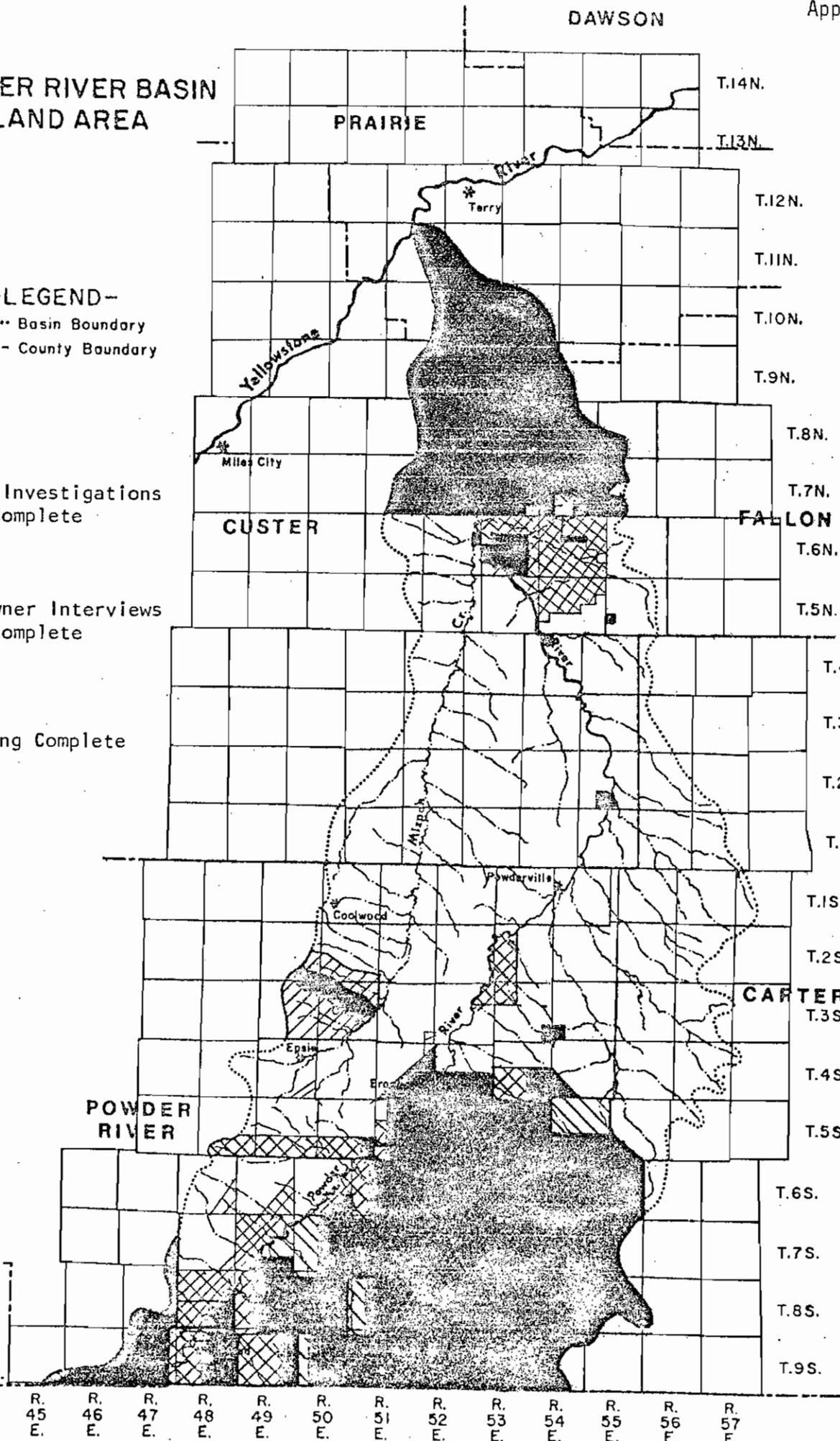
**--LEGEND--**

- ..... Basin Boundary
- - - - - County Boundary

 Field Investigations Complete

 Landowner Interviews Complete

 Encoding Complete



Mont.  
Wyo.

R. 45 E. R. 46 E. R. 47 E. R. 48 E. R. 49 E. R. 50 E. R. 51 E. R. 52 E. R. 53 E. R. 54 E. R. 55 E. R. 56 E. R. 57 E.

## IN THE SENATE

SENATE BILL NO. 1622

BY STATE AFFAIRS COMMITTEE

## AN ACT

1  
2 RELATING TO DEVELOPMENT OF THE UNAPPROPRIATED WATERS OF  
3 IDAHO; AMENDING CHAPTER 17, TITLE 42, IDAHO CODE, BY THE  
4 ADDITION OF A NEW SECTION 42-1736A, IDAHO CODE, TO PRO-  
5 VIDE A STATEMENT OF POLICY RELATING TO WATER, TO PROVIDE  
6 FOR DUTIES OF THE DIRECTOR OF THE DEPARTMENT OF WATER  
7 RESOURCES, TO PROVIDE FOR DUTIES OF THE WATER RESOURCE  
8 BOARD, AND TO ESTABLISH FLOWS ON CERTAIN PORTIONS OF THE  
9 SNAKE RIVER; AMENDING CHAPTER 17, TITLE 42, IDAHO CODE,  
10 BY THE ADDITION OF A NEW SECTION 42-1736B, IDAHO CODE,  
11 TO PROVIDE FOR ESTABLISHING FLOWS ON OTHER RIVERS, TO  
12 PROVIDE FOR ESTABLISHING MAINTENANCE LEVELS ON LAKES AND  
13 RESERVOIRS, TO PROVIDE THAT FUTURE FILINGS, PERMITS AND  
14 DECREES WILL BE DETERMINED WITH RESPECT TO THE EFFECT ON  
15 MINIMUM FLOWS OR MAINTENANCE LEVELS, TO PROVIDE FOR  
16 LEGISLATIVE REVIEW OF PLAN AND DEVELOPMENT PROJECTS, AND  
17 TO PROVIDE ADDITIONAL DUTIES FOR THE WATER RESOURCE  
18 BOARD; REPEALING SECTION 42-225, IDAHO CODE, RELATING TO  
19 THE DUTIES OF THE DEPARTMENT OF WATER RESOURCES TO  
20 SURVEY STREAMS AND GROUND WATER AREAS; AMENDING CHAPTER  
21 2, TITLE 42, IDAHO CODE, BY THE ADDITION OF A NEW  
22 SECTION 42-241, IDAHO CODE, TO PROVIDE A STATEMENT OF  
23 PURPOSE; AMENDING CHAPTER 2, TITLE 42, IDAHO CODE, BY  
24 THE ADDITION OF A NEW SECTION 42-242, IDAHO CODE, TO  
25 DEFINE TERMS; AMENDING SECTION 42-225a, IDAHO CODE, TO  
26 REDESIGNATE AS SECTION 42-243, IDAHO CODE, TO PROVIDE A  
27 FINAL DATE BY WHICH PERSONS USING OR CLAIMING RIGHTS TO  
28 THE USE OF WATER, OTHER THAN FOR DOMESTIC PURPOSES, MUST  
29 FILE A CLAIM OF SUCH RIGHT, AND TO PROVIDE AN EXCEPTION  
30 FOR ESTABLISHED CLAIMS; AMENDING SECTION 42-225b, IDAHO  
31 CODE, TO REDESIGNATE AS SECTION 42-244, IDAHO CODE, AND  
32 CHANGE THE FEE REQUIRED; AMENDING CHAPTER 2, TITLE 42,  
33 BY THE ADDITION OF A NEW SECTION 42-245, IDAHO CODE; TO  
34 PROVIDE THAT A FAILURE TO FILE A CLAIM SHALL BE DEEMED  
35 AS THE WAIVER OR RELINQUISHMENT OF ANY RIGHT, TITLE OR  
36 INTEREST IN THE RIGHT; AMENDING CHAPTER 2, TITLE 42,  
37 IDAHO CODE, BY THE ADDITION OF A NEW SECTION 42-246,  
38 IDAHO CODE, TO PROVIDE THAT THE FILING OF A CLAIM IS NOT  
39 AN ADJUDICATION OF A RIGHT; AMENDING CHAPTER 2, TITLE  
40 42, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 42-247,  
41 IDAHO CODE, TO PROVIDE FOR GIVING NOTICE OF THE PROVI-  
42 SIONS OF CHAPTER 2, TITLE 42, IDAHO CODE; AMENDING TITLE  
43 42, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 15,

of the legislature to review and approve the actions of the water resource board, the water resource board is specifically directed:

(a) To inventory all of the unappropriated waters of this state;

(b) To recommend to the legislature appropriations in trust for the people of Idaho for specific purposes;

(c) To develop a list of specific proposals for storage of any unappropriated waters of this state, which proposals shall show location, costs, and proposed uses and benefits;

(d) To take all necessary actions to assure that Idaho citizens shall not be denied the right to divert and appropriate to beneficial uses, under the provisions of article XV of the constitution of the state of Idaho, the unappropriated waters of this state.

SECTION 3. That Section 42-225, Idaho Code, be, and the same is hereby repealed.

SECTION 4. That Chapter 2, Title 42, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 42-241, Idaho Code, and to read as follows:

\* 42-241. PURPOSE. The future growth and development of the state is dependent upon effective management and efficient use of the state's water resources. The purpose of this act is to provide adequate records of water right claims for efficient administration and to aid in the proper planning for the future use of the state's water resources.

SECTION 5. That Chapter 2, Title 42, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 42-242, Idaho Code, and to read as follows:

42-242. DEFINITIONS. Whenever used in this act, the terms:

(1) "Person" shall mean an individual, partnership, association, public or private corporation, city or other municipality, county, state agency, or the state of Idaho, and the United States of America when claiming water rights established under the laws of the state of Idaho.

(2) "Notice in writing" means a notice substantially in the following form:

WATER RIGHTS NOTICE

Every person, including but not limited to an individual, partnership, association, public or private corpora-

1 tion, city or other municipality, county, state agency or  
 2 the state of Idaho, and the United States of America, when  
 3 claiming water rights established under the laws of the  
 4 state of Idaho, is hereby notified that all water rights or  
 5 claimed water rights relating to the withdrawal or diversion  
 6 of public surface or ground waters of the state for uses  
 7 other than domestic purposes as defined in section  
 8 42-230(d), Idaho Code, except those water rights based upon  
 9 authority of permit or license issued by the department of  
 10 water resources or one of its predecessors or water rights  
 11 which have previously been adjudicated by a court having  
 12 jurisdiction of such matters, must be registered with the  
 13 department of water resources, Boise, Idaho, not later than  
 14 June 30, 1983. FAILURE TO REGISTER AS REQUIRED BY LAW WILL  
 15 BE GROUNDS FOR INSTITUTING AN ACTION FOR FORFEITURE OF THE  
 16 CLAIMED WATER RIGHT. For further information contact the  
 17 Department of Water Resources, Boise, Idaho, for a copy of  
 18 the act and an explanation thereof.

19 SECTION 6. That Section 42-225a, Idaho Code, be, and  
 20 the same is hereby amended to read as follows:

21 42-225a 42-243. FILING OF CLAIMS OF RIGHTS ESTABLISHED  
 22 BY DIVERSION AND USE -- FORM AND CONTENT OF CLAIM. In order  
 23 to ~~assist in the compilation of the survey of appropriations~~  
 24 ~~as provided in the previous section and --~~ to allow for the  
 25 recording of historic uses of the waters of this state, any  
 26 person using or claiming rights to the use of water for  
 27 uses other than domestic purposes as defined in section  
 28 42-230(d), Idaho Code, which have heretofore been estab-  
 29 lished by diversion and application to a beneficial use may  
 30 shall file a claim of such right with the department of  
 31 water resources not later than June 30, 1983. Such claim  
 32 shall be in affidavit form on forms furnished by the depart-  
 33 ment of water resources and shall set forth:  
 34 a. The name and post-office address of the claimant.  
 35 b. The quantity of water claimed to have been used.  
 36 c. The source of the water supply.  
 37 d. The location of the point or points of diversion.  
 38 e. The nature of the use and the period during each  
 39 year when the water is used for such purposes.  
 40 f. The priority of the right claimed which shall be  
 41 determined by the date when the water was first applied to a  
 42 beneficial use provided there has been no period of abandon-  
 43 ment or nonuse or forfeiture of the water right since that  
 44 date.  
 45 g. If water is claimed for irrigation, the legal  
 46 description of the lands irrigated.  
 47 h. Such other information as shall be required by the

blank form furnished by the department.

2 Such claim may be accompanied by maps showing the place  
3 of use, affidavits of witnesses familiar with the uses  
4 claimed, measurements of the water diverted and used, and  
5 such other information as the claimant may wish to submit.

6 This section shall not apply to any water rights which  
7 are based on the authority of a permit or license issued by  
8 the department of water resources or one of its predecessors  
9 or water rights which have previously been adjudicated by a  
10 court having jurisdiction of such matters.

11 SECTION 7. That Section 42-225b, Idaho Code, be, and  
12 the same is hereby amended to read as follows:

13 42-225b 42-244. RECORDING OF CLAIMS BY DEPARTMENT --  
14 CORRECTIONS. Upon receipt of any claim submitted under this  
15 chapter, together with the statutory filing fee of ~~\$10.00~~ as  
16 set forth in section 42-221, Idaho Code, it shall be the  
17 duty of the department of water resources to file and to  
18 maintain a record of such claim, which shall be available  
19 for public inspection during all normal office hours. The  
20 department shall also cause a notice to be published once a  
21 week for two (2) consecutive weeks in a newspaper published  
22 and of general circulation in the county where the water is  
23 claimed to be diverted, if there is such a newspaper, other-  
24 wise in a newspaper of general circulation in the county,  
25 which said notice shall set forth such information as shall  
26 apprise the public of the nature of the claim which has been  
27 filed. At any time after the filing of a claim under the  
28 previous section, any person who disagrees that a right has  
29 been established as set forth in said claim may file an  
30 exception thereto in duplicate, in affidavit form, accompa-  
31 nied by such proof as said person deems appropriate. An  
32 exception filed shall be made a part of the file of the  
33 claim in the department of water resources and shall be  
34 considered the same as other evidence in said file. A copy  
35 of an exception filed shall be forwarded to the claimant by  
36 the department of water resources. Such claims may be cor-  
37 rected by the claimant only by filing of an amended claim in  
38 the same form as the original, which shall be recorded and  
39 numbered by the department the same as the original, and for  
40 which no additional filing fees shall be required.

