



Municipal Water Law Policy 2030

Dave Christensen
Water Resources Program

Overview

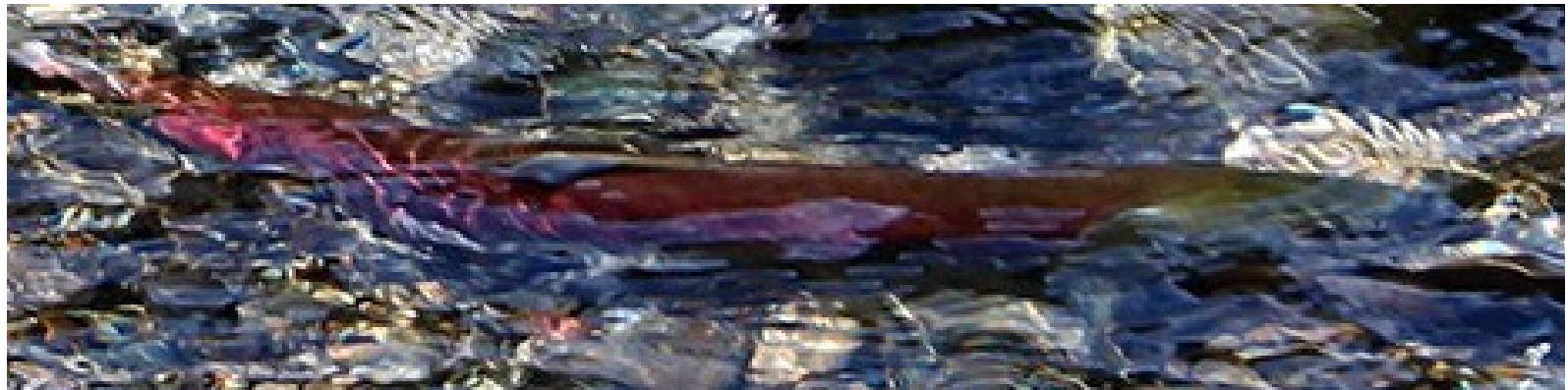
- Background
- Goals for policy update
- Initial policy positions
- Next steps

Municipal Water Law Background

- Passed in 2003 in response to the *Theodoratus v. Ecology* decision.
- Protects water right certificates issued to municipal water suppliers based on system capacity (pumps and pipes certificates) from diminishment.
- Allows flexibility for municipal water suppliers to serve new growth throughout their service areas.
- Requires service connection metering and conservation standards to be met.
- Two Supreme Court decisions on litigation related to the MWL (*Lummi* and *Cornelius* decisions).

Goals for Policy 2030 Update

- Consistency and transparency in Ecology decisions where no specific direction exists in current policy.
- POL 2030 describes current implementation approach of the MWL and is advisory only.
- Major issues we are discussing right now.
 - Active compliance.
 - Utility consolidation.
 - Transferring municipal water rights between utilities.
 - Use of municipal water rights for mitigation.
 - Other issues, such as use in Trust.

