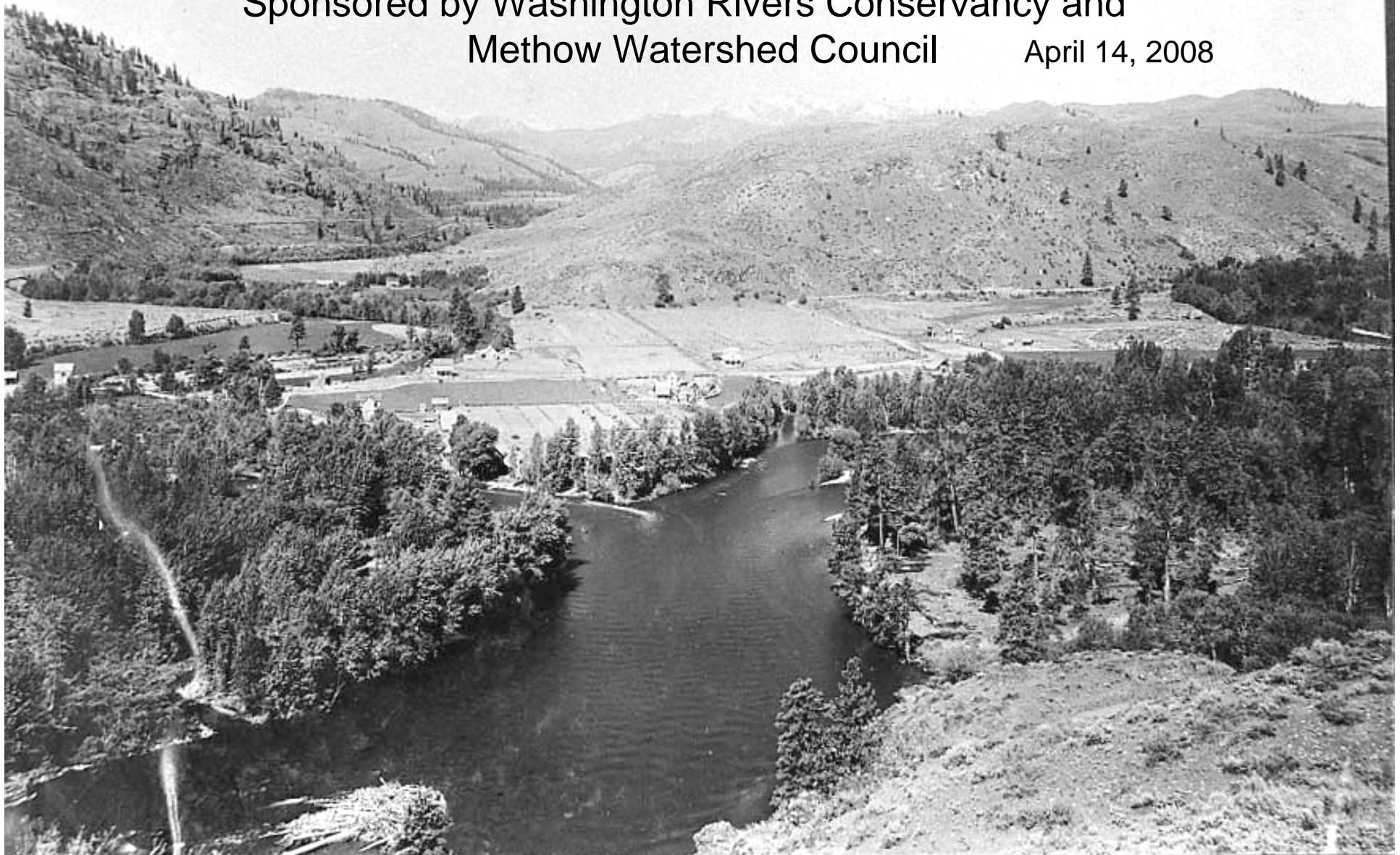


WATER RIGHTS WORKSHOP

Sponsored by Washington Rivers Conservancy and
Methow Watershed Council April 14, 2008



where the Methow & Twisp meet.

WORKSHOP OVERVIEW

- Establishing & maintaining water rights
 - Peter Dykstra, State Director, Trust for Public Lands
- Trust water rights
 - Lisa Pelly, Director, Washington Rivers Conservancy
- Water rights & development
 - Mary McCrea, Water Rights Attorney, Cascadia Law Group
- Methow Watershed Planning Council
 - Katharine Bill, Chair, Methow Watershed Planning Council

ESTABLISHING A WATER RIGHT IN THE OLD DAYS

Appropriative Water Right

- Find a stream
- Post a notice on a tree
- Build a diversion and conveyance system
- Put the water to beneficial use- irrigation, mining, domestic



Riparian Water Right

- Right to use water tied to ownership of land
- If more than one landowner on a stream, all share the water equally

ESTABLISHING A WATER RIGHT UNDER THE WATER CODE

Permit process

- (1) File an application for water right with Ecology
- (2) Application is published for public comment
- (3) Ecology investigates
- (4) Ecology must issue a permit if it finds:
 - water is available
 - water will be put to a beneficial use
 - new water right will not adversely impact existing water rights
 - new water right will not be detrimental to public welfare

ESTABLISHING A WATER RIGHT UNDER THE WATER CODE,

continued

Permit process

- (5) Permit establishes development schedule to construct necessary infrastructure and to put water to beneficial use
- (6) File proof of appropriation
- (7) Ecology issues certificate

WHAT IS A WATER RIGHT?



- In Washington State, water is a public resource owned by all the people.
- Individuals and entities who hold water rights have the right to use the water but do not own it.
- A water right is a right to use water according to the terms and conditions of a water right document.

A Water Right is:

a **right** to a
beneficial use of a
reasonable quantity of
public water for
beneficial purpose during a
certain **period of time**
occurring at a
certain **place**.

ELEMENTS OF A WATER RIGHT

- Point of diversion or withdrawal
- Instantaneous quantity (Q_i)
- Annual quantity (Q_A)
- Purpose of use
- Place of use
- Season of use
- Priority date



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

file

CERTIFICATE OF WATER RIGHT

- Surface Water (Issued in accordance with the provisions of Chapter 117, Laws of Washington for 1917, and amendments thereto, and the rules and regulations of the Department of Ecology.)
 Ground Water (Issued in accordance with the provisions of Chapter 253, Laws of Washington for 1945, and amendments thereto, and the rules and regulations of the Department of Ecology.)