41 SECTION 8. That Chapter 2, Title 42, Idaho Code, be,  
42 and the same is hereby amended by the addition thereto of a  
43 NEW SECTION, to be known and designated as Section 42-245,  
44 Idaho Code, and to read as follows:

45 42-245. FAILURE TO FILE CLAIM WAIVES AND RELINQUISHES

1 RIGHT. Any person claiming the right to divert or withdraw  
2 and use waters of the state who fails to file a claim as  
3 provided in section 42-243, Idaho Code, shall be conclu-  
4 sively deemed to have waived and relinquished any right,  
5 title or interest in said right.

6 SECTION 9. That Chapter 2, Title 42, Idaho Code, be,  
7 and the same is hereby amended by the addition thereto of a  
8 NEW SECTION, to be known and designated as Section 42-246,  
9 Idaho Code, and to read as follows:

10 42-246. FILING OF CLAIM NOT DEEMED ADJUDICATION OF  
11 RIGHT -- EVIDENCE. The filing of a claim does not constitute  
12 an adjudication of any claim to the right to use of waters  
13 as between the water use claimant and the state, or as  
14 between one (1) or more water use claimants and another or  
15 others. A statement of claim filed pursuant to section  
16 42-243, Idaho Code, shall be admissible in a general adjudi-  
17 cation of water rights as evidence of the times of use and  
18 the quantity of water the claimant was withdrawing or  
19 diverting as of the year of the filing, if, but only if, the  
20 quantities of water in use and the time of use when a  
21 controversy is mooted are substantially in accord with the  
22 times of use and quantity of water claimed in the claim. A  
23 claim shall not otherwise be evidence of the priority of the  
24 claimed water right.

25 SECTION 10. That Chapter 2, Title 42, Idaho Code, be,  
26 and the same is hereby amended by the addition thereto of a  
27 NEW SECTION, to be known and designated as Section 42-247,  
28 Idaho Code, and to read as follows:

29 42-247. NOTICE OF CHAPTER PROVISIONS -- HOW GIVEN --  
30 REQUIREMENTS. To ensure that all persons referred to in sec-  
31 tions 42-242 and 42-243, Idaho Code, are notified of the  
32 provisions of this chapter, the department of water  
33 resources is directed to give notice of the provisions of  
34 this chapter as follows:

35 (1) It shall cause a notice in writing to be placed in  
36 a prominent and conspicuous place in at least one (1) news-  
37 paper published and of general circulation in each county of  
38 the state, if there is such newspaper, otherwise in a news-  
39 paper of general circulation in the county, at least once  
40 each year for five (5) consecutive years.

41 (2) It shall cause a notice substantially the same as a  
42 notice in writing to be broadcast by each commercial tele-  
43 vision station operating in the United States and viewed in  
44 the state, and by at least one (1) commercial radio station  
45 operating from each county of the state having such a sta-

1 tion, regularly, at six (6) month intervals for five (5)  
2 consecutive years.

3 (3) It shall cause a notice in writing to be placed in  
4 a prominent and conspicuous location in each county court-  
5 house in the state.

6 (4) The county treasurer of each county shall enclose  
7 with each mailing of one (1) or more statements of taxes due  
8 issued in 1981 a copy of a notice in writing and a declara-  
9 tion that it shall be the duty of the recipient of the  
10 statement of taxes due to forward the notice to the benefi-  
11 cial owner of the property. A sufficient number of copies  
12 of the notice and declaration shall be supplied to each  
13 county treasurer by the director of the department of water  
14 resources before the fifteenth day of January, 1981.

15 The director of the department may also in his discre-  
16 tion give notice in any other manner which will carry out  
17 the purposes of this section.

18 SECTION 11. That Title 42, Idaho Code, be, and the same  
19 is hereby amended by the addition of a NEW CHAPTER to be  
20 known and designated as Chapter 15, Title 42, Idaho Code,  
21 and to read as follows:

22 CHAPTER 15

23 42-1501. LEGISLATIVE PURPOSE - MINIMUM STREAM FLOW  
24 DECLARED BENEFICIAL USE. The legislature of the state of  
25 Idaho hereby declares that the public health, safety and  
26 welfare require that the streams of this state and their  
27 environments be protected against loss of water supply to  
28 preserve the minimum stream flows required for the pro-  
29 tection of fish and wildlife habitat, aquatic life, recrea-  
30 tion, aesthetic beauty, transportation and navigation  
31 values, and water quality. The preservation of the water of  
32 the streams of this state for such purposes when made pur-  
33 suant to this act is necessary and desirable for all the  
34 inhabitants of this state, is in the public interest and is  
35 hereby declared to be a beneficial use of such water. The  
36 legislature further declares that minimum stream flow is a  
37 beneficial use of water of the streams of this state for the  
38 purpose of protecting such waters from interstate diversion  
39 to other states or by the federal government for use outside  
40 the boundaries of the state of Idaho. Minimum stream flows  
41 as established hereunder shall be prior in right to any  
42 claims asserted by any other state, government agency, or  
43 person for out of state diversion. It is, therefore, neces-  
44 sary that authority be granted to receive, consider, approve  
45 or reject applications for permits to appropriate water of  
46 the streams of this state to such beneficial uses to pre-





*copies to  
Arvin  
Ted  
Ralph S.  
Ron G.  
Rich M.  
Bob Person*

**RECEIVED**

JAN 25 1978

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RESOURCES & CONSERVATION

# IDAHO'S WATER: Who's Claiming it?

by

**E. Woody Trihey**

*208-885-6429*

Assistant Director

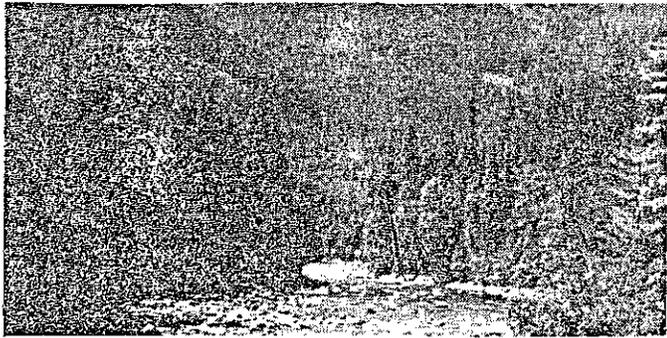
Idaho Water Resources Research Institute



**IDAHO WATER RESOURCES RESEARCH INSTITUTE**

# IDAHO'S WATER: Who's Claiming it?

*This information supplement has been prepared in response to a request made by three members of the Idaho State Legislature at the 1977 Idaho Water Conference. It was suggested that in consideration of the "Water Rights" issue, the Idaho Legislators would benefit from an overview of the situation in Idaho and also from a summary of the experiences of neighboring states regarding their handling of water rights. In response to that request, research has been conducted and this "capsule" summary of Idaho water rights presented. Also, background material on the experiences of seven western states (Washington, Oregon, Nevada, Utah, Wyoming, Montana and Texas), having mandatory claims registration/adjudication programs of their own has been assembled and used to address questions believed to be of particular interest to the Idaho Legislature. In addition to background reading and correspondence with program administrators in all seven states, three neighboring states were visited and additional information and insight gained through discussions and interviews. The sincere cooperation and candidness of all those contacted is gratefully acknowledged.*



## 1. What is a Water Right - How to Obtain One?

A water right is title to use a portion of the public waters of our state at a specified location for some beneficial purpose. There are three popular references to water rights in Idaho: permit, decreed right, and claim to a use right.

**1. Permit or Licensed Right** - The permit system is intended to protect water users from the adversities of over appropriation and to provide those charged with allocating water the information necessary to apportion the resource during times of shortage. The permit is not a water right in itself, but is a prerequisite for a licensed water right. The permit establishes a priority date and authorizes the holder to appropriate water for beneficial use. The applicant must proceed to complete his diversion works and apply the water to beneficial use within the time period specified by the permit. Usually this period is five years or less. Subsequently, IDWR may license the water right.

With the exception of small domestic wells, the Idaho Code requires that all rights to divert and use public waters of the state be initiated by the permit method of appropriation after March 25, 1963 for groundwater and after May 20, 1971 for surface water. At present, there are a little more than 28,500 licensed or active permits in Idaho, or approximately 11% of the estimated total number of rights to beneficial use of water in the state.<sup>1</sup>

**2. Court Decree of Adjudicated Right** - The district court has the power to review and decree the priority, place of use, and amount of water to which each user on a system is entitled. When water has been used for a period of time, the individual rights may be determined through court issuance of a decree. The decree is based upon a thorough investigation of evidence submitted in support of the claimed use rights. Legal settlement of these rights is called adjudication; the water right being a decreed or adjudicated right. Adjudication proceedings may be initiated by legislative action; by a law suit, introduced by an individual or group of claimants against another user or group of users within the watershed; or by administrative action on the part of the Idaho Department of Water Resources (IDWR).

About 12,000 water rights have been adjudicated and identified by court decree in Idaho. Major early water right decrees include the Snake River and tributaries above Milner Dam, and the Wood, Lost, Boise, Bear and Weiser Rivers. These decrees do not include all rights on the respective rivers, nor do they reflect changes in use of water since the decrees were issued.

Adjudication studies are currently being prepared to assist the Idaho courts in issuing decrees on Basin Creek, Cassia County; Warm Creek, Franklin County; Lemhi River; Cow Creek; Luellen Creek; and a five-county area of the Payette River Basin. These decrees when issued will identify an additional 13,000 water rights. In combination with the 12,000 rights which have been adjudicated, this will represent approximately 10% of the estimated 250,000 rights to apply surface or groundwater to beneficial use in Idaho.<sup>2</sup> Many existing permits and licensed rights are included among those water rights which have been adjudicated or are pending adjudication. This relationship is presented in Figure 1.

**3. Claim to a Use Right** - A claim to a right established by diversion and beneficial use, the so called constitutional provision, provides for title to water for a specified purpose by diverting a certain amount and putting it to beneficial use. Section 3, Article 15 of the Constitution of the State of Idaho states, "The right to divert and appropriate the unappropriated waters of any natural stream to beneficial uses shall never be denied..."

A water right claim is a statement alleging a right to water acquired in this manner. If the claimant volunteers the information, the Department of Water Resources can create a file to preserve the information; making it available to the public. However, a license for the use of water based upon a claim cannot be issued by IDWR. The only way a use right can be clearly determined is through a court decree (adjudication). Just under 3300 claims are currently on file with the Department:

Recent statutory provisions have halted any further use of the constitutional provision to develop a water right in Idaho. However, the majority of our state's water rights had already been developed under Article 15 of the state constitution and date from early periods when filing on water rights was not required. It is estimated that 215,000 or 86% of all existing beneficial uses of water in Idaho are undeclared claims of such origin.<sup>3</sup>