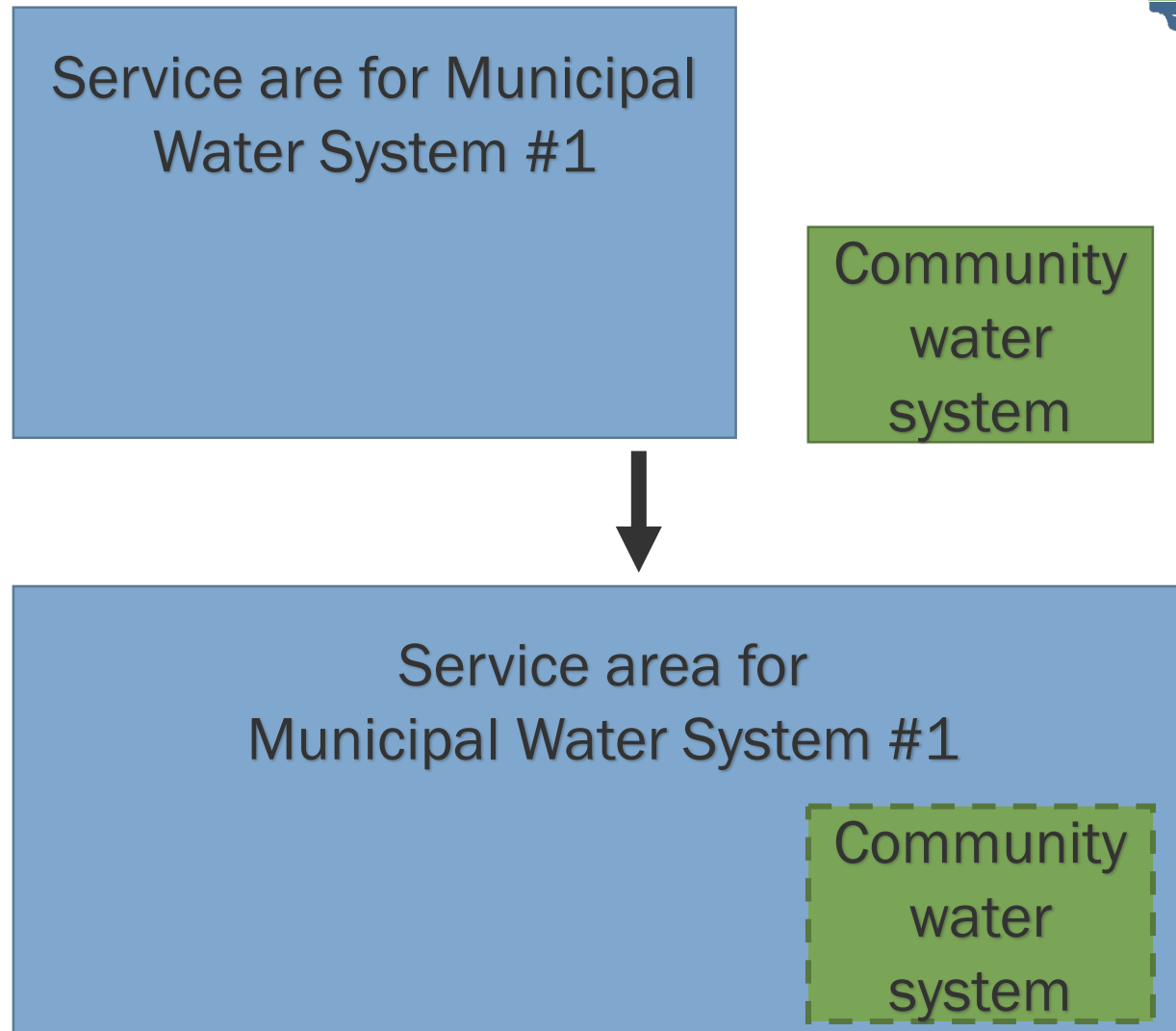


Active Compliance

- Water rights for municipal supply purposes are protected from relinquishment.
- Crown West appeals court decision called out Ecology's use of the term in POL 2030.
- Initial Position:
A water right qualifies for "municipal supply purposes" if it is:
 - a) Beneficially used consistent with RCW 90.03.015(4); or,
 - b) Identified in a DOH-approved Water System Plan.



