

## Do you need a water right change and how is that done?

Water rights are typically documented as a claim if they relate to water use that initiated prior to the Surface Water Code of 1917 or the Ground Water Code 1945. After those dates acquiring water rights required a permitting process with the State. Permits are granted to allow persons to develop and thereby perfect water rights. Certificates certify that such perfection of a water right has taken place. It is possible to perfect water rights within the limited quantities allowed for exempt wells that still do not require the permitting process.

It is very important to remember a water right document must relate to actual beneficial use of the water. The courts have said that “beneficial use is the beginning the measure and the limit of a water right”. Permits allow prospective use, but even they have development timelines that must be met to retain the right.

Water rights typically have several attributes:

- Source (well or body of surface water)
- Point of diversion
- Instant demand rate ( $Q_i$ )
- Annual demand rate ( $Q_a$ )
- Type of use
- Number of acres irrigated, if irrigation right
- Season of use
- Place of use (Appurtenance)

If your use of a right has deviated outside the original attributes then you likely have made a “defacto” change to your right that needs to be corrected with a water right change so that the document conforms to your desired uses. Ideally you should identify such needed changes in advance and get permission to change the right in advance.

Changing a water right is done by filling out an application and preparing a notice of that application to be published. You can file this application with the Department of Ecology, but the DOE has been extremely slow in processing change applications (decades). DOE also has a cost reimbursement process that requires that you pay DOE hire someone else to process your application and pay DOE to supervise that process. Our

experience with this program is that it has been slow and expensive. Filing with a Water Conservancy Board has typically been the quickest and least expensive process for getting a water right change approved. Still, it can take several months to get such an approval.

Conservancy Boards typically require that we prepare a decision document draft called a “Record of Examination”. These are very dense technical documents that explain how all of the statutory criterion are met by the proposed changes to the water right. This document must also be supported by evidence that can include hydro geologic reports, declarations or other evidence of water use, and anything else that may bear on the validity of the right and the lack of potential impairments to other water rights.

Once a Conservancy Board approves a change the Department of Ecology has 45 days to act on the decision. It can give itself a 30 day extension and nearly always does. DOE can approve, modify or deny the decision and often is successful in getting the conservancy board to withdraw the decision for further work which restarts this 75 days. If the decision is not palatable to the applicant then it can be appealed to the Pollution Control Hearings Board where it can be heard at a trial typically within about 6 months.

This process is formidable and expensive so we are careful to advise filing applications only for changes that we think have sufficient merits to justify the time and expense. Our success rate on water right change applications is nearly 100%. We consider success as achieving substantially all of our client’s needs.