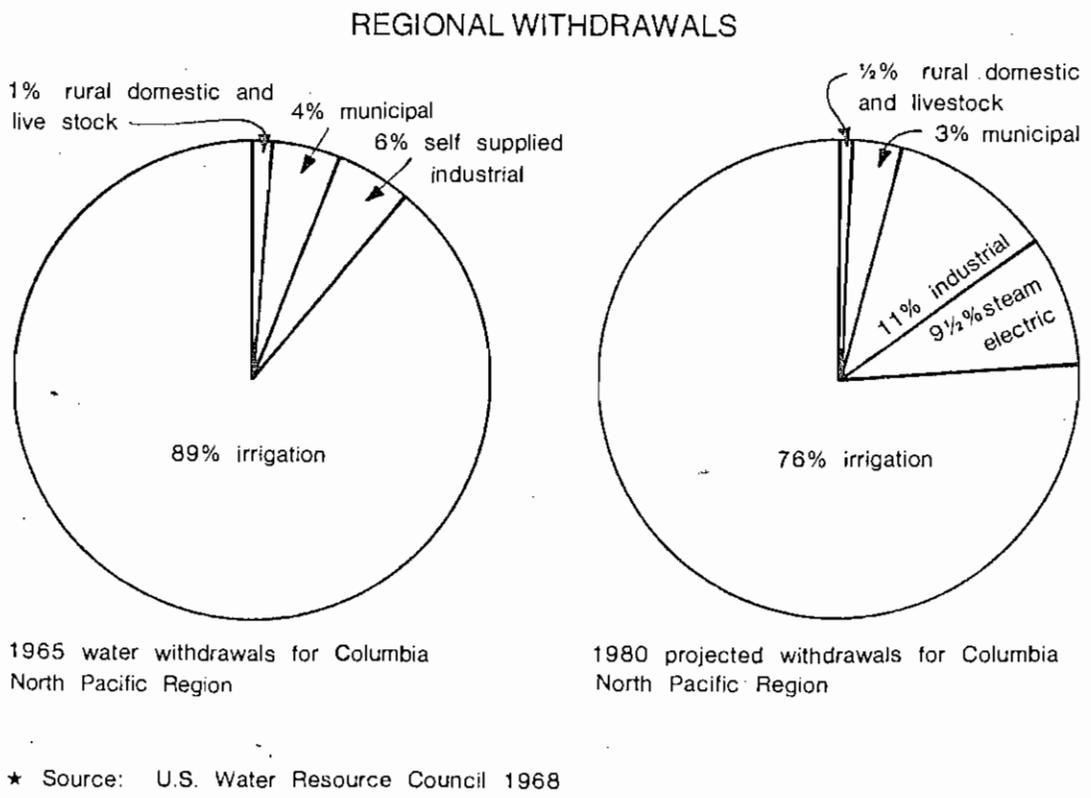
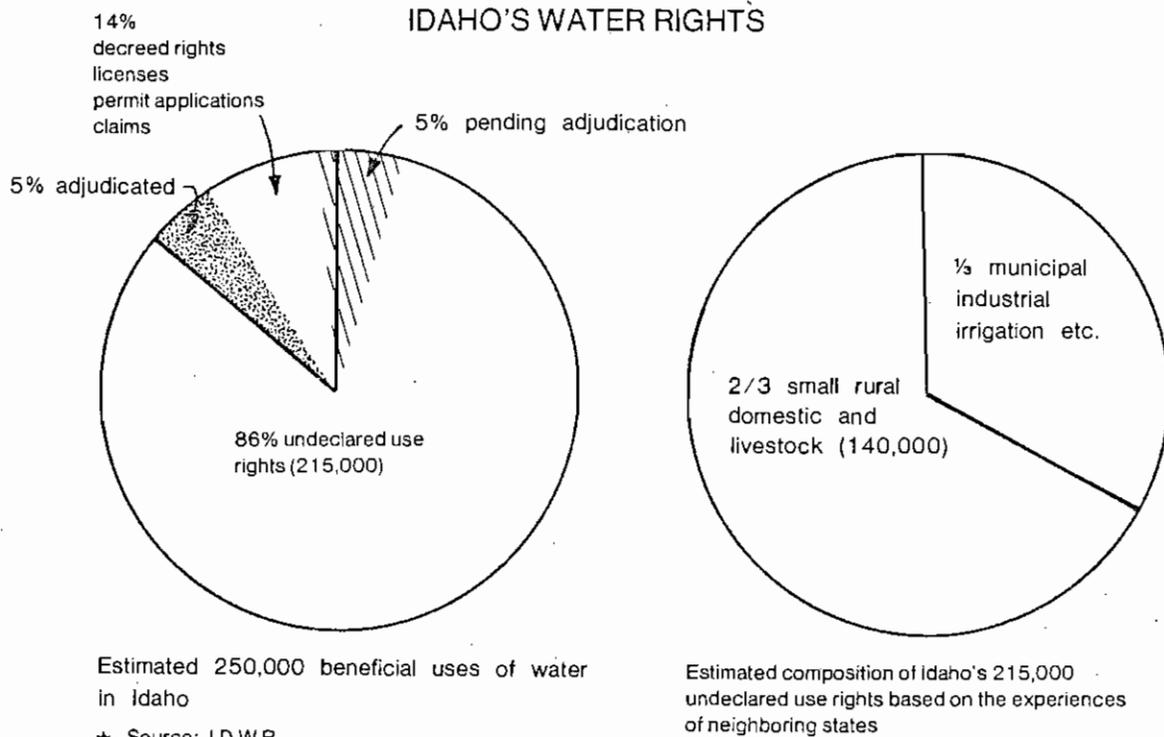
Figure 1 summarizes estimates of existing use rights, decreed rights and permits in Idaho in comparison to percent and withdrawal by beneficial use.

<sup>1</sup>Idaho Department of Water Resources, State Water Plan

<sup>2</sup>ibid.

<sup>3</sup>ibid.

Figure 1. Comparison of existing water rights, claims and permits to withdrawals for beneficial use in Idaho.



## II. What's the Problem with Undeclared Rights?

The existence of such a large number of undeclared use rights is a source of uncertainty which will eventually stifle financial investment in new development. The availability of water is paramount to the continued growth and development of Idaho. The present inability to adequately assess the availability of this critical resource is a major obstacle to planners and investors alike. Few businesses would contemplate or bankers support a development which might precipitate litigation involving existing use rights. Many of the streams throughout the state appear to be near or fully appropriated during portions of the year. Until more knowledge is gained about existing use rights in these areas, further financial investment is, at best, speculative.

The obscurity which prevails because of these undeclared use rights also poses a potential threat to the integrity of the claims themselves. One of the primary purposes of Idaho's statutory permit system is to protect existing users from the adversities of over appropriation by new claimants. However, adequate consideration cannot be given existing users until their use rights have been declared. At present, it is not until after the proposed new diversion has been made and a user has complained of a detrimental impact that the limit of the resource is actually known. By then conflict is inevitable and resolution costly.

Considerable attention has recently focused on implementation aspects of our State Water Plan. The alternatives discussed therein are the result of careful consideration of many controlling factors: water availability, existing uses, minimum flows, future needs, etc. The cornerstone of any implementation program is an accurate assessment of appropriated and unappropriated waters in the state. With 86% of the total water rights undeclared there is little chance of obtaining any sort of credible accounting, regardless of who does the arithmetic.

The existence of such a large number of undeclared use rights presents an impediment to the Director of IDWR in discharging his duties under Section 42-203 I.C. pertaining to the approval of applications for a permit to develop a water right. This statute limits grounds for denial of an application to the following:

- a) The proposed use will reduce the quantity of water under existing rights.
- b) Insufficient water supply to fulfill the purpose for which the water right is sought.
- c) The application is not made in good faith (speculation).
- d) The applicant does not possess sufficient financial resources to develop the water right.

In the absence of information essential to an assessment of existing uses and water availability, the Director can only react to these statutory criteria on the basis of speculation and conjecture. In actuality, he is placed in the position of (1) gambling that granting the application will not reduce the quantity of water available to existing users, or (2) assuming that it will do so, and denying the application. Neither alternative is desirable.



## III. Alternatives and Their Relation to the Problem

### 1. Acceptance of the Status Quo

The rather recent additions to Idaho's statutes which make the permit system of developing a water right mandatory, have halted new development of water rights under the constitutional provision. Basically, these statutory requirements protect existing rights from the possibility that new users might overdraft the available supply. They also provide an administrative procedure for allocating water during drought periods. Through the permit system the IDWR obtains information on amount, point of diversion, beneficial use, etc. for new rights, but until information concerning existing use rights is volunteered, little more can be done to refine the water supply picture for the state. By accepting the status quo, the Department would remain in the position of depending upon hindsight to forecast the availability of unappropriated waters.

Because of their limited ability to determine the amounts of appropriated and unappropriated water, the frequency with which the Department will be required to deny future applications for water rights permits will increase. No doubt such decisions will protect existing uses from the encroachment of new diversions, but the decisions will be supported by conjecture rather than evidence.

### 2. Mandatory Registration of all Claims within Water Shortage Areas.

Six areas in southern Idaho have been designated as critical groundwater areas because of insufficient groundwater supplies to provide for existing uses. The Rathdrum Prairie and Moscow sub-basin are potential candidates for similar designation in northern Idaho. The Snake River above Milner Dam is fully appropriated during much of the year. While downstream, considerable interest is being shown for diversions to the Mountain Home and Bruneau Plateau.

A statutory requirement for declaration of all existing uses within such designated water short areas would offer protection against expanding uses and provide for some semblance of priority allocation in times of drought.

Mandatory registration would also set the stage for an area-wide adjudication and identification of all existing water rights. It is conceivable that a limited amount of unappropriated water might be determined as a result of such court proceedings.

### 3. Mandatory Registration of All Use Rights, Except Small Domestic Wells, Within the State.

Such a statutory requirement would provide the Department of Water Resources with a means of obtaining the information necessary to assess all significant claims to water use within the state. Having identified these claims, the relative magnitudes of unappropriated water could be determined throughout the state and the amount of water claimed for beneficial uses would become a matter of public record, capable of being documented.



This sort of registration program would not license the claims. It could, however, provide the information needed to assess the urgency, and outline a schedule of court actions that could do so.



Although a precise accounting of the unappropriated water could not be made, a great deal of the uncertainty and anxiety of those contemplating financial investment in new developments would be negated. Those responsible for the planning and allocation of water supplies, both private and public, would have access to more relevant and reliable data upon which to base their forecasts. Relating to this, information would be available to the Director of IDWR upon which more informed decisions pertaining to the permit system could be based.

Instream flow proposals could better be evaluated in perspective with available supplies and efforts to obtain such flows focused on appropriate stream reaches. It is quite possible that maintenance of flows to protect an established downstream beneficial use would satisfy instream flow needs in the upper reaches of a watershed. However, until numbers are compared, nothing of consequence can be undertaken.

Additionally, declaration of all significant use rights in Idaho would put the state in a much stronger position to deal with Federal reserved rights claims. The potential impacts of granting reserved rights claims could readily be documented and submitted as testimony by the state. Having pre-existing use rights declared would facilitate identification of priority dates with respect to the Federal claim and give the state several advantages in collectively defending the use rights of those affected by the Federal claim.

#### **4. Mandatory Registration of All Use Rights, Including Small Domestic Wells, Within the State**

Declaration of all claims to beneficial use of water not covered by a court decree or licensed under the state's permit system would be expected under this type of statutory provision. This approach to claims registration would go beyond alternative No. 3 and require an estimated 140,000 small domestic wells throughout the state be declared. Inclusion of these claims would require revoking the present exemption granted small domestic wells under the permit system. In addition, their inclusion would have a relatively insignificant effect upon improving the precision of the assessment of unappropriated water available from alternative No. 3 since statewide, rural domestic withdrawals account for less than 1% of total withdrawals for all beneficial uses.

The two biggest advantages in registering small domestic wells would be:

- (1) obtaining information on well locations and priority dates, and
- (2) refining assessments of domestic withdrawals in critical groundwater areas as they relate to, or are influenced by, withdrawals for alternate beneficial uses.

#### **5. Statewide Adjudication Program**

A statewide adjudication program is the **only** way to identify and determine the validity of existing use rights not presently licensed. Until the adjudication proceeding is conducted and a court decree issued, existing uses can only be defined by the language of the respective claims. This language may or may not be consistent with the court's decree. The discrepancies which might exist between claims and the decreed rights are indicative of inherent errors contained in water use assessments based solely, or in part, on declared use rights. Real precision in accounting for appropriated and unappropriated waters will not be at hand until a statewide adjudication has been conducted.

#### **IV - What Would a Registration Program Cost?**

The cornerstone of a successful claims registration program must be an Act which requires registration or forfeiture of the existing use right. Forfeiture is the only element which can insure that all bona fide use rights have been declared; yet, this provision will probably raise a legal question as to constitutionality. The Act might be challenged by some as being founded on the taking of real property without due process. To mute this argument, other states have undertaken broad based intensive public awareness campaigns to disseminate program information.

Although this approach has apparently set a precedent for blunting the challenge, it is somewhat expensive. Upward to one-half the overall cost of a claims registration program is commonly associated with informing the public of program requirements. Some economy could be achieved, however, by utilizing existing modes of direct line communication with landowners. County treasurer and cooperative extension service offices as well as the Soil Conservation Districts, livestock, and water user groups could be directly involved with appropriate segments of information dissemination.

#### **Other Costs**

A second significant cost item would be the telephone and postage charges. The state must take the initiative in developing and maintaining an open line of communication with individual claimants. This is particularly true if it were decided to include small domestic wells in the registration process. For the most part, this segment of the clientele is unfamiliar with the recording and reporting of water use. This group would be the most likely to require technical and administrative assistance with their claim registration forms and the most disadvantaged if required to purchase that assistance from the private sector.

The most frustrating cost to accept would be that of waiting. Apathy of the general public toward a multiple year program, such as claims registration, would be difficult to overcome. The experiences of those states interviewed indicate that relatively few declarations are received until the closing months of the program. Washington, for example, reported that 67% of their total claims were received during the final year of the program. Agency staff commented that perhaps 80% of these claims arrived during the last two months of their program—approximately 75,000 claims! Whether the registration period was three years or ten years, the same response pattern would probably have prevailed.

#### **Five Year Minimum**

Considerable economy could be achieved by anticipating a similar response pattern would occur in Idaho and budgeting accordingly. Five years is about the minimum period required to effectively organize and conduct a claims registration program. However, the actual registration period need not necessarily be five years. A thirty-six month period, commencing part way into the second year of the registration program, would provide sufficient opportunity for claimants to file, while providing for more cost-effective utilization of state personnel and resources. Total program cost could readily be reduced from ten to fifteen percent. However, levels of funding required during the third and fourth years of such a "staged" program could be expected to exceed first year costs by two to three hundred percent. Unless adequate funding is provided during these latter years, the program would fall into total disarray and the State's investment to date would be seriously jeopardized.

Table 1 presents an anticipated schedule of funding levels for alternatives 3 and 4 based on a three-year registration period contained within a five-year program period. Cost estimates are restricted to statewide advertising of program requirements and a computerized cataloging of the claims submitted. No more than a cursory review of the claims could be expected under these levels of funding. It is believed that Alternative 3, mandatory registration of all existing use rights except small domestic wells, could be accomplished at a program cost of approximately one million dollars. Were small domestic wells to be included, program costs would approximate 1.5 million dollars for a similar five-year period.

On the basis of an estimated 215,000 existing use rights in the state, two thirds of which might be small domestic wells, a sufficiently large clientel exists which could finance a claims registration program through collection of a nominal filing fee. A fee of \$15 per claim would appear to be a reasonable fee under Alternative No. 3, \$10 per claim if domestic wells were included (Alternative 4).

was virtually impossible to identify any meaningful cost estimates which might pertain to enactment of an adjudication program in Idaho.