Utility Consolidation



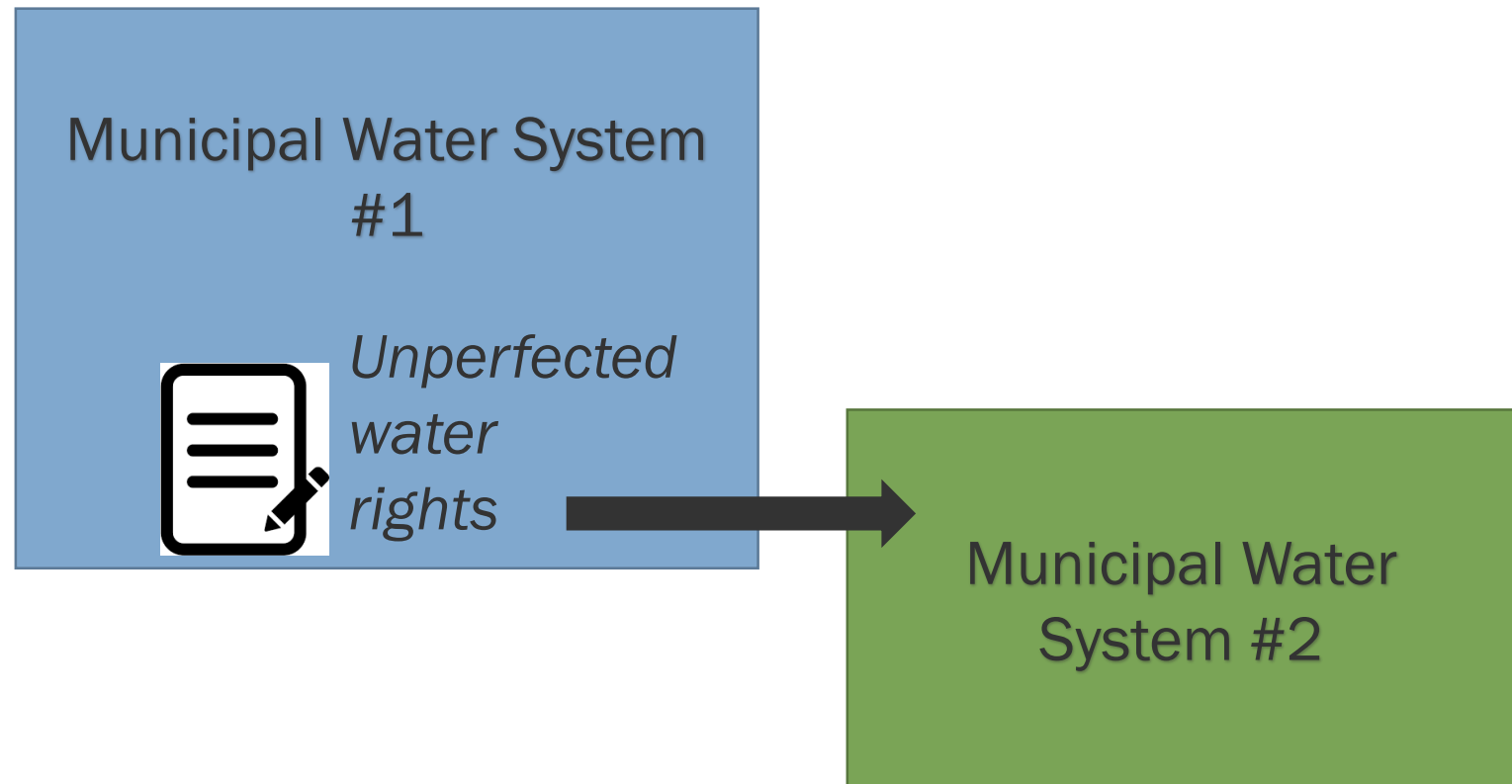
What happens to the community water system's
unperfected water right certificates?

Utility Consolidation: Initial Position

In a consolidation the unperfected quantities that are valid for change are based on the original intent of the water right.

- The original intent is the quantity necessary to supply the “community water system.”
- There must have been reasonable diligence by the “community water system” to grow into the inchoate quantities.
- If no change in point of withdrawal is needed, then Ecology does not evaluate the water rights.

Transferring Municipal Water Rights



Can unperfected water rights be transferred from one municipal system to another (sold) ?

Transferring Unperfected Water Rights

Initial Position: Only perfected quantities of a water right certificate are valid for change and transfer to be sold to another utility.

RCW [90.03.380](#)(1)
The right to the use of water which has been applied to a beneficial use in the state...



Using Municipal Water Rights for Mitigation

Under what conditions can municipal water right certificates be used for mitigation for a new water right permit?



Using Municipal Water Right Certificates for Mitigation: Initial Position

	Method of Mitigation		
		Active Mitigation	Passive Mitigation
Type of Water Right(s)	Perfected	May be allowed under 90.03.550 or by adding mitigation as a purpose of use	May be allowed by adding mitigation as a purpose of use
	Unperfected	May be allowed under 90.03.550	Not allowed (can only use highest perfected quantity)

Mitigation Using Municipal Water Rights

RCW 90.03.550 Beneficial uses of water under a municipal water supply purposes water right may include water withdrawn or diverted under such a right and used for:

- (1) Uses that benefit fish and wildlife, water quality, or other instream resources or related habitat values
- If a mitigation proposal can meet this standard then no additional “purpose of use” needs to be added.

POL 2030

Next Steps

- Gathering input on these and other major policy issues in summer into fall, including other issues (e.g., Trust).
- Anticipating draft policy update later this year (fall/winter).
- After public comment, then we will draft a final policy update in 2023.
- Significant differences in desired outcomes between interests.
- Goal is to find common ground to support policies that ensure water for communities and the environment.





Questions?

Dave Christensen

Program Development and
Operations Support Manager

dave.christensen@ecy.wa.gov

360-489-4227

(We will make this presentation
available on the WRAC webpage)