PRIORITY DATE December 27, 1984	APPLICATION NUMBER S4-28582	PERMIT NUMBER S4-28582P	CERTIFICATE NUMBER S4-28582C
------------------------------------	--------------------------------	----------------------------	---------------------------------

NAME
[REDACTED]

ADDRESS (STREET) Entiat River Road	(CITY) Entiat	STATE Washington	(ZIP CODE) 98822
---------------------------------------	------------------	---------------------	---------------------

This is to certify that the herein named applicant has made proof to the satisfaction of the Department of Ecology of a right to the use of the public waters of the State of Washington as herein defined, and under and specifically subject to the provisions contained in the Permit issued by the Department of Ecology, and that said right to the use of said waters has been perfected in accordance with the laws of the State of Washington, and is hereby confirmed by the Department of Ecology and entered of record as shown, but is limited to an amount actually beneficially used.

PUBLIC WATER TO BE APPROPRIATED

SOURCE
Entiat River (via the Cannon-Anderson Ditch)

TRIBUTARY OF (IF SURFACE WATERS)

Columbia River

MAXIMUM CUBIC FEET PER SECOND .1	MAXIMUM GALLONS PER MINUTE	MAXIMUM ACRE-FEET PER YEAR 20
-------------------------------------	----------------------------	----------------------------------

QUANTITY, TYPE OF USE, PERIOD OF USE
For irrigation of five (5) acres from April 15 to October 15.

LOCATION OF DIVERSION/WITHDRAWAL

APPROXIMATE LOCATION OF DIVERSION/ WITHDRAWAL
750 feet north and 550 feet east from the southwest corner of Section 28.

LOCATED WITHIN SMALLEST LEGAL SUBDIVISION SW 1/4 SW 1/4	SECTION 28	TOWNSHIP N. 26	RANGE (E. OR W.) W.M. 20 E.	W.R.I.A. 46	COUNTY Chelan
--	---------------	-------------------	--------------------------------	----------------	------------------

RECORDED PLATTED PROPERTY

LOT	BLOCK	OF (GIVE NAME OF PLAT OR ADDITION)
-----	-------	------------------------------------

LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED

Within the SW 1/4, lying southwesterly of the Entiat River, in Section 33, T. 26 N., R. 20 E.W.M., in Chelan County.

INTERRUPTIBLE WATER RIGHTS

- An interruptible water right is one that is subject to interruption (i.e., no water diverted) when instream flow falls below a set level. This is stated in the water right certificate.
- When river flow is dropping and approaching the specific minimum flow, Ecology notifies owners of interruptible rights. You must call the River Flow Information Line daily to determine whether you can pump that day.

WHAT IS A WATER RIGHT CLAIM AND WHAT DOES IT MEAN?

- Any person who claimed a right to use water that was established before 1917 for a surface water right and before 1945 for a groundwater right was required to file such claim with Ecology.
- A water right claim is a document that authorizes a water right holder to use water per the terms of the claim.
- A water right claim is a water right with equal legal standing to a water right certificate.

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
WATER RIGHT CLAIMS REGISTRATION

WATER RIGHT CLAIM

1. NAME [REDACTED]

ADDRESS Box [REDACTED]

ENTIAT, WA ZIP CODE 98822

2. SOURCE FROM WHICH THE RIGHT TO TAKE AND MAKE USE OF WATER IS CLAIMED: SURFACE
(SURFACE OR GROUND WATER)

W.R.I.A. 46 (LEAVE BLANK)

A. IF GROUND WATER, THE SOURCE IS _____

B. IF SURFACE WATER, THE SOURCE IS ENTIAT RIVER

3. THE QUANTITIES OF WATER AND TIMES OF USE CLAIMED:

A. QUANTITY OF WATER CLAIMED 2.2 C.F.S. PRESENTLY USED NONE
(CUBIC FEET PER SECOND OR GALLONS PER MINUTE)

B. ANNUAL QUANTITY CLAIMED 320 PRESENTLY USED NONE
(ACRE FEET PER YEAR)

C. IF FOR IRRIGATION, ACRES CLAIMED 80 PRESENTLY IRRIGATED NONE

D. TIME(S) DURING EACH YEAR WHEN WATER IS USED: APRIL - SEPT.

4. DATE OF FIRST PUTTING WATER TO USE: MONTH Not Known YEAR 1890

5. LOCATION OF THE POINT(S) OF DIVERSION/WITHDRAWAL: 1000' FEET EAST AND 100'
FEET NORTH FROM THE NW CORNER CORNER OF SECTION 33
BEING WITHIN SW 1/4 - SW 1/4 OF SECTION 28 T. 26 N., R. 20 E (E.O.W.) W.M.
IF THIS IS WITHIN THE LIMITS OF A RECORDED PLATTED PROPERTY, LOT _____ BLOCK _____ OF

(GIVE NAME OF PLAT OR ADDITION)

6. LEGAL DESCRIPTION OF LANDS ON WHICH THE WATER IS USED: NW 1/4 OF SE 1/4 AND
SW 1/4 OF NE 1/4 OF SEC 33 T 26 Range 20 E.
SEE LEGAL DISCRIPTION ATTATCHED

7. PURPOSE(S) FOR WHICH WATER IS USED: IRRIGATION-STOCK

8. THE LEGAL DOCTRINE(S) UPON WHICH THE RIGHT OF CLAIM IS BASED: APPROPRIATION

WATER RIGHT # 52466 FILED 2-12-1913 IN CHELAN CO

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 WATER USE CLAIMANTS
AND ANOTHER OR OTHERS. THIS ACKNOWLEDGEMENT CONSTITUTES RECEIPT FOR
THE FILING FEE.

DATE RETURNED: THIS HAS BEEN ASSIGNED
WATER RIGHT CLAIM REGISTRY NO. FEB 25 1975 130056

I HEREBY SWEAR THAT THE ABOVE INFORMATION IS TRUE AND
ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF.
X [REDACTED]

DATE 6-25-74

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

DIRECTOR - DEPARTMENT OF ECOLOGY

A FEE OF \$2.00 MUST ACCOMPANY THIS WATER RIGHT CLAIM

RETURN ALL THREE COPIES WITH CARBONS INTACT, ALONG WITH YOUR FEE TO:
DEPARTMENT OF ECOLOGY

“PAPER WATER RIGHT” v. “ACTUAL WATER RIGHT”

- Water right certificates and water right claims are “paper water rights.”
- Washington law requires a water user to beneficially use their water right according to the provisions of the certificate or claim.
- A person’s “actual water right” is the **amount of water** they have beneficially used over time.
- A paper water right may be the same as the actual water right.
- In an adjudication of rights, the court confirms actual water rights, whether based on a certificate or a claim.