#### Status Quo

The costs associated with pursuit of the status quo in Idaho are equally difficult to identify and almost impossible to document. Like the use rights themselves, these costs are, for the most part, undeclared. Similar to the uncertainties which haunt projections of water availability in our state, is the obscurity which enshrouds estimates of investment opportunities foregone, investigative studies undertaken, or conflicts precipitated because decision makers were limited by existing water rights information. Perhaps the best approach to answering the question, "What will it cost not to register existing use rights in Idaho?", would be to refer the reader back to the preceding discussion of problems associated with undeclared claims and ask, "What level of investment is acceptable to abrogate this obscurity and uncertainty?"

Table 1. Schedule of Anticipated Funding Required for a Mandatory Claims Registration Program in Idaho

Year	Alternative No. 3 Without Small Domestic Wells	Alternative No. 4 With Small Domestic Wells
1	105,000	120,000
2	175,000	275,000
3	235,000	395,000
4	330,000	475,000
5	85,000	250,000
Program Totals	930,000	1,515,000

In presenting an estimate of costs associated with a statewide adjudication program, an appropriate opening statement might be that the process of claims registration is merely one prerequisite. Claims must be declared, cataloged, evaluated, and presented as testimony before being ruled upon. This is a very time consuming and expensive undertaking, particularly in those instances where individual claimants are being represented by private counsel. Various techniques can be employed to restrain the period of litigation, yet, it may still require years to get a particular case into the state courts.

#### Other States

Montana is presently considering the employment of five full-time water judges to decide on water rights cases stemming from its state-wide adjudication program. Even so, it is estimated that it will require from twenty to twenty-five years to complete the task of adjudicating an estimated 500,000 water rights claims. The cost of Montana's program can be estimated as being well in excess of 50 million dollars. Texas undertook adjudication of approximately 15,000 water rights claims in 1971. Their experience to date would indicate that these particular proceedings will probably require ten years and four million dollars. In neither of these instances was information readily available, pertaining to fees which might have been paid by individual claimants for private counsel or engineering studies.

Among the other states contacted (Wyoming, Utah, Nevada and Oregon), water rights registration and adjudication procedures date from territorial time and early statehood. By 1909 each of these states had adopted a surface water code with provisions for a mandatory permit system and adjudication proceedings. Because these programs have been in operation since the early 1900's, it



## The Idaho Water Resources Research Institute



5/26/wr.

CHAPTER 90.14 RCW  
WATER RIGHTS—REGISTRATION—WAIVER AND RELINQUISHMENT, ETC.

SECTIONS

- 90.14.010 Purpose.
- 90.14.020 Legislative declaration.
- 90.14.031 Definitions.
- 90.14.041 Claim of right to withdraw, divert or use ground or surface waters—Filing statement of claim required—Exemptions.
- 90.14.051 Statement of claim—Contents—Short form.
- 90.14.061 Statement of claim—Filing procedure—Processing of claim—Fee.
- 90.14.071 Failure to file claim waives and relinquishes right.
- 90.14.081 Filing of claim not deemed adjudication of right—Prima facie evidence.
- 90.14.091 Definitions—Water rights notice—Form.
- 90.14.101 Notice of chapter provisions—How given—Requirements.
- 90.14.111 Water rights claims registry.
- 90.14.121 Penalty for overstating claim.
- 90.14.130 Reversion of rights to state due to nonuse—Notice—Hearing—Order determining whether right relinquished.
- 90.14.140 "Sufficient cause" for nonuse defined—Rights exempted.
- 90.14.150 Rights arising from permit to withdraw public waters not affected—Extensions.
- 90.14.160 Relinquishment of right for abandonment or failure to beneficially use without sufficient cause—Prior rights acquired through appropriation, custom or general adjudication.
- 90.14.170 Relinquishment of right for abandonment or failure to beneficially use without sufficient cause—Rights acquired due to ownership of land abutting stream, lake, or watercourse.
- 90.14.180 Relinquishment of right for abandonment or failure to beneficially use without sufficient cause—Future rights acquired through appropriation.
- 90.14.190 Court review—Evidence—Attorneys' fees.
- 90.14.200 Implementation and enforcement of chapter to be carried out in accordance with chapter 34.04 RCW—Proceedings under RCW 90.14.130 deemed "contested cases".
- 90.14.210 Chapter applies to all rights to withdraw ground waters.
- 90.14.220 No rights to be acquired by prescription or adverse use.
- 90.14.230 Rules and regulations.
- 90.14.900 Effective date—1967 c 233.
- 90.14.910 Severability—1967 c 233.

90.14.010 PURPOSE. The future growth and development of the state is dependent upon effective management and efficient use of the state's water resources. The purpose of this chapter is to provide adequate records for efficient administration of the state's waters, and to cause a return to the state of any water rights which are no longer exercised by putting said waters to beneficial use. [1967 c 233 § 1.]

90.14.020 LEGISLATIVE DECLARATION. The legislature finds that:

(1) Extensive uncertainty exists regarding the volume of private claims to water in the state;

(2) Such uncertainty seriously retards the efficient utilization and administration of the state's water resources, and impedes the fullest beneficial use thereof;

(3) A strong beneficial use requirement as a condition precedent to the continued ownership of a right to withdraw or divert water is essential to the orderly development of the state;

(4) Enforcement of the state's beneficial use policy is required by the state's rapid growth;

(5) All rights to divert or withdraw water, except riparian rights which do not diminish the quantity of water remaining in the source such as boating, swimming, and other recreational and aesthetic uses must be subjected to the beneficial use requirement;

(6) The availability for appropriation of additional water as a result of the requirements of this chapter will accelerate growth, development, and diversification of the economy of the state;

(7) Water rights will gain sufficient certainty of ownership as a result of this chapter to become more freely transferable, thereby increasing the economic value of the uses to which they are put, and augmenting the alienability of titles to land. [1967 c 233 § 2.]

90.14.031 DEFINITIONS. Unless a different meaning is plainly required by the context, the following words and phrases as used in RCW 90.14.031 through 90.14.121 shall have the following meanings:

(1) "Person" shall mean an individual, partnership, association, public or private corporation, city or other municipality, county, or a state agency, and the United States of America when claiming water rights established under the laws of the state of Washington.

(2) "Beneficial use" shall include, but not be limited to, use for domestic water, irrigation, fish, shellfish, game and other aquatic life, municipal, recreation, industrial water, generation of electric power, and navigation. [1969 ex.s. c 284 § 12.]

Severability--1969 ex.s. c 284: See note following RCW 90.48.290.

90.14.041 CLAIM OF RIGHT TO WITHDRAW, DIVERT OR USE GROUND OR SURFACE WATERS--FILING STATEMENT OF CLAIM REQUIRED--EXEMPTIONS. All persons using or claiming the right to withdraw or divert and make beneficial use of public surface or ground waters of the state, except as hereinafter provided in this section, shall file with the department of water resources not later than June 30, 1974, a statement of claim for each water right asserted on a form provided by the department. This section shall not apply to any water rights which are based on the authority of a permit or certificate issued by the department of water resources or one of its predecessors. [1969 ex.s. c 284 § 13.]

Reviser's note: Powers, duties, and functions of the department of water resources transferred to the department of ecology: See RCW 43.21A.060, and note following.

90.14.051 STATEMENT OF CLAIM--CONTENTS--SHORT FORM. The statement of claim for each right shall include substantially the following:

- (1) The name and mailing address of the claimant.
- (2) The name of the watercourse or water source from which the right to divert or make use of water is claimed, if available.
- (3) The quantities of water and times of use claimed.
- (4) The legal description, with reasonable certainty, of the point or points of diversion and places of use of waters.
- (5) The purpose of use, including, if for irrigation, the number of acres irrigated.
- (6) The approximate dates of first putting water to beneficial use for the various amounts and times claimed in subsection (3).
- (7) The legal doctrine or doctrines upon which the right claimed is based, including if statutory, the specific statute.
- (8) The sworn statement that the claim set forth is true and correct to the best of claimant's knowledge and belief.

Except, however, that any claim for diversion or withdrawal of surface or ground water for those uses described in the exemption from the permit requirements of RCW 90.44.050 may be filed on a short form to be provided by the department. Such short form shall only require inclusion of sufficient data to identify the claimant, source of water, purpose of use and legal description of the land upon which the water is used: PROVIDED, That the provisions of RCW 90.14.081 pertaining to evidentiary value of filed claims shall not apply to claims submitted in short form: AND PROVIDED FURTHER, That claimants for such minimal uses may, at their option, file statements of claim on the standard form used by all other claimants. [1973 1st ex.s. c 113 § 1; 1969 ex.s. c 284 § 14.]

90.14.061 STATEMENT OF CLAIM--FILING PROCEDURE--PROCESSING OF CLAIM--FEE. Filing of a statement of a claim shall take place and be completed upon receipt by the department of water resources, at its office in Olympia, of an original statement signed by the claimant or his authorized agent, and two copies thereof. Any person required to file hereunder may file through a designated representative. A company, district, public or municipal corporation, or the United States when furnishing to persons water pertaining to water rights required to be filed under RCW 90.14.041, shall have the right to file one claim on behalf of said persons on a form prepared by the department for the total benefits of each person served; provided that a separate claim shall be filed by such company, district, public or private corporation, or the United States for each operating unit of the filing entity providing such water and for each water source. Within thirty days after receipt of a statement of claim the department shall acknowledge the same by a notation on one copy indicating receipt thereof and the date of receipt, together with the wording of the first sentence of RCW 90.14.091, and shall return said copy by certified or registered mail to the claimant at the address set forth in the statement of claim. No statement of claim shall be

accepted for filing by the department of water resources unless accompanied by a two dollar filing fee. [1969 ex.s. c 284 § 15.]

90.14.071 FAILURE TO FILE CLAIM WAIVES AND RELINQUISHES RIGHT. Any person claiming the right to divert or withdraw waters of the state as set forth in RCW 90.14.041, who fails to file a statement of claim as provided in RCW 90.14.041, 90.14.051 and 90.14.061, shall be conclusively deemed to have waived and relinquished any right, title, or interest in said right. [1969 ex.s. c 284 § 16.]

90.14.081 FILING OF CLAIM NOT DEEMED ADJUDICATION OF RIGHT--PRIMA FACIE EVIDENCE. The filing of a statement of claim does not constitute an adjudication of any claim to the right to use of waters as between the water use claimant and the state, or as between one or more water use claimants and another or others. A statement of claim filed pursuant to RCW 90.14.061 shall be admissible in a general adjudication of water rights as prima facie evidence of the times of use and the quantity of water the claimant was withdrawing or diverting as of the year of the filing, if, but only if, the quantities of water in use and the time of use when a controversy is mooted are substantially in accord with the times of use and quantity of water claimed in the statement of claim. A statement of claim shall not otherwise be evidence of the priority of the claimed water right. [1969 ex.s. c 284 § 17.]

90.14.091 DEFINITIONS--WATER RIGHTS NOTICE--FORM. For the purpose of RCW 90.14.031 through 90.14.121 the following words and phrases shall have the following meanings:

- (1) "Statement of taxes due" means the statement required under RCW 84.56.050.
- (2) "Notice in writing" means a notice substantially in the following form:

#### WATER RIGHTS NOTICE

Every person, including but not limited to an individual, partnership, association, public or private corporation, city or other municipality, county, state agency and the state of Washington, and the United States of America, when claiming water rights established under the laws of the state of Washington, are hereby notified that all water rights or claimed water rights relating to the withdrawal or diversion of public surface or ground waters of the state, except those water rights based upon authority of a permit or certificate issued by the department of water resources or one of its predecessors, must be registered with the department of water resources, Olympia, Washington not later than June 30, 1974. FAILURE TO REGISTER AS REQUIRED BY LAW WILL RESULT IN A WAIVER AND RELINQUISHMENT OF SAID WATER RIGHT OR CLAIMED WATER RIGHT. For further information contact the Department of Water Resources, Olympia, Washington, for a copy of the act and an explanation thereof. [1969 ex.s. c 284 § 18.]

Reviser's note: Powers, duties, and functions of the department of water resources transferred to the department of ecology: See RCW 43.21A.060, and note following.

90.14.101 NOTICE OF CHAPTER PROVISIONS--HOW GIVEN--REQUIREMENTS. To insure that all persons referred to in RCW 90.14.031 and 90.14.041 are notified of the registration provisions of this chapter, the department of water resources is directed to give notice of the registration provisions of this chapter as follows:

(1) It shall cause a notice in writing to be placed in a prominent and conspicuous place in all newspapers of the state having a circulation of more than fifty thousand copies for each week day, and in at least one newspaper published in each county of the state, at least once each year for five consecutive years.

(2) It shall cause a notice substantially the same as a notice in writing to be broadcast by each commercial television station operating in the United States and viewed in the state, and by at least one commercial radio station operating from each county of the state having such a station regularly at six month intervals for five consecutive years.

(3) It shall cause a notice in writing to be placed in a prominent and conspicuous location in each county court house in the state.

(4) The county treasurer of each county shall enclose with each mailing of one or more statements of taxes due issued in 1972 a copy of a notice in writing and a declaration that it shall be the duty of the recipient of the statement of taxes due to forward the notice to the beneficial owner of the property. A sufficient number of copies of the notice and declaration shall be supplied to each county treasurer by the director of the department of water resources before the fifteenth day of January, 1972. In the implementation of this subsection the department of water resources shall provide reimbursement to the county treasurer for the reasonable additional costs, if any there may be, incurred by said treasurer arising from the inclusion of a notice in writing as required herein.

(5) It shall provide copies of the notice in writing to the press services with offices located in Thurston county during January of the years 1970, 1971, 1972, 1973 and 1974.

The director of the department may also in his discretion give notice in any other manner which will carry out the purposes of this section. Where notice in writing is given pursuant to subsections (1) and (3) of this section, RCW 90.14.041, 90.14.051 and 90.14.071 shall be set forth and quoted in full. [1969 ex.s. c 284 § 19.]