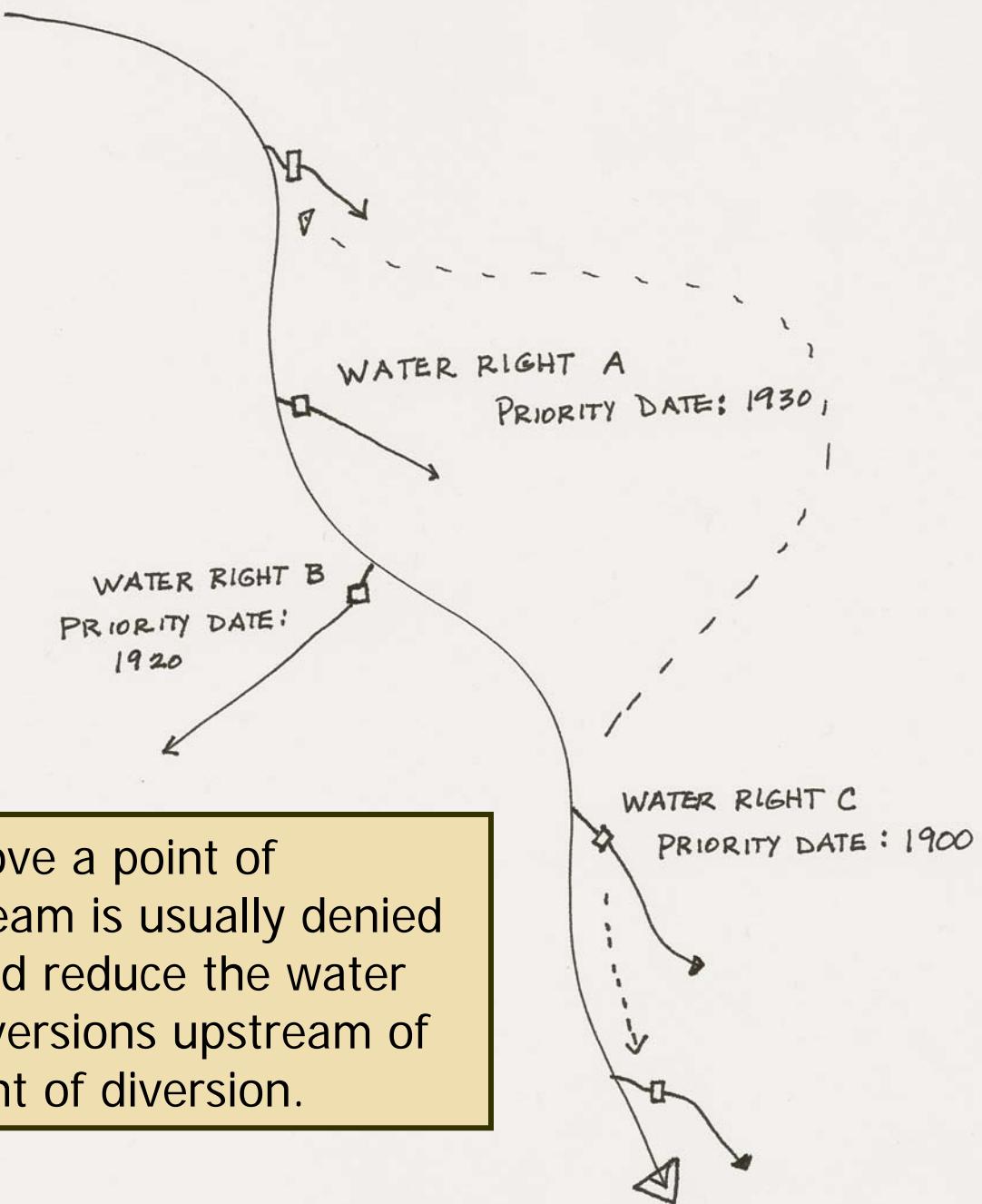
CAN I CHANGE OR TRANSFER MY WATER RIGHT?

- The terms “change” and “transfer” are used interchangeably to mean a change in an element of a water right (e.g., point of diversion, place of use) or the transfer of the right from one person to another.
- A change requires filing an application with Ecology or the county water conservancy board.
- Ecology or water conservancy board will conduct an investigation of the extent and validity of the right.
- Primary standards for any change:
 - cannot impair other water rights
 - cannot result in an increase in consumptive use under the right.

SPECIAL ISSUES IN WATER RIGHT CHANGES

- A change from irrigation to domestic requires a change from a seasonal use to a year-round use. The time of year when instream flows are needed most will be an important factor.
- A change in place of use within an irrigation district does not require Ecology review or approval.





A change to move a point of diversion upstream is usually denied because it would reduce the water available for diversions upstream of the current point of diversion.

INSTREAM FLOWS

- Instream flows (base flows) are minimum stream flows set by rule, intended to protect fish and wildlife.
- Instream flow water rights are diversionary rights that have been transferred to the Trust Water Rights Program for instream flow purposes.
- Both are recognized water rights protected based on their priority dates:
 - Instream flow – date of rule
 - Instream flow water right – date of transferred water right

HOW DO I KEEP MY WATER RIGHT?

- By statute, a water user is required to beneficially use his/her water on a continuous basis:

Any person entitled to divert or withdraw waters of the state ... 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 July 1, 1967, shall relinquish such right or portion thereof....