Reviser's note: "this 1969 amendatory act" has been changed to "this chapter" in the first paragraph. "This 1969 amendatory act" [1969 ex.s. c 284] consists of RCW 90.48.290, 90.48.295, 90.22.010-90.22.040, 90.14.031-90.14.121, 43.27A.190-43.27A.220, 43.27A.075, and repeals RCW 43.21.145 and 90.14.030-90.14.120.

Powers, duties, and functions of the department of water resources transferred to the department of ecology: See RCW 43.21A.060, and note following.

90.14.111 WATER RIGHTS CLAIMS REGISTRY. The department of water resources is directed to establish a registry entitled the "Water Rights Claims Registry". All claims set forth pursuant to RCW 90.14.041, 90.14.051 and 90.14.061 shall be filed in the registry alphabetically and consecutively by control number, and by such other manner as deemed appropriate by the department. [1969 ex.s. c 284 § 20.]

Reviser's note: Powers, duties and functions of the department of water resources transferred to the department of ecology: See RCW 43.21A.060, and note following.

90.14.121 PENALTY FOR OVERSTATING CLAIM. The filing of a statement of claim pursuant to RCW 90.14.061 which knowingly provides for an overstatement of a right either in quantities of water or times of use claimed shall constitute a misdemeanor punishable by a fine of not more than two hundred fifty dollars or by imprisonment for not more than ninety days, or both. [1969 ex.s. c 284 § 21.]

90.14.130 REVERSION OF RIGHTS TO STATE DUE TO NONUSE--NOTICE--HEARING--ORDER DETERMINING WHETHER RIGHT RELINQUISHED. When it appears to the supervisor of water resources that a person entitled to the use of water has not beneficially used his water right or some portion thereof, and it appears that said right has or may have reverted to the state because of such nonuse, as provided by RCW 90.14.160, 90.14.170, or 90.14.180, the supervisor shall notify such person to show cause at a hearing before the supervisor why his right or portion thereof should not be declared relinquished: PROVIDED, That where a company, association, district, or the United States has filed a blanket claim under the provisions of RCW 90.14.060 for the total benefits of those served by it, the notice to show cause shall be served on such company, association, district or the United States and not upon any of its individual water users who may not have used the water or some portion thereof which they were entitled to use. The notice shall contain, (1) the time and place of the hearing as determined by the supervisor, (2) a description of the water right, including the approximate location of the point of diversion, the general description of the lands or places where such waters were used, the water source, the amount involved, the purpose of use, the apparent authority upon which the right is based, and (3) a statement that unless sufficient cause be shown the water right will be declared relinquished. Said notice shall be served by registered or certified mail and be posted at least sixty days before the hearing and sent to the last known address of said person. The supervisor shall, as soon as practicable after such hearing, make an order determining whether such water right has been relinquished and give notice to said person of the contents thereof in the same manner as in the notice procedure provided for in this section. [1967 c 233 § 13.]

Reviser's note: Department of conservation was abolished by 1967 c 242 § 20 [RCW 43.27A.180] and division of water resources transferred to department of water resources by 1967 c 242 § 8 [RCW 43.27A.080]. Powers, duties, functions of department of water

resources transferred to department of ecology, see chapter 43.21A RCW.

Proceedings under this section deemed "contested cases": RCW 90.14.200.

90.14.140 "SUFFICIENT CAUSE" FOR NONUSE DEFINED--RIGHTS EXEMPTED. For the purposes of this chapter "sufficient cause" shall be defined as the nonuse of all or a portion of the water by the owner of a water right for a period of five or more consecutive years where such nonuse occurs as a result of:

- (1) Drought, or other unavailability of water;
- (2) Active service in the armed forces of the United States during military crisis;
- (3) Nonvoluntary service in the armed forces of the United States;
- (4) The operation of legal proceedings;
- (5) Federal laws imposing land or water use restrictions, or acreage limitations, or production quotas.

Notwithstanding any other provisions of this chapter, there shall be no relinquishment of any water right:

(1) If such right is claimed for power development purposes under chapter 90.16 RCW and annual license fees are paid in accordance with chapter 90.16 RCW, or

(2) If such right is used for a standby or reserve water supply to be used in time of drought or other low flow period so long as withdrawal or diversion facilities are maintained in good operating condition for the use of such reserve or standby water supply, or

(3) If such right is claimed for a determined future development to take place either within fifteen years of the effective date of this act, or the most recent beneficial use of the water right, whichever date is later, or

(4) If such right is claimed for municipal water supply purposes under chapter 90.03 RCW, or

(5) If such waters are not subject to appropriation under the applicable provisions of RCW 90.40.030 as now or hereafter amended. [1967 c 233 § 14.]

Effective date--1967 c 233: The effective date of this act was July 1, 1967, see RCW 90.14.900.

90.14.150 RIGHTS ARISING FROM PERMIT TO WITHDRAW PUBLIC WATERS NOT AFFECTED--EXTENSIONS. Nothing in this chapter shall be construed to affect any rights or privileges arising from any permit to withdraw public waters or any application for such permit, but the supervisor shall grant extensions of time to the holder of a preliminary permit only as provided by RCW 90.03.290. [1967 c 233 § 15.]

90.14.160 RELINQUISHMENT OF RIGHT FOR ABANDONMENT OR FAILURE TO BENEFICIALLY USE WITHOUT SUFFICIENT CAUSE--PRIOR RIGHTS ACQUIRED THROUGH APPROPRIATION, CUSTOM OR GENERAL ADJUDICATION. Any person entitled to divert or withdraw waters of the state through any

appropriation authorized by enactments of the legislature prior to enactment of chapter 117, Laws of 1917, or by custom, or by general adjudication, who abandons the same, or who voluntarily fails, without sufficient cause, to beneficially use all or any part of said right to divert or withdraw for any period of five successive years after the effective date of this act, shall relinquish such right or portion thereof, and said right or portion thereof shall revert to the state, and the waters affected by said right shall become available for appropriation in accordance with RCW 90.03.250. [1967 c 233 § 16.]

Effective date--1967 c 233: The effective date of this act was July 1, 1967, see RCW 90.14.900.

90.14.170 RELINQUISHMENT OF RIGHT FOR ABANDONMENT OR FAILURE TO BENEFICIALLY USE WITHOUT SUFFICIENT CAUSE--RIGHTS ACQUIRED DUE TO OWNERSHIP OF LAND ABUTTING STREAM, LAKE, OR WATERCOURSE. Any person entitled to divert or withdraw waters of the state by virtue of his ownership of land abutting a stream, lake, or watercourse, who abandons the same, or who voluntarily fails, without sufficient cause, to beneficially use all or any part of said right to withdraw or divert said water for any period of five successive years after the effective date of this act shall relinquish such right or portion thereof, and such right or portion thereof shall revert to the state, and the waters affected by said right shall become available for appropriation in accordance with the provisions of RCW 90.03.250. [1967 c 233 § 17.]

Effective date--1967 c 233: The effective date of this act was July 1, 1967, see RCW 90.14.900.

90.14.180 RELINQUISHMENT OF RIGHT FOR ABANDONMENT OR FAILURE TO BENEFICIALLY USE WITHOUT SUFFICIENT CAUSE--FUTURE RIGHTS ACQUIRED THROUGH APPROPRIATION. Any person hereafter entitled to divert or withdraw waters of the state through an appropriation authorized under RCW 90.03.330, 90.44.080, or 90.44.090 who abandons the same, or who voluntarily fails, without sufficient cause, to beneficially use all or any part of said right to withdraw for any period of five successive years shall relinquish such right or portion thereof, and such right or portion thereof shall revert to the state, and the waters affected by said right shall become available for appropriation in accordance with RCW 90.03.250. All certificates hereafter issued by the supervisor of water resources pursuant to RCW 90.03.330 shall expressly incorporate this section by reference. [1967 c 233 § 18.]

Reviser's note: The department of conservation was abolished by 1967 c 242 § 20 [RCW 43.27A.180] and division of water resources transferred to department of water resources by 1967 c 242 § 8 [RCW 43.27A.080]. Powers, duties, functions of department of water resources transferred to department of ecology, see chapter 43.21A RCW.

90.14.190 COURT REVIEW--EVIDENCE--ATTORNEYS' FEES. Any person feeling aggrieved by any order of the supervisor of water resources

may have the same reviewed by the superior court of the county in which the waters under consideration are situated. In any review by the courts, the findings of fact as set forth in the report of the supervisor of water resources shall be prima facie evidence of the fact of any waiver or relinquishment of a water right or portion thereof. The court, reviewing any order of the supervisor, may award reasonable attorney's fees to any party injured by an arbitrary, capricious or erroneous order of the supervisor. Such attorney's fees shall be paid by the department of conservation from any funds available therefor. [1967 c 233 § 19.]

Reviser's note: The department of conservation was abolished by 1967 c 242 § 20 [RCW 43.27A.180] and division of water resources transferred to department of water resources by 1967 c 242 § 8 [RCW 43.27A.080]. Powers, duties, functions of department of water resources transferred to department of ecology, see chapter 43.21A RCW.

90.14.200 IMPLEMENTATION AND ENFORCEMENT OF CHAPTER TO BE CARRIED OUT IN ACCORDANCE WITH CHAPTER 34.04 RCW—PROCEEDINGS UNDER RCW 90.14.130 DEEMED "CONTESTED CASES". All matters relating to the implementation and enforcement of this chapter shall be carried out in accordance with chapter 34.04 RCW as it now exists or hereafter shall be amended except where the provisions of this chapter expressly conflict herewith. Proceedings held pursuant to RCW 90.14.130 hereof are "contested cases" within the meaning of chapter 34.04 RCW. [1967 c 233 § 20.]

90.14.210 CHAPTER APPLIES TO ALL RIGHTS TO WITHDRAW GROUND WATERS. The provisions of this chapter shall apply to all rights to withdraw ground waters of the state, whether authorized by chapter 90.44 RCW or otherwise. [1967 c 233 § 21.]

90.14.220 NO RIGHTS TO BE ACQUIRED BY PRESCRIPTION OR ADVERSE USE. No rights to the use of surface or ground waters of the state affecting either appropriated or unappropriated waters thereof may be acquired by prescription or adverse use. [1967 c 233 § 22.]

90.14.230 RULES AND REGULATIONS. The supervisor of water resources is authorized to promulgate such rules and regulations as are necessary to carry out the provisions of this chapter. [1967 c 233 § 23.]

Reviser's note: Department of conservation was abolished by 1967 c 242 § 20 [RCW 43.27A.180] and division of water resources transferred to department of water resources by 1967 c 242 § 8 [RCW 43.27A.080]. Powers, duties, functions of department of water resources transferred to department of ecology, see chapter 43.21A RCW.

90.14.900 EFFECTIVE DATE--1967 C 233. The effective date of this act is July 1, 1967. [1967 c 233 § 25.]

90.14.910 SEVERABILITY--1967 C 233. If any provisions of this act or the application thereof to any person or circumstance is held invalid, the act can be given effect without the invalid provision or application; and to this end the provisions of this act are declared to be severable. This act shall be liberally construed to effectuate its purpose. [1967 c 233 § 26.]

State of Washington  
Department of Ecology



Water Right Claims Registration

# Water Right Claim

Name \_\_\_\_\_

Address \_\_\_\_\_

Zip Code \_\_\_\_\_ Phone No. \_\_\_\_\_

1) Source from which the right to take and make use of water is claimed:  Surface Water  Ground Water

If surface water, please indicate source; give name if known:

\_\_\_\_\_  
(River, stream, lake, pond, spring, etc.)

2) Purpose(s) for which water is used:

Domestic  Stockwatering  Irrigation (lawn and garden)  Other Use (specify) \_\_\_\_\_

3) Legal description of lands on which water is used: \_\_\_\_\_

If located within the limits of a recorded platted property:

Lot \_\_\_\_\_ Block \_\_\_\_\_ of \_\_\_\_\_

(Give name of plat or addition)

In addition, please indicate Sec. \_\_\_\_\_ T. \_\_\_\_\_ N., R. \_\_\_\_\_ E/W, W.M.

County in which lands are located \_\_\_\_\_

### DO NOT USE THIS SPACE

The filing of a statement of claim does not constitute an adjudication of any claim to the right to use of waters as between the water use claimant and the state or as between one or more use claimants and another or others. This acknowledgment constitutes receipt for the filing fee.

Date Registered \_\_\_\_\_ This has been assigned Water Right Claim Registry No. \_\_\_\_\_

Director, Department of Ecology

I hereby swear that the above information is true and accurate to the best of my knowledge and belief.

X \_\_\_\_\_

Date \_\_\_\_\_

If claim filed by designated representative print or type full name and mailing address of agent below.

\_\_\_\_\_

\_\_\_\_\_

Additional information relating to water quality and/or well construction is available.

Return all three copies with carbons intact, along with your fee to:



REMOVE THE INSTRUCTION SHEET FROM THE FORM SET BEFORE MAKING OR FILING IT. THE FORM SET (FORM CLAIM FORM SHEETS 2-4) IS TO BE COMPLETED AND RETURNED COMPLETE WITH PERSONS IN THE RETURN ENVELOPE PLIED.  
 USE A TYPEWRITER OR BALLPOINT PEN TO FILL OUT THIS FORM TO ASSURE GOOD COPIES. PRINT CLEARLY.  
 REMOVE THE INSTRUCTION SHEET AT THIS PERFORMANCE. DO NOT REMOVE ANY OTHER SHEETS OR CARBONS.