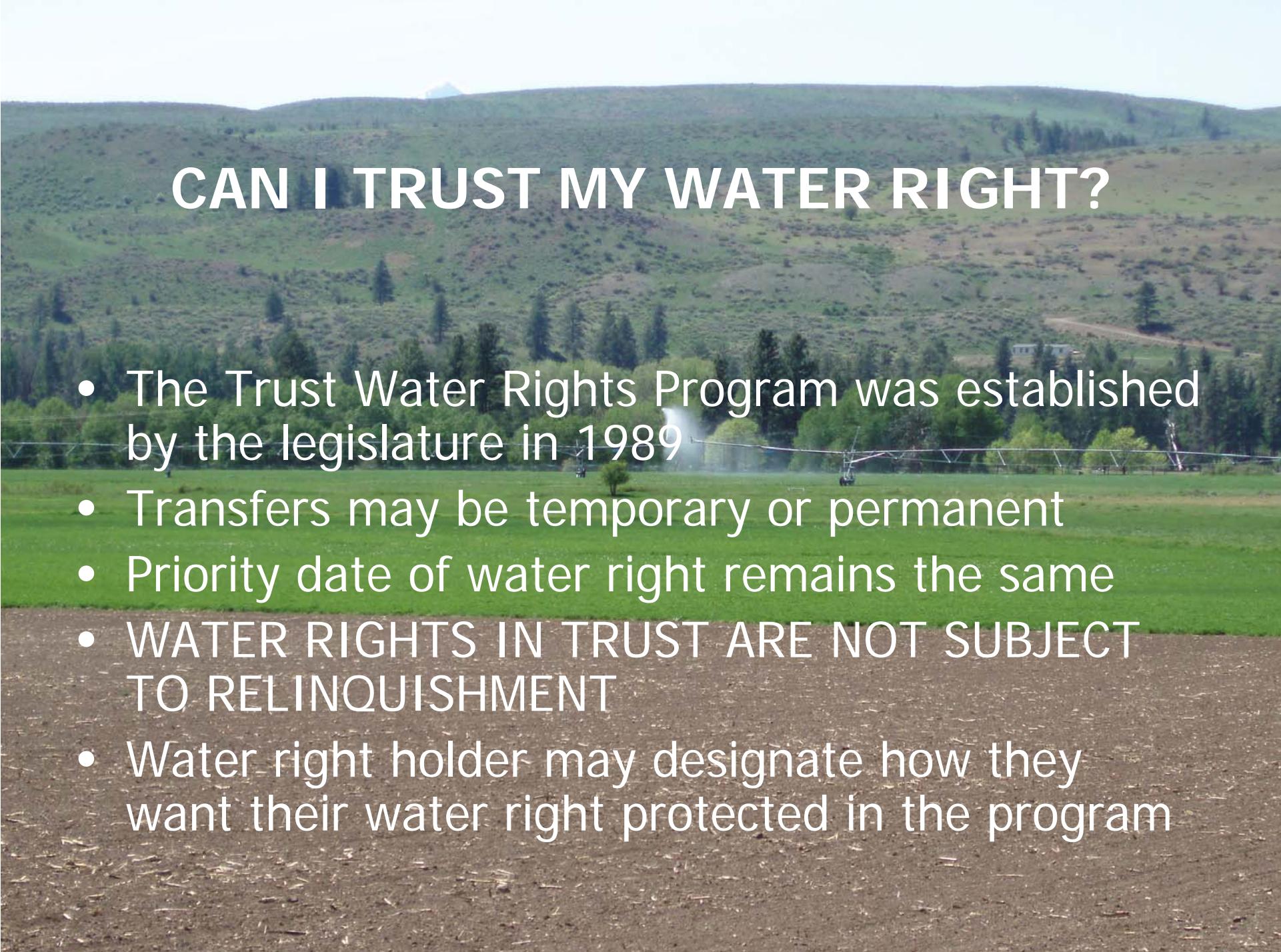
RCW 90.14.160

- Abandonment required intent, relinquishment does not.
- A right can be partially or totally relinquished.



SUFFICIENT CAUSES FOR NONUSE

- Statute lists numerous reasons for not using a water right that are accepted as sufficient causes and which will not result in relinquishment, including:
 - Drought or other unavailability of water
 - Temporarily reduced diversions for agriculture due to varying weather conditions
 - Reduced use of water due to crop rotation
- Statute also identifies certain types of water rights that are not subject to relinquishment, including:
 - Water for a “determined future development”
 - Water right for municipal water supply purposes
 - Trust water rights



CAN I TRUST MY WATER RIGHT?

- The Trust Water Rights Program was established by the legislature in 1989
- Transfers may be temporary or permanent
- Priority date of water right remains the same
- **WATER RIGHTS IN TRUST ARE NOT SUBJECT TO RELINQUISHMENT**
- Water right holder may designate how they want their water right protected in the program

WHY WOULD I WANT TO TRUST MY WATER?

Opportunities for putting water in trust:



- Just purchased property with water rights and need time to decide how to use the rights
- Selling property with water rights and will not be using the water while property is on the market
- Have filed a change application with Ecology and will not be using the water pending Ecology's decision
- Have a water right that you don't intend to use
- Partial use of water right
- Financial compensation or donation
- WRC will conduct a confidential evaluation of your water right prior to filing, prepare and steward your application through the administrative process
- Multiple transaction methods and tools

WATER RIGHTS AND DEVELOPMENT

- Exempt wells
- Single water right certificate for multiple parcels
- Metering
- Agencies with water rights authority



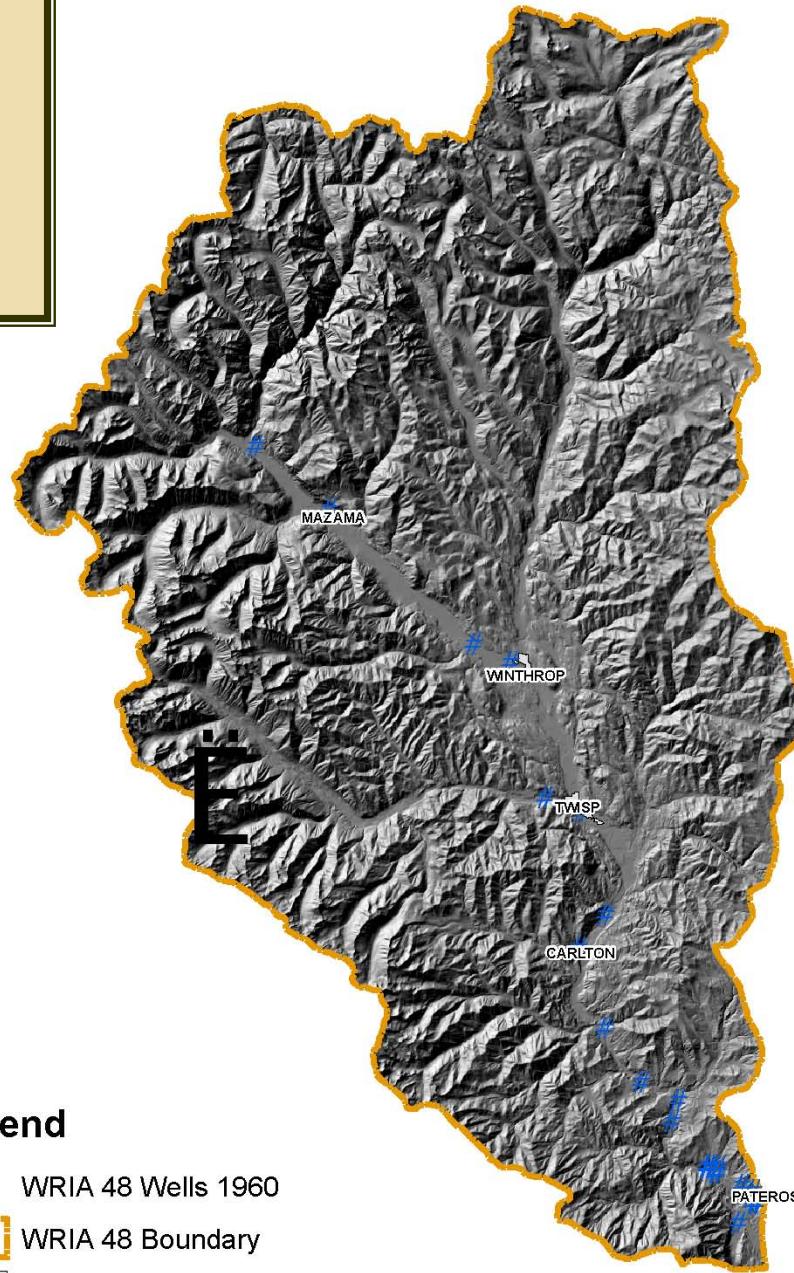
EXEMPT WELLS

- Exempt wells are groundwater withdrawals that are exempt from the permitting process required under the water code.
- Statute defines acceptable uses for exempt wells:
 - Stock watering purposes
 - Watering a lawn or a non-commercial garden less than 1/2 acre in size in an amount not over 5,000 gallons per day
 - Single or group domestic uses in an amount up to 5,000 gallons per day
 - Water for an industrial purpose in an amount up to 5,000 gallons per day
- Exempt wells were intended for small withdrawals.
- As pressure for more water has grown and new rights are hard to come by, use of exempt wells has increased dramatically.