STATE OF WASHINGTON - DEPARTMENT OF ECOLOGY  
 WATER RIGHT CLAIMS REGISTRATION

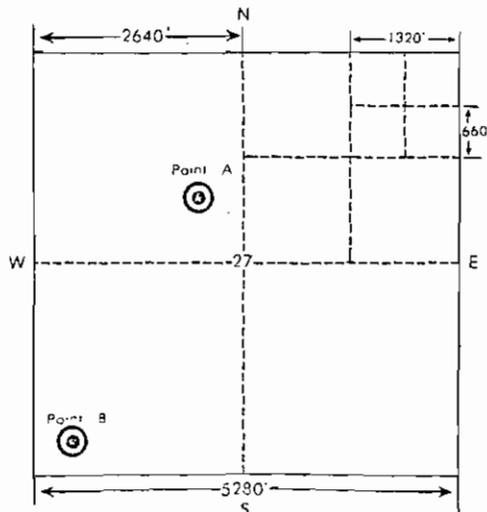
**INSTRUCTIONS FOR COMPLETING WATER RIGHT CLAIM FORM**

The purpose of these instructions is to ease the task of filling out your Water Right Claim.

**WHO SHOULD FILE:** All persons using or claiming the right to withdraw or divert and make beneficial use of public surface or ground waters of the state shall file with the Department of Ecology, not later than June 30, 1974, a statement of claim for each water right. This shall not apply to any water rights which are based on the authority of a permit or certificate issued by the Department of Ecology or one of its predecessor agencies. Permits or certificates issued by the Department of Ecology establish a priority date as of the date application for permit was originally submitted. If an earlier priority right is claimed for the same water use, it will be necessary that a water right claim be submitted. **FAILURE TO REGISTER AS REQUIRED BY LAW WILL RESULT IN A WAIVER AND RELINQUISHMENT OF THE CLAIMED WATER RIGHT.** A separate Water Right Claim must be filed for each water right asserted.

**PROCEDURE FOR FILING:** The claim form which is attached identifies that basic information which must be submitted to satisfy the provisions of the Water Rights Claims Registration Act (Chapter 284, Laws of 1969, First Extraordinary Session). If additional space is needed under any of the questions or you wish to submit maps and exhibits in support of your claim, please feel free to attach additional sheets to this claim form. However, such attachments must be on 8 1/2" x 13" paper. Should you be filing a claim for the benefit of a company, district, public or municipal corporation or other entity where multiple users are involved, use the same form; except that, in instances when the claim cannot be adequately represented on the form, the entity in question may submit its claim in a special format which must have the approval of the Department of Ecology prior to its acceptance for official registration.

- (1) Under this item insert your complete name and mailing address.
- (2) Normally, a single source will be identified under this item. The item W.R.I.A. is to be left blank and filled in by the Department of Ecology for its use.
  - A. Ground water sources are those where water does not naturally appear on the surface of the earth, which include, but are not limited to, wells, sumps, and infiltration trenches or galleries.
  - B. Surface water sources are those where water appears naturally on the surface of the earth, and include, but are not limited to, creeks, streams, rivers, lakes, springs, ponds or swamps. If the water is taken from a ditch or canal, the source is not the ditch or canal. The source is at the point it leaves its natural course and enters the ditch or canal. If the source does not have an official name (for example: "Wenatchee River"), identify it as an unnamed stream (pond or lake, etc.).
- (3) The quantities of water and times of use claimed shall be indicated by completing Items A through D, as explained below.
  - A. The instantaneous rate of diversion or withdrawal claimed shall be indicated by the most appropriate unit; either cubic feet per second or gallons per minute. One cubic foot per second equals approximately 450 gallons per minute. Strike out the unit that is not applicable. The diversion or withdrawal rate of water claimed and presently used shall be indicated by the same unit.
  - B. The annual quantity claimed shall be indicated as acre-feet per year. One acre-foot equals 43,560 cubic feet or 325,850 gallons. Also, the annual quantity presently used shall be indicated as acre-feet per year.
  - C. If used for irrigation, the number of acres claimed shall be indicated to the nearest whole number of acres. The acres that you presently irrigate shall also be indicated to the nearest whole number of acres.
  - D. Time(s) during each year when water is used shall be indicated by inserting the period by inclusive dates. For example: April 1 to October 15.
- (4) Record the date of first putting the water claimed to beneficial use by inserting the proper month and the correct year.
- (5) Identify accurately the location of the point(s) at which water is taken from its source. This identification must include the north-south distance and the east-west distance from a specified subsection or section corner. For example: Using a simple sketch, such as the one shown below, the location of the source at which water is taken can be described.



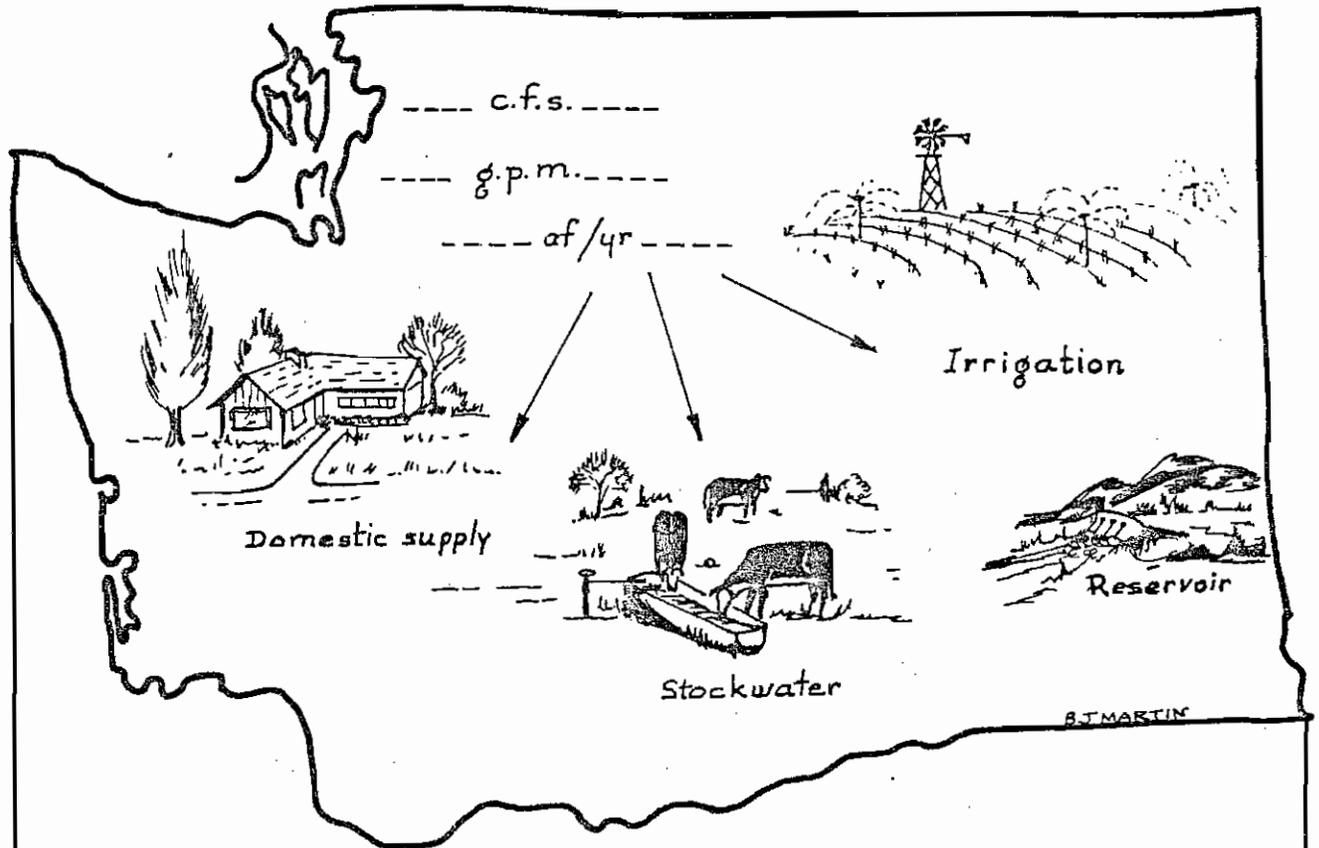
Point A can be described as being 443 feet west and 660 feet north of the center of Sec. 27, being within the SE1/4 NW1/4 of said section.

OR

Point B can be described as being 600 feet north and 614 feet east of the southwest corner of Sec. 27, being within the SW1/4 SW1/4 of said section.

If this is within a recorded tract of land, such as a subdivision, plat, etc., state that recorded identification. For example: Lot 7, Block 51 of the Plat of the Town of Dixie, Washington.

**GUIDELINES** to assist you in computing  
**QUANTITIES** of water when filing  
applications for water rights



This information will help in determining **NORMAL QUANTITIES** of water required for the uses most frequently requested by the public.

State of  
Washington  
Department  
of Ecology



## Water Quantity Definitions

### CUBIC FEET PER SECOND – (c.f.s.)

This term is used for measuring SURFACE WATER SOURCE ONLY.

### GALLONS PER MINUTE – (g.p.m.)

This term is used for measuring GROUND WATER SOURCE ONLY.

A comparison of these two terms in quantity for each source.

1.0 (c.f.s.) = 450 (g.p.m.)

0.10 (c.f.s.) = 45 (g.p.m.)

0.01 (c.f.s.) = 4½ (g.p.m.)

### ACRE FEET PER YEAR – (af/yr)

This term is used by our technical staff to compute the TOTAL annual quantity of waters for each use.

## Examples of Normal Use and Quantities

#### I. DOMESTIC SUPPLY – 0.01 to 0.02 (c.f.s.) – or – 3 to 10 (g.p.m.)

This includes up to one-half acre irrigation for lawns/gardens.

#### II. IRRIGATION – 0.02 (c.f.s.) – or – 10 (g.p.m.) per acre

Based on crops to be irrigated and geographic location, some areas may require more water per acre. Your county extension agent or Soil Conservation Service may be consulted as to local requirements.

#### III. HEAT and FROST PROTECTION – 0.222 (c.f.s.) – or – 100 (g.p.m.) per acre

This generally applies to cranberry farms, etc.

#### IV. STOCKWATER – Average Herd – 0.01 (c.f.s.) – or – 4.5 (g.p.m.)

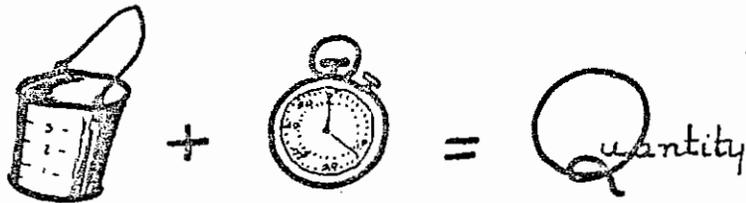
No water right issued when animals drink directly from stream.

Suggested quantities per animal per day:

Mature beef	15 gallons per DAY
Milk cow	35 gallons per DAY
Sheep	3 gallons per DAY
Hogs	7 gallons per DAY
100 chickens	10 gallons per DAY
Horses	15 gallons per DAY

*THE CAREFUL COMPUTATION OF QUANTITY FOR EACH USE CAN SAVE THE TIME AND EXPENSE OF FILING TO ADD ANOTHER USE OR FOR MORE WATER TO COVER THE INTENDED USE. REMEMBER:*

1. A use can be REMOVED from an application – but CANNOT BE ADDED except by filing a NEW APPLICATION.
2. The quantity of water can be REDUCED on an application – but CANNOT BE INCREASED except by filing a NEW APPLICATION.



IT IS SUGGESTED THAT AN ENGINEER OR GEOLOGIST BE CONSULTED FOR THE EVALUATION OF THE FOLLOWING USES:

- Group Domestic Supply – 2 to 19 homes
- Community Domestic Supply – 20 homes or more
- Municipal Supply----
- Fish Propagation----
- Industrial Use----
- Commercial Use----
- Reservoir Applications----

and

Combination of Several Uses on One Application

*When filing a water right application READ and CAREFULLY FOLLOW the item-by-item instruction sheet which is attached for your convenience.*

WHEN THE LOCATION OF THE WELL or POINT OF DIVERSION CANNOT BE MEASURED or DETERMINED FROM ONE OF THE SUBSECTION CORNERS AS REQUIRED, THE APPLICANT SHOULD:

- A. Make a drawing of the shape of his land.
- B. Draw and identify roads or streams bordering this land.
- C. Mark (x) the point of diversion or well location as it relates to the property lines.
- D. Include this drawing with the application.

The department engineer/technicians may then be able to determine the approximate subsection locations with the legal description submitted.

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*AND DON'T FORGET*

*INCLUDE A COPY OF YOUR DEED OR PURCHASE CONTRACT*

*SIGN THE APPLICATION*

*ENCLOSE THE INITIAL \$10.00 EXAMINATION FEE*  
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## What Is a Water Right?

A Water Right permit or certificate is a legal document establishing the individual or collective right to the use of a certain amount of water. This right is acquired through procedures established by state laws.

There are two types of water rights:

### 1. THE SURFACE WATER RIGHT

Surface waters are defined as waters occurring above ground—such as lakes, rivers, creeks, springs, and streams. The State Surface Water Code enacted in 1917 requires persons taking or using any surface waters to obtain a permit from the State Department of Ecology. Anyone with an existing water right does not have to get a permit. All permits are issued subject to rights already in existence.

### 2. THE GROUND WATER RIGHT

Ground waters are defined as water found below the surface of the ground—such as those obtained from wells. The State Ground Water Code enacted in 1945 requires everyone without an existing right, whenever it is proposed to use over 5,000 gallons of water daily or more than one-half acre of irrigation, to apply for and obtain a permit. No construction of a well or other works to withdraw water in excess of 5,000 gallons a day will be allowed without a permit. All permits are issued subject to limitations imposed by existing rights held by other individuals.