METHOW WATERSHED

Exempt Wells

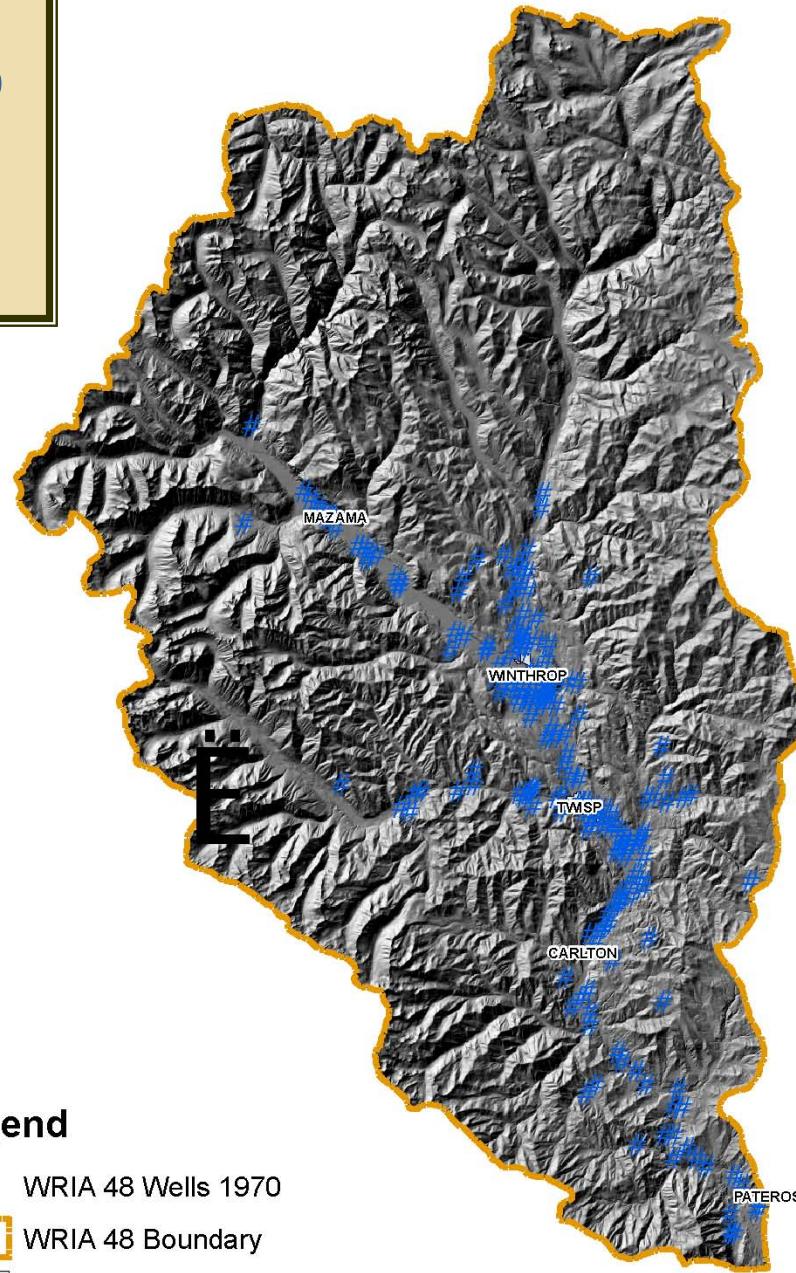
1960



METHOW WATERSHED

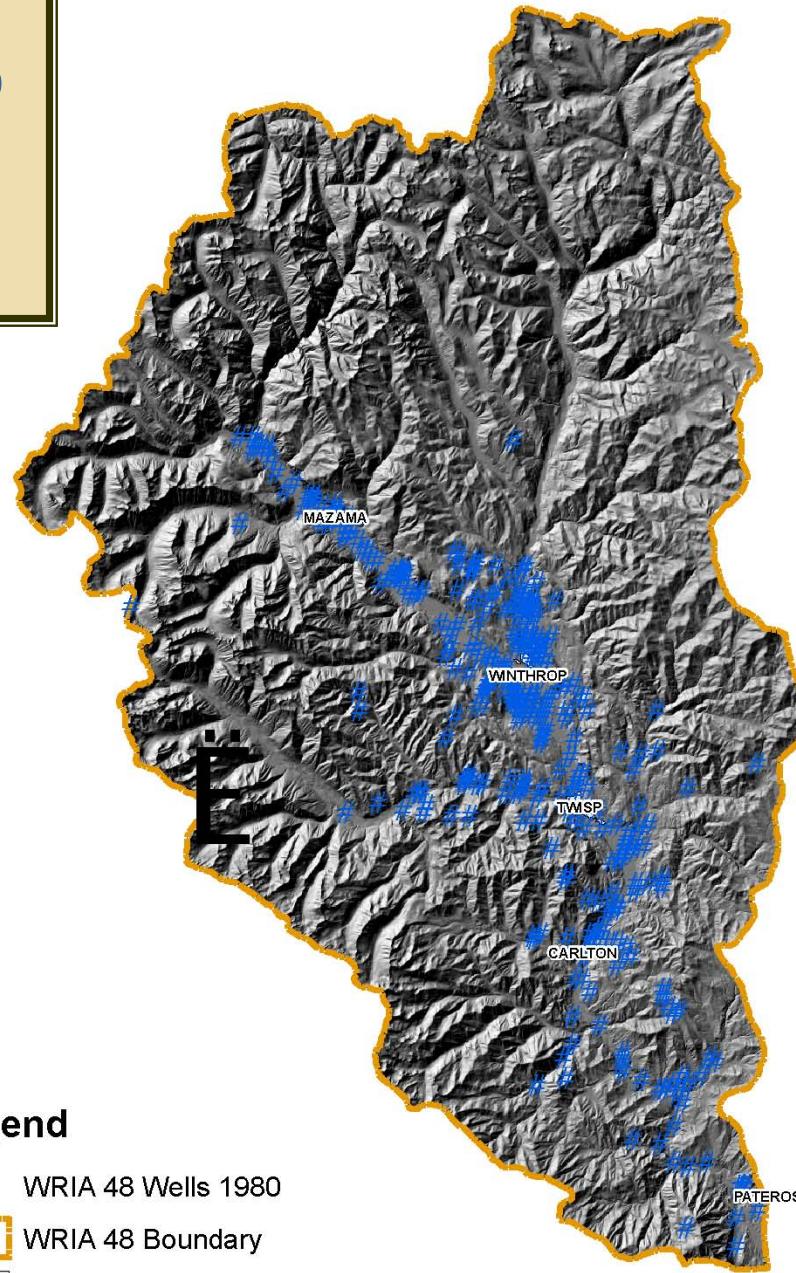
Exempt Wells

1970



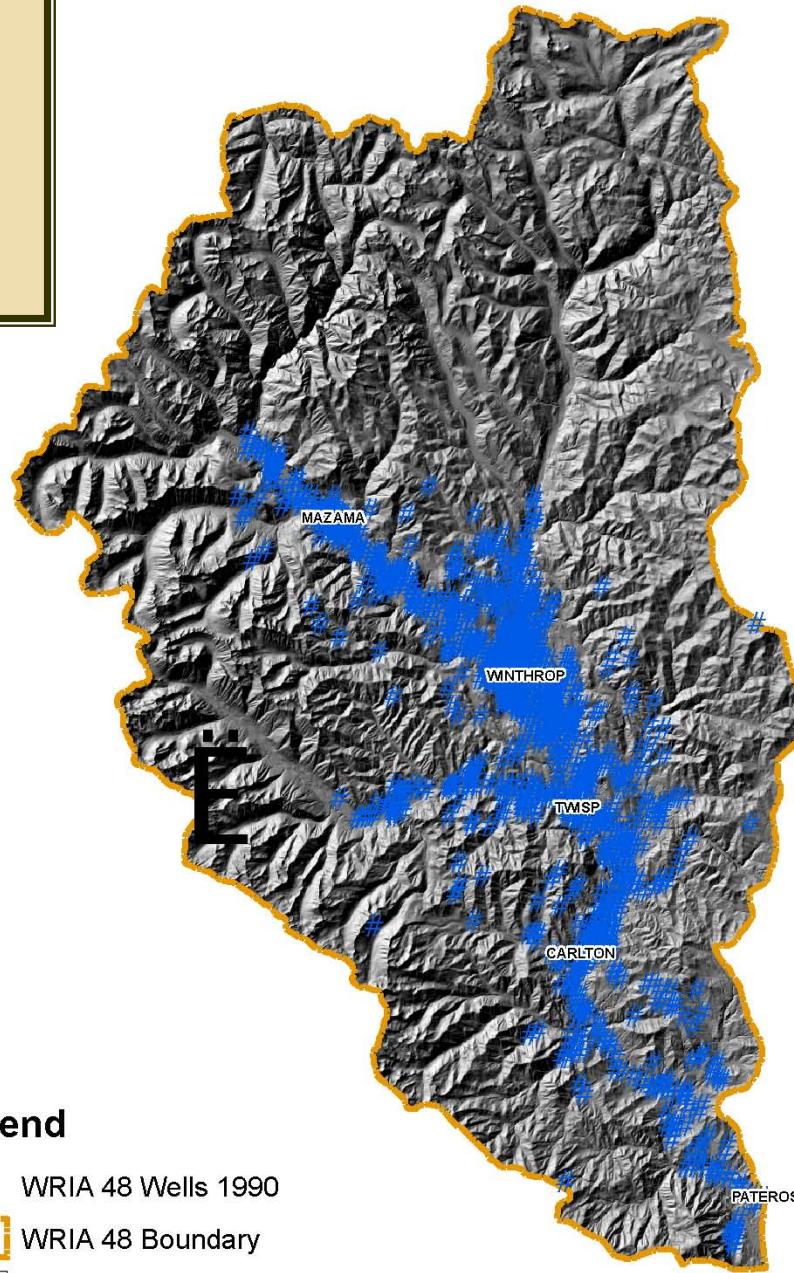
METHOW WATERSHED

Exempt Wells 1980



METHOW WATERSHED

Exempt Wells 1990



USE OF EXEMPT WELLS FOR MULTIPLE HOUSES

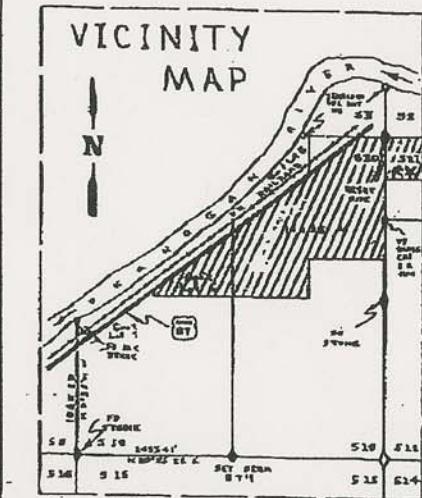
- Developers tried one exempt well for every lot
- In *Ecology v. Campbell & Gwinn*, the Washington Supreme Court ruled that statute allows only one exempt withdrawal per “project.”
- “Project” - Ecology looks at factors such as common ownership, common timing of development, common access roads, etc.
- No. of houses on a single exempt withdrawal depends upon anticipated demand.
 - Old “six pack” rule
 - In-house water only -- 200 gpd to 600 gpd
 - If outdoor water use included, demand goes up and the number of houses goes down

SINGLE WATER RIGHT for MULTIPLE PARCELS

- As property is subdivided, often all parcels are covered under a single water right certificate.
- Water right is usually divided on a pro rata basis among the new owners, unless specifically provided otherwise in the short plat documents or the property deeds
- To acquire a separate water right, Ecology established a process for Administrative Partition of Water Right.
 - All owners under the right must agree to the division. A form is filed with Ecology who then issues a separate water right certificate to each new owner.
 - This is an administrative process that does not involve an evaluation of the water right.