### REGIONAL OFFICE ADDRESSES AND PHONE NUMBERS

1. *NORTHWEST REGION* – 15345 N.E. 36th, Redmond, 98052  
Phone – 885-1900
2. *SOUTHWEST REGION* – Airport Buildings, Olympia, 98504  
Phone – 753-2353
3. *EASTERN REGION* – East 103 Indiana Avenue, Spokane, 99207  
Phone – 456-2926

State of  
Washington  
Department  
of Ecology



## STATE OF WASHINGTON

Glen H. Fiedler

On June 30, 1974, the State of Washington concluded a five-year water right claims registration program. On the assumption that this program may be of special interest to other western states, our report this year will be devoted entirely to a summary of the history, experience and results of the first effort by our state to compile a record of all rights claimed to the use of our surface and ground waters.

### Need for Registration Act

Since 1917, appropriative rights to surface water have been subject to a state administered permit and certificate system requiring all appropriations since that date to be placed on public record when rights are initiated. This process has as its premise the "first in time is first in right" doctrine, and the date an application is received by the state established its priority in time as against other appropriations. Approval of an application results in the issuance of a permit or "license" to develop and place waters to beneficial use consistent with provisions and limitations of the permit. Once this beneficial use has taken place, the final certificate of water right issues and is recorded in state and county offices.

In 1945, this system was expanded to include ground waters. An exception was made that for withdrawals of less than 5,000 gallons per day for stockwatering purposes or for the watering of a lawn or of a noncommercial garden, not exceeding one-half acre in area, or for single or group domestic uses, a permit is not required, but to the extent that water is regularly beneficially used in such small amounts, a right is established equal to that authorized under the permit procedures. The majority of the single family domestic wells drilled in the state are covered by this exemption clause and public record of these rights did not exist.

Under various doctrines of water right law, beneficial uses of surface water initiated prior to 1917 and ground water prior to 1945 ripened into valid water rights. In addition, many prescriptive and riparian rights may exist. Although the statutes of our state provide and specify a procedure for the adjudication of such "grandfather" and other unrecorded rights, no significant program for determination of claimed right had been undertaken. Thus, it was recognized that the approximate 21,800 certificates of surface water and ground water rights issued under the administrative procedures since 1917 and recorded in public files may represent only a small portion of the total claims against the state's water resources. It was in the sense of a public need to determine the number and significance of unrecorded water right claims that registration legislation evolved.

### Legislative History

During the 1965-67 period, a Legislative Interim Committee on Water Resources considered many problems associated with administration of the state's existing water codes. Contributing to and having a significant impact upon the course of these discussions was the western, as well as national, attention then being given to the subject of exportation of northwest waters to the southwest. Although not referenced in the preamble of legislation which evolved, there was a strong feeling among state water resource leaders that documentation of all claims to beneficial

uses of our waters would provide some guarantee that such appropriated waters would not be subject to exportation.

Also under consideration were issues such as the uncertainty of water supply to both existing and potential developments arising from demands under unrecorded water right claims, problems of transferability of both recorded and unrecorded rights, and the cloud placed over water right planning activities where legal and valid demands upon our water resources may not be of public record. From these, as well as other considerations, the Legislative Interim Committee developed legislation which contained two primary provisions:

1. That all persons claiming a right under state law to divert or withdraw waters of the state must file a statement of his claim within a prescribed five-year period; and
2. That five years consecutive nonuse of water was evidence of relinquishment of the right to make use of such water.

The registration feature of the Act further provided that anyone failing to file a statement of claim shall be conclusively deemed to have waived and relinquished any right, title or interest in said right, but that exempt from the registration requirement were rights verified by permits and certificates issued pursuant to the provisions of the 1917 and 1945 codes or adjudication proceedings thereunder.

The Registration Act was first passed into law as Chapter 233, Laws of 1967, with an expiration date of June 30, 1972. Based upon a failure of the legislature to provide implementation funds for operation during the first biennium, the administering agency refused to implement the Act.

The legislation was re-enacted with slight modifications two years later as Chapter 284, Laws of 1969, with an expiration date of June 30, 1974. An operating budget was provided and the Act implemented.

#### Administrative Costs

Throughout the legislative development of this Act, proponents were acutely aware of the legal challenge to the constitutionality of the Act which could be founded on the taking of real property without due process. To blunt this argument, procedures were provided to give extensive but somewhat expensive public notice of the provisions of the Act. These procedures included:

1. Legal notice in newspapers throughout the state at least once each year for five consecutive years;
2. Broadcasts of notice by each commercial television station operating in the United States and viewed in the state, and by at least one commercial radio station operating from each county of the state regularly at six-month intervals for five consecutive years;
3. Posting of notices in prominent and conspicuous locations in each county courthouse in the state;

4. Enclosing with each mailing of all real estate tax statements issued in 1972 a copy of a notice, in writing, and a declaration that it was the duty of the recipient of the statement of taxes due to forward the notice to the beneficial owner of the property;
5. Providing copies of the notice, in writing, to the press services with offices located in the State Capitol during January of each of the five years; and
6. In any other manner which the department deemed to be desirable.

Throughout the majority of the five-year registration period, administrative functions were performed by a basic staff of three people. These included a program supervisor, assistant and clerk. Temporary employees were utilized during short term, high-volume workload periods. During the closing months of the program, all available staff, plus temporary help, were utilized in an unsuccessful effort to record incoming claims within a 30-day processing period.

Administrative and operating costs of the program over its five-year life and the man-years of effort and shown in Table 1.

Table 1

ADMINISTRATIVE AND OPERATING COSTS  
OF  
WATER RIGHT CLAIMS REGISTRATION PROGRAM

<u>Fiscal Year</u>	<u>Man-Years</u>	<u>Approximate Expenditures</u>
1970	3.5	\$ 83,000
1971	3.5	101,300
1972	4.5	101,400
1973	5.3	131,600
1974	8.6	196,100
<hr/>		
TOTAL	25.4	\$ 613,400

Registration Program Experience

Prior to implementation of the Act, staff estimates were that between 100,000 and 300,000 unrecorded claims existed throughout the state. Forecast as to the rate these claims would be received was deemed to be impossible, except that a large number could be expected during the last few months of the program.

Early attempts were made to bring the registration requirement to the attention of the public through public meetings, attendance of association, district and other organization meetings and through the news media. Response to the program in its early stages was minimal, with claimants reacting sporadically to the newspaper publication of legal notices. Very little public interest appeared to be generated by notices through the other news media.

A major public awareness of the registration requirement developed in 1972 at the approximate mid-point of the program. In February of 1972 under provisions of the Act, notices of registration were included with 1,344,538 real estate property tax statements issued by the 39 county treasurers under a \$30,000 contract with the state. For a short time thereafter, claims were received at a rate in excess of 2,000 per month. However, this interest level was short-lived.

As expected, the majority of claimants delayed until the last few months, weeks and days to register their claims. Since the expiration date (June 30, 1974) arrived on a Sunday, agency offices were open to claimants throughout the weekend and until midnight on June 30. The result was a mountain of claims that will take four to six months for processing. Thus, at this time the total number of claims that will be registered is not known but is estimated to be about 140,000.

Registration of claims throughout the five-year period is shown on Figure 1. The total registered each year of the program and the percentage it represents is shown on Table 2.

Table 2  
REGISTRATION OF CLAIMS BY YEAR

<u>Calendar Year</u>	<u>Number of Claims</u>	<u>Percent of Total</u>
1970	1,976	1.4
1971	5,247	3.7
1972	13,481	9.6
1973	24,972	17.9
1974	94,324	67.4
	140,000	100.0

This five-year program has brought sharply into focus several significant factors of public attitude, awareness and acceptance of such a registration program. Several of these factors are:

- Apathy of the general public to a relatively long-range program is difficult, if not impossible, to overcome. In this instance, 67% of the claims were registered during the closing months of the program. If the registration period was three years or ten years, it is expected that the same attitudes would exist.
- Registration forms requiring data in the form of quantities of water, location of diversion points, legal description of land, water right doctrines and other such technical or legal information are difficult for the public to accept or complete. This is especially true in the case of minimal uses of water. We reacted to and overcame a large portion of this problem the third year of the registration program through obtaining legislative approval for use of a "short form" for claimed rights of 5,000 gallons per day or less. This form required only the name and address of the claimant, source of supply, purpose of use, and legal description of the benefited lands.

- A general lack of understanding of the complicated water right laws of our state exists in the general public. Thus, many citizens were required to seek the advice of attorneys, engineers and other knowledgeable people in an effort to file their claims. Others may have elected to save their time and money and take their chances on continued use of water without state or other interference.

An underestimated impact of the registration requirement upon the state's water resources program was the phenomenal increase in water right applications received, particularly in 1974. This is graphically shown on Figure 2 and indicates that many individuals, when prompted to review the legal status of their water use, elected to initiate applications under the water code procedures either in addition or as an alternative to registering claims.

### Significance of Claims

Until all claims registered as of June 30, 1974 have been recorded and selected data is entered into a computer program, the significance of the claims as a valid demand upon the public water resources cannot be assessed. However, staff estimates are that some 90,000 claims may represent minimal ground water withdrawals which were exempted from the permit requirements under the 5,000 gallons per day exclusion of our ground water code. Of the remaining claims, a large number may relate to undeveloped projects claimed under riparian ownership for future use. The worth of these latter claims is questionable at best and will no doubt be the subject of litigation.

It is known that in many instances significant individual claims have been registered. Staff of the U.S. Bureau of Reclamation worked closely with the state agency in quantifying and registering numerous claims of operating irrigation districts in the Yakima River basin for substantial quantities of water with priorities dating to the early 1900's. Major cities such as Seattle and Tacoma registered claims on sources developed prior to 1917 and which represent their principal sources of municipal and industrial water supply. The State Department of Natural Resources took advantage of the registration process to record a multitude of claims for benefit of public lands under its management.

### Benefits of Registration Program

Although the issue of exportation of northwest waters has subsided in many arenas, awareness of the limited nature of the resource and its many faceted values has not. The need which existed five years ago for quantification and recording of all claims to the state's waters is now amplified many times over.

Completion of the registration program has significant beneficial effects upon the future course of the water resource allocation and management program in our state. Principal benefits are projected to be as follows:

Identification of illegal uses - Prior to June 30, 1974, many regulation and enforcement efforts were defeated by the cloud of existing unrecorded rights. While this Act does not purport to adjudicate the validity of the registered claims, it does close the door to allegations of rights which are not benefited by documents issued under the water code procedures or claimed under the Registration Act.

Adjudication procedures - In past court actions for determination of the extent and priority of rights to a particular water source, all landowners within the watershed or drainage basin were considered potential claimants and joined in the action. This involved considerable time and expense in dealing with parties who, in fact, made no claim to water rights. Through use of records generated under the water codes and Registration Act, only those parties known to claim rights need be served with summons and all others may be deemed to have no claim or to have relinquished any claim they previously held. This administrative advantage, coupled with proposed streamlining of our adjudication procedures, will allow the state to embark upon an energetic and successful adjudication program.

Greater confidence in planning - Considerable attention is now being addressed by our state to development of management plans for individual stream basins. Such plans consider the problems of water availability, existing uses, future uses, minimum flows and other factors controlling further water-oriented development within the basin. One of the foundation stones for a meaningful and viable management plan is an accurate assessment of the amount of water appropriated from a stream or aquifer system. Only then can an analysis be made as to water availability for additional uses. The results of the Registration Act joined by an aggressive adjudication program can provide this basic assessment.

#### Conclusion

The requirement for registration of claimed water rights was found to be an extremely sensitive subject to both the legislature and general public and a difficult program to administratively manage. However, the voluminous data generated as to claimed demands upon our valuable water resources accentuates the need for resolution of the question as to just how much of the resource is validly appropriated. The Registration Act was only a first step in the inventory and assessment of the demand. The state is now faced with a challenge to expeditiously quiet title in these claims with as little burden of time, effort and cost to the claimants as possible.