T 32 N R 25 E
SECTION 10

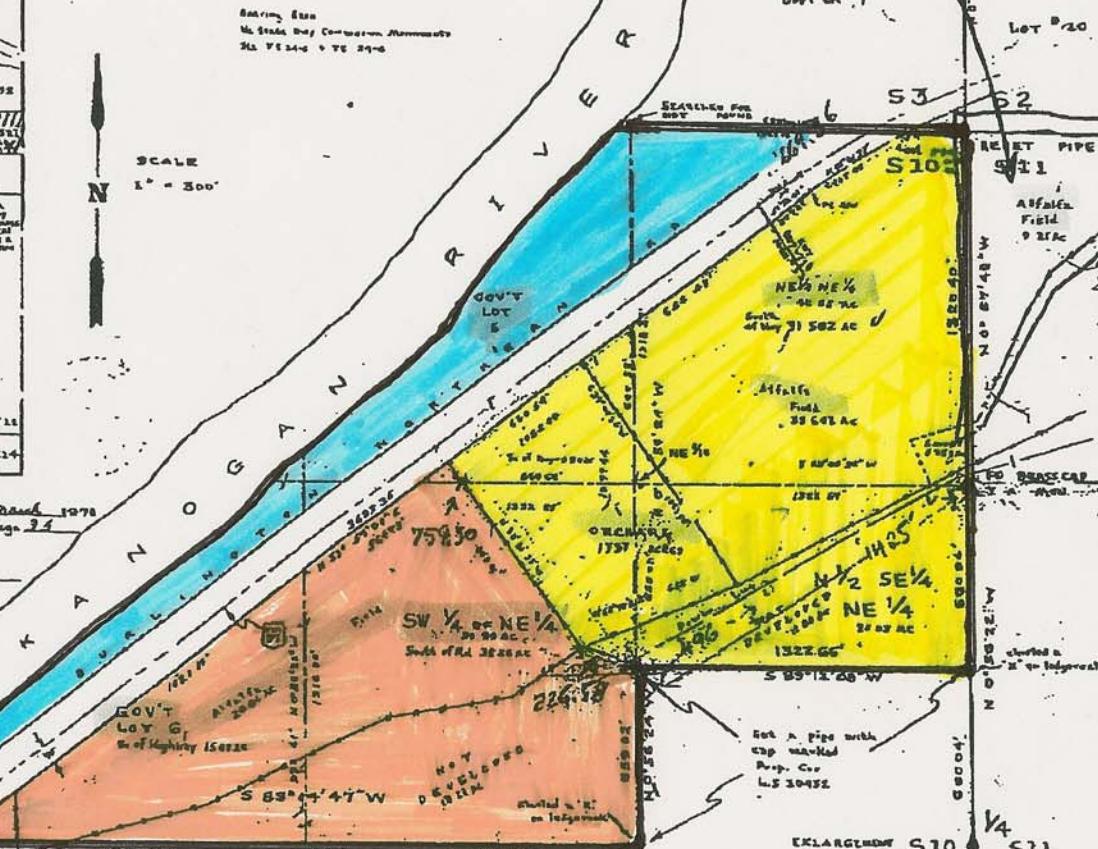
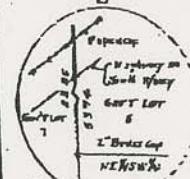
~~Twelve acres of land for irrigation outside Certificate legal Description~~



689265 AUDITOR'S CERTIFICATE
Filed for record this 21 day of March 1978
at the request of Herb Pauls
(and) James

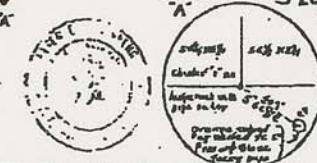
ABOVE OWNED
County Buildings
CPD 00000
Apple orchard 13.47
Alfalfa 13.45
Not developed 63.24
Corn 25
TOTAL 151.75

ENLARGEMENT B



SURVEYOR'S CERTIFICATE
This map correctly represents a survey
made by me or under my direction in
conformance with the Survey Recording
Act at the request of Herb Pauls

Peter E. Soechberg
PCP 2-422



FILE: 6247

METERING

- Measuring water use has been required for years. The Report of Referee in the adjudication of water rights from Beaver Creek, tributary to the Methow River, held in 1920-1921, directed as follows:

"Any person taking water from Beaver Creek and tributaries shall provide and maintain at his own expense proper diversion works and measuring devices as are required by statute, under Section 87 of Chapter 117, laws of 1917."

- Measuring is still required by statute. RCW 90.03.360 requires metering of the following:
 - Diversions for all new water rights
 - Diversions from waters in which the salmonid stock status is depressed or critical
 - Diversions of more than 1 cubic foot per second;
 - Ecology may require metering for all previously existing water rights.

METERING CAN WORK FOR YOU

- Water rights are a valuable asset-- in some places they are more valuable than the property itself.
- Metering provides information to quantify your water right if you want to apply to change your right.
- Metering provides information useful to you and a potential buyer if you want to sell your water right.
- Metering provides information for local water planning.
- Knowledge about your water right is empowering; metering is a key.



WHO'S ON FIRST?

Agencies and Water Regulation

- **Department of Ecology**
 - Water right permitting, including new water rights and changes
 - Water right regulation and enforcement
 - Review of Water System Plans submitted to Department of Health
- **County Water Conservancy Board**
 - Water right changes only
- **Department of Health**
 - Review and approve water system plans for group A and B public water systems.
 - Public water systems must show adequate water quantity for supplying water users on the system
- **County/City/Town**
 - **GMA** authority-- ensures public facilities, including domestic water systems, are in place and adequate when development is occupied.
 - **Subdivision approval**-- may not be granted unless written findings that potable water supplies are provided.
 - **Building permits**-- applicants must show evidence of adequate water supply for intended use of building unless potable water facilities are not needed.