Appendix E

EXPECTED CLAIMS FILED AND REVENUE RECEIVED

A. If all water uses are to be claimed and an estimated 500,000 claims are filed, then:

<u>Year</u>	<u>No. of Claims Filed</u>	<u>Average No. Per Day</u>	<u>Percent of Total</u>	<u>Revenue \$25 Fee</u>	<u>Revenue \$20 Fee</u>
First	15,000	63	3%	375,000	300,000
Second	50,000	208	10%	1,250,000	1,000,000
Third	100,000	416	20%	2,500,000	2,000,000
Fourth	335,000	1400	67%	8,375,000	6,700,000
				<u>12,482,000</u>	<u>10,000,000</u>

B. If claims for other than stock and domestic groundwater use are required and an estimated 55% of 500,000 or 275,000 claims are filed, then:

<u>Year</u>	<u>No. of Claims Filed</u>	<u>Average No. Per Day</u>	<u>Percent of Total</u>	<u>Revenue \$25 Fee</u>	<u>Revenue \$20 Fee</u>
First	8,000	33	3%	216,000	240,000
Second	27,000	112	10%	729,000	810,000
Third	55,000	230	20%	1,485,000	1,650,000
Fourth	185,000	771	67%	4,995,000	5,550,000
				<u>7,425,000</u>	<u>8,250,000</u>

Appendix G

Cost Estimate for Claims Registration Program  
(500,000 Claims Estimated)

<u>PERSONAL SERVICES</u>	<u>1st YEAR</u>		<u>2nd YEAR</u>		<u>3rd YEAR</u>		<u>4th YEAR</u>		<u>5th YEAR</u>	
Program Manager	1	17,670 (16)	1	17,670 (16)	1	17,670 (16)	1	17,670 (16)	1	17,670 (16)
Secretary	1	8,640 (8)	1	8,640 (8)	1	8,640 (8)	1	8,640 (8)	1	8,640 (8)
Program Assistant	1	16,140 (15)	1	16,140 (15)	1	16,140 (15)	1	16,140 (15)	1	16,140 (15)
Secretary	1	8,640 (8)	1	8,640 (8)	1	8,640 (8)	1	8,640 (8)	1	8,640 (8)
Systems Analyst	1	14,750 (14)	1	14,750 (14)	1	14,750 (14)	1	14,750 (14)	1	14,750 (14)
Programmer	1	13,490 (13)	1	13,490 (13)	1	13,490 (13)	1	13,490 (13)	1	13,490 (13)
Agricultural Engineer	1	16,140 (15)	1	16,140 (15)	1	16,140 (15)	1	16,140 (15)	0	-0-
Soil Scientist	1	13,490 (13)	1	13,490 (13)	1	13,490 (13)	1	13,490 (13)	0	-0-
Hydrologist	1	14,750 (14)	1	14,750 (14)	1	14,750 (14)	1	14,750 (14)	0	-0-
Lawyer	1	16,140 (15)	1	16,140 (15)	1	16,140 (15)	1	16,140 (15)	0	-0-
Personnel Manager	1	14,750 (14)	1	14,750 (14)	1	14,750 (14)	1	14,750 (14)	1	14,750 (14)
Field Manager	11	12,340 (12)	11	12,340 (12)	11	12,340 (12)	11	12,340 (12)	11	12,340 (12)
Water Rights Analyst III	0	-0-	11	10,320 (10)	22	10,320 (10)	22	10,320 (10)	22	10,320 (10)
Analyst-Clerk	11	7,920 (7)	11	7,920 (7)	11	7,920 (7)	11	7,920 (7)	11	7,920 (7)
Records Technician II	3	9,440 (9)	5	9,440 (9)	5	9,440 (9)	5	9,440 (9)	5	9,440 (9)
Records Technician I	3	8,640 (8)	5	8,640 (8)	10	8,640 (8)	10	8,640 (8)	10	8,640 (8)
Keypunch Operator II	2	8,640 (8)	5	8,640 (8)	10	8,640 (8)	10	8,640 (8)	10	8,640 (8)
Keypunch Operator I	1	7,920 (7)	5	7,920 (7)	10	7,920 (7)	10	7,920 (7)	10	7,920 (7)
Accounting Clerk	1	9,440 (9)	1	9,440 (9)	1	9,440 (9)	1	9,440 (9)	1	9,440 (9)
Writer-Editor-P.R.	1	13,490 (13)	1	13,490 (13)	1	13,490 (13)	1	13,490 (13)	0	-0-
Citizen Advocate	2	11,270 (11)	3	11,270 (11)	3	11,270 (11)	3	11,270 (11)	0	-0-
Records Supervisor	1	14,750 (14)	1	14,750 (14)	1	14,750 (14)	1	14,750 (14)	1	14,750 (14)
	47	517,120	70	735,670	96	954,550	96	954,550	88	867,370
Inflation & Merit Raises		-0-		51,400		70,400		142,400		193,000
Benefits 14.5%		75,000		114,100		148,600		159,000		164,000
<b>TOTAL</b>		<b>\$ 592,100</b>		<b>\$ 901,200</b>		<b>\$1,173,600</b>		<b>\$1,256,000</b>		<b>\$1,299,000</b>

Grand Total for Personal Services - \$5,222,000

## Appendix G

## Cost Estimate - 500,000 Claims (continued)

<u>OPERATIONS</u>	<u>1st YEAR</u>	<u>2nd YEAR</u>	<u>3rd YEAR</u>	<u>4th YEAR</u>	<u>5th YEAR</u>	
Contracted Services						
Data Processing	15,000	45,000	95,000	100,000	100,000	
Radio & TV Adver.	85,000	85,000	85,000	100,000	-0-	
Printing	50,000	10,000	11,000	12,000	-0-	
Microfilm Service	5,000	5,300	5,600	6,000	6,400	
Insurance & Bonds	2,000	2,100	2,200	2,300	2,400	
Other	15,000	20,000	30,000	35,000	20,000	
Supplies & Materials						
Office	10,000	15,000	16,000	17,000	17,000	
Maps-Charts, etc.	10,000	5,000	5,300	5,600	6,200	
Microfilm	3,000	6,000	10,000	12,000	13,000	
Data Processing	6,000	10,000	11,000	12,000	13,000	
Other	5,000	6,000	10,000	12,000	10,000	
Communications						
Telephone	12,000	13,000	14,000	15,000	16,000	
Watts line	20,000	21,000	22,000	23,000	24,000	
Postage & Mailing	460,000	35,000	50,000	75,000	80,000	
Advertising-legal	4,000	4,200	4,400	4,700	-0-	
Other	20,000	20,000	20,000	20,000	20,000	
Travel	20,000	40,000	43,000	46,000	25,000	
Rent						
Office	24,000	38,000	54,000	58,000	56,000	
D.P. Equipment	4,000	12,000	25,000	27,000	29,000	
Other	5,000	7,500	12,000	13,000	13,000	
Repair & Maintenance	5,000	5,000	10,000	12,000	10,000	
	<u>780,000</u>	<u>408,100</u>	<u>1,435,000</u>	<u>838,000</u>	<u>461,000</u>	
15% Contingency	118,000	61,000	215,000	126,000	69,000	
TOTAL	898,000	469,000	1,650,000	964,000	530,000	4,511,600

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Program Total                      9,737,000

9,734,000 ÷ 500,000 claims = \$19.50/claim  
 ÷ 400,000 claims = \$24.40/claim

Appendix H

Cost Estimate for Claims Registration Program  
(Exempt Stock & Domestic Groundwater Claims)  
(275,000 Claims Estimated)

<u>PERSONAL SERVICES</u>	<u>1st YEAR</u>		<u>2nd YEAR</u>		<u>3rd YEAR</u>		<u>4th YEAR</u>		<u>5th YEAR</u>	
Program Manager	1	17,670 (16)	1	17,670 (16)	1	17,670 (16)	1	17,670 (16)	1	17,670 (16)
Secretary	1	8,640 (8)	1	8,640 (8)	1	8,640 (8)	1	8,640 (8)	1	8,640 (8)
Program Assistant	1	16,140 (15)	1	16,140 (15)	1	16,140 (15)	1	16,140 (15)	1	16,140 (15)
Secretary	1	8,640 (8)	1	8,640 (8)	1	8,640 (8)	1	8,640 (8)	1	8,640 (8)
Systems Analyst	1	14,750 (14)	1	14,750 (14)	1	14,750 (14)	1	14,750 (14)	1	14,750 (14)
Programmer	1	13,490 (13)	1	13,490 (13)	1	13,490 (13)	1	13,490 (13)	1	13,490 (13)
Agricultural Engineer	1	16,140 (15)	1	16,140 (15)	1	16,140 (15)	1	16,140 (15)	0	-0-
Soil Scientist	1	13,490 (13)	1	13,490 (13)	1	13,490 (13)	1	13,490 (13)	0	-0-
Hydrologist	1	14,750 (14)	1	14,750 (14)	1	14,750 (14)	1	14,750 (14)	0	-0-
Lawyer	1	16,140 (15)	1	16,140 (15)	1	16,140 (15)	1	16,140 (15)	0	-0-
Personnel Manager	1	14,750 (14)	1	14,750 (14)	1	14,750 (14)	1	14,750 (14)	1	14,750 (14)
Field Manager	11	12,340 (12)	11	12,340 (12)	11	12,340 (12)	11	12,340 (12)	11	12,340 (12)
Water Rights Analyst III	0	-0-	6	10,320 (10)	11	10,320 (10)	22	10,320 (10)	22	10,320 (10)
Analyst-Clerk	11	7,920 (7)	11	7,920 (7)	11	7,920 (7)	11	7,920 (7)	11	7,920 (7)
Records Technician II	1	9,940 (9)	3	9,940 (9)	4	9,940 (9)	5	9,940 (9)	5	9,940 (9)
Records Technician I	2	8,640 (8)	2	8,640 (8)	3	8,640 (8)	5	8,640 (8)	5	8,640 (8)
Keypunch Operator II	1	8,640 (8)	3	8,640 (8)	5	8,640 (8)	10	8,640 (8)	10	8,640 (8)
Keypunch Operator I	1	7,920 (7)	2	7,920 (7)	5	7,920 (7)	10	7,920 (7)	10	7,920 (7)
Accounting Clerk	1	9,940 (9)	1	9,940 (9)	1	9,940 (9)	1	9,940 (9)	1	9,940 (9)
Writer-Editor-P.R.	1	13,490 (13)	1	13,490 (13)	1	13,490 (13)	1	13,490 (13)	0	-0-
Citizen Advocate	2	11,270 (11)	3	11,270 (11)	3	11,270 (11)	3	11,270 (11)	0	-0-
Records Supervisor	1	14,750 (14)	1	14,750 (14)	1	14,750 (14)	1	14,750 (14)	1	14,750 (14)
	43	460,050	55	583,970	67	695,190	91	918,730	83	827,170
Inflation & Merit Raises		-0-		32,200		75,200		129,200		196,000
Benefits 14.5%		66,700		89,000		111,800		152,000		157,000
<b>TOTAL</b>		<b>\$ 526,800</b>		<b>\$ 705,000</b>		<b>\$ 882,000</b>		<b>\$ 1,200,000</b>		<b>\$ 1,180,000</b>

Grand Total for Personal Services - \$4,493,000

Appendix H

Cost Estimate - 275,000 Claims (continued)  
(Exempt Stock and Domestic)

<u>OPERATIONS</u>	<u>1st Year</u>	<u>2nd Year</u>	<u>3rd Year</u>	<u>4th Year</u>	<u>5th Year</u>	
Contracted Services						
Data Processing	9,000	30,000	60,000	60,000	60,000	
Radio & TV Adver.	85,000	85,000	85,000	100,000	-0-	
Printing	35,000	10,000	11,000	12,000	-0-	
Microfilm Service	3,000	3,300	3,600	4,000	4,500	
Insurance & Bonds	2,000	2,100	2,200	2,300	2,400	
Other	15,000	15,000	20,000	25,000	20,000	
Supplies & Materials						
Office	6,000	9,000	10,000	11,000	11,000	
Maps-Charts, etc.	10,000	5,000	5,300	5,600	6,200	
Microfilm	3,000	4,000	6,000	8,000	8,000	
Data Processing	4,000	6,000	7,000	8,000	8,000	
Other	3,000	4,000	6,000	7,000	6,000	
Communications						
Telephone	12,000	13,000	14,000	15,000	16,000	
Watts line	20,000	21,000	22,000	23,000	24,000	
Postage & Mailing	460,000	20,000	30,000	50,000	50,000	
Advertising	4,000	4,200	4,400	4,700	-0-	
Other	12,000	13,000	14,000	15,000	15,000	
Travel	20,000	40,000	43,000	46,000	25,000	
Rent						
Office	22,000	30,000	40,000	55,000	51,000	
D.P. Equipment	3,000	8,000	15,000	17,000	18,000	
Other						
Repair & Maintenance	5,000	8,000	10,000	12,000	10,000	
	<u>733,000</u>	<u>331,000</u>	<u>409,000</u>	<u>891,000</u>	<u>363,000</u>	
15% Contingency	40,000	49,000	61,000	133,000	50,000	
TOTAL	770,000	380,000	470,000	1,024,000	386,000	3,030,000

Program Total 7,672,000

7,523,000 ÷ 275,000 claims = \$27.00/claim

Appendix I

POWDER RIVER DECLARATIONS  
STATISTICS

<u>PURPOSE</u>	<u>PERCENT BY PURPOSE</u>	<u>TYPE OF RIGHT</u>	<u>TYPE PERCENT</u>	<u>NO. OF RIGHTS</u>	<u>SOURCE</u>	<u>PERCENT BY SOURCE</u>	<u>NO. OF RIGHTS</u>
Domestic	8.3%	Use	64%	446	Surface	4%	27
		Other	36%	254	Ground	96%	673
				<u>700</u>			<u>700</u>
Stock	82.5%	Use	79%	5427	Surface	55%	3811
			21%	1462	Ground	45%	3078
				<u>6889</u>			<u>6889</u>
Irrigation	19.0%	Use	52%	833	Surface	89%	1423
		Other	48%	757	Ground	11%	167
				<u>1590</u>			<u>1590</u>
Other	10.9%	Use	61%	553	Surface	72%	653
		Other	39%	357	Ground	28%	257
	<u>120.7%*</u>			<u>910</u>			<u>910</u>

1. 75% of the claims are based upon use right
2. 45% of the claims are for stock and domestic groundwater use

\*some rights have more than one purpose of use

## Appendix I

ABSTRACT OF FINDINGS\*\*  
STATISTICS

<u>PURPOSE</u>	<u>PERCENT BY PURPOSE</u>	<u>TYPE OF RIGHT</u>	<u>TYPE PERCENT</u>	<u>NO. OF RIGHTS</u>	<u>SOURCE</u>	<u>PERCENT BY SOURCE</u>	<u>NO. OF RIGHTS</u>
Domestic	6.8%	Use	79%	162	Surface	1%	1
		Other	21%	43	Ground	99%	204
				<u>205</u>			<u>205</u>
Stock	86.1%	Use	93%	2376	Surface	56%	1452
		Other	7%	191	Ground	44%	1115
				<u>2567</u>			<u>2567</u>
Irrigation	14.5%	Use	75%	326	Surface	94%	408
		Other	25%	106	Ground	6%	24
				<u>432</u>			<u>432</u>
Other	.5%	Use	56%	9	Surface	31%	5
		Other	44%	7	Ground	69%	11
	<u>107.9%*</u>			<u>16</u>			<u>16</u>

1. 90% of the findings are based upon use rights
2. 40% of the findings are for stock and domestic groundwater use

\*some rights have more than one purpose of use

\*\*this represents only those findings so far compiled or about 35% of the total eventual finding