METHOW WATERSHED COUNCIL

- **Methow Basin Instream Flow Rule, 1976, WAC 173-548**
 - Divides Methow Basin into 7 reaches
 - Sets minimum base flows per month
 - Reserves 2 cfs per reach for growth after 1976
 - Establishes closed basins
- **Watershed Planning Act, 1998, RCW 90.82**
 - Established Methow Basin Planning Unit
 - 'To provide local citizens with maximum possible input concerning their goals and objectives for water resource management and development.'
 - Focus on **Water Quantity**
 - Methow Watershed Plan approved by County Commissioners, June 2005

2005 METHOW WATER BUDGET

(acre-feet)

Sub-Basin	Municipal	Exempt	Agricultural	Forest	TOTAL
Chewuch	19	170	4,769	410,752	415,710
Lower Methow	102	275	26,125	386,490	412,992
Methow Headwaters	0	77	2,495	222,340	224,912
Middle Methow	19	176	9,571	29,714	39,480
Twisp	51	131	4,204	191,811	196,197
Upper Methow	19	126	8,303	107,681	116,129
TOTAL	210	955	55,467	1,348,788	1,405,420

METHOW WATERSHED COUNCIL

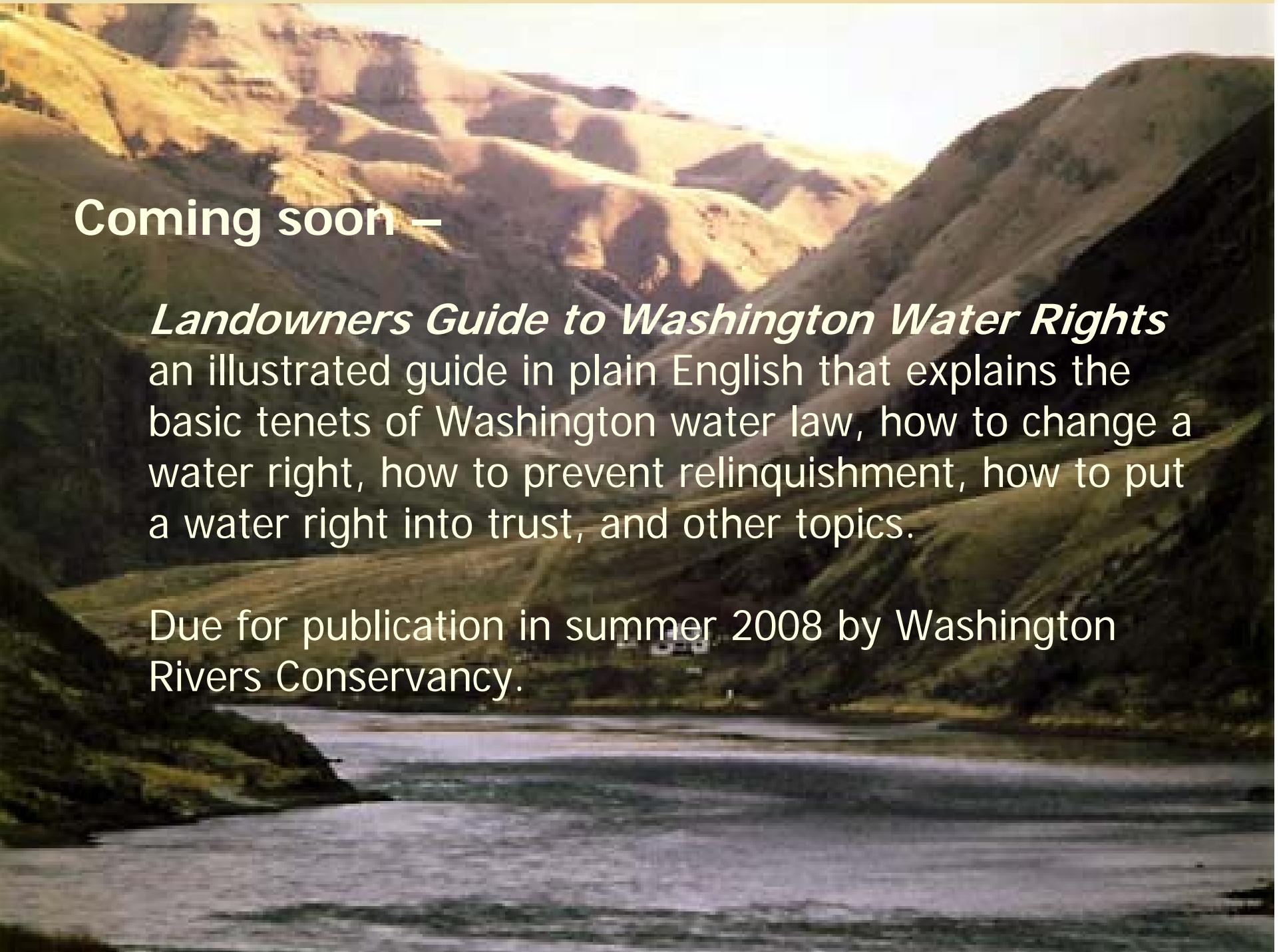
■ Plan Obligations

- Representative Council (eventually to become a publicly elected district)
- Annual Water Use Report to County
- Implement water storage, conservation, planning and efficiency projects to achieve best possible water management in the Methow Basin



METHOW WATERSHED COUNCIL

- **Members selected by initiating governments
(Town of Twisp, MVID, Okanogan County)**
 - Katharine Bill, Chair
 - Mike Fort, Vice-Chair
 - Greg Knott
 - Ray Campbell
 - Marty Williams
 - Vicky Welch
 - Tom Gehring (Town of Twisp)
 - Nate Wehmeyer (Okanogan County)
 - Tim Johnson (MVID)
- **Meet the third Thursday of each month, Twisp Town Hall, 6:00**



Coming soon –

Landowners Guide to Washington Water Rights
an illustrated guide in plain English that explains the
basic tenets of Washington water law, how to change a
water right, how to prevent relinquishment, how to put
a water right into trust, and other topics.

Due for publication in summer 2008 by Washington
Rivers Conservancy.

For additional information, call

Washington Rivers Conservancy

509-888-0970

Katharine Bill, Methow Watershed Council

509-341-4210

