



DEPARTMENT OF  
**ECOLOGY**  
State of Washington

# Municipal Water Law Policy Update

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March 24, 2022

## Some background

- Water right certificates are relinquished (go back to the public) if they are not used for five years.
- Municipal water right certificates are protected from relinquishment since 1967.
- Up until 1997, Ecology issued water right certificates for municipal uses once the main withdrawal and distribution works had been constructed (based on system capacity) before all of the water was put to use.
- The Supreme Court's decision in *Theodoratus v. Ecology* implied that municipal water suppliers could not rely on system capacity to validate inchoate water rights.
- Led to uncertainty as to the status of municipal rights.



# Municipal Water Law (MWL)

Law passed  
in 2003

- Passed in 2003 in response to the *Theodoratus v. Ecology* decision.
- Protects water right certificates issued to municipal water suppliers.
- 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).



# Municipal Water Law Policy



- POL 2030.
- Describes current implementation approach of the MWL and is advisory only.
- Many issues have come up in which Ecology has made water right decisions that are not specifically addressed in the statute or POL 2030, for example:
  - Active compliance.
  - Utility consolidations.
  - Requests to transfer water rights between utilities.
  - Using Municipal Water Rights for mitigation purposes.
- Incorporate court decisions that establish case law.

## Active Compliance

- Crown West appeals court decision called out Ecology's definition in POL-2030.
- Has been a point of disagreement between Ecology and utilities.
- Key provision provides “safe harbor” for water rights listed in water system plans.

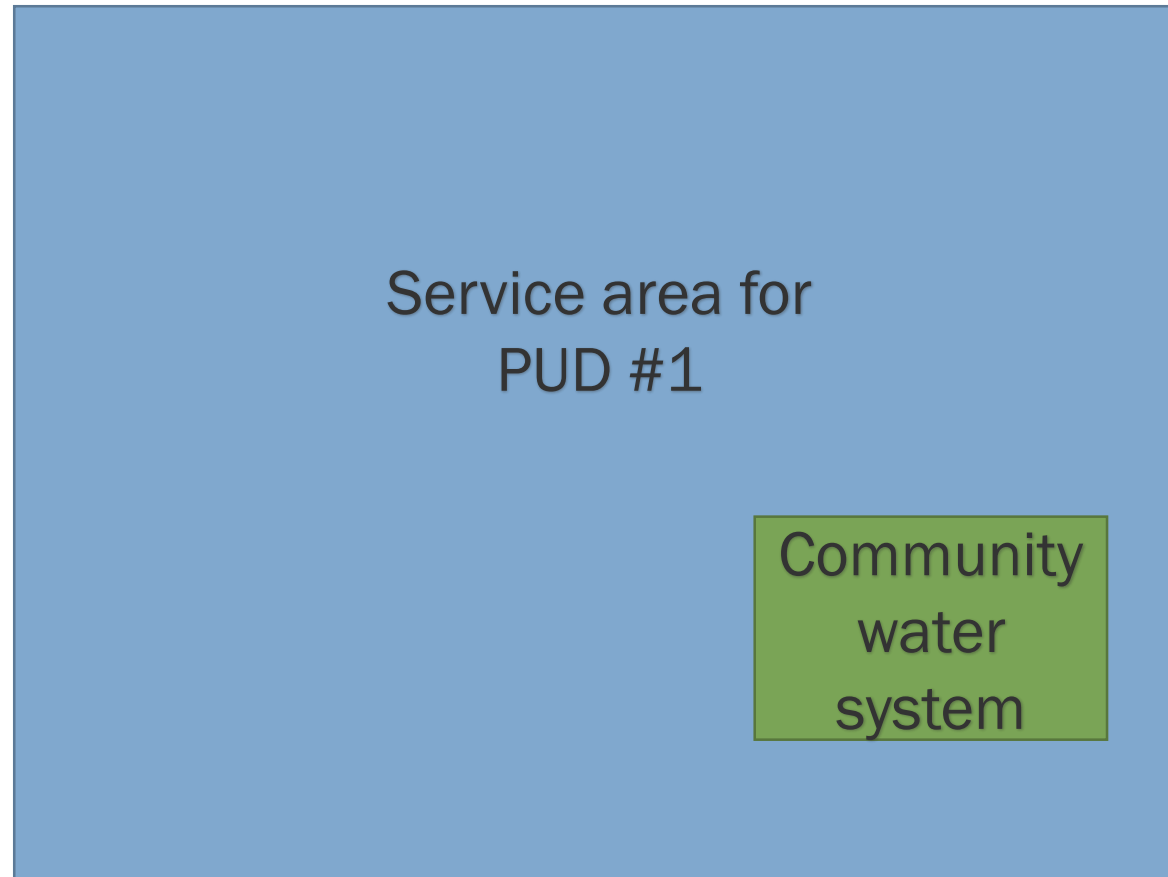


# Utility Consolidations

Service area for  
PUD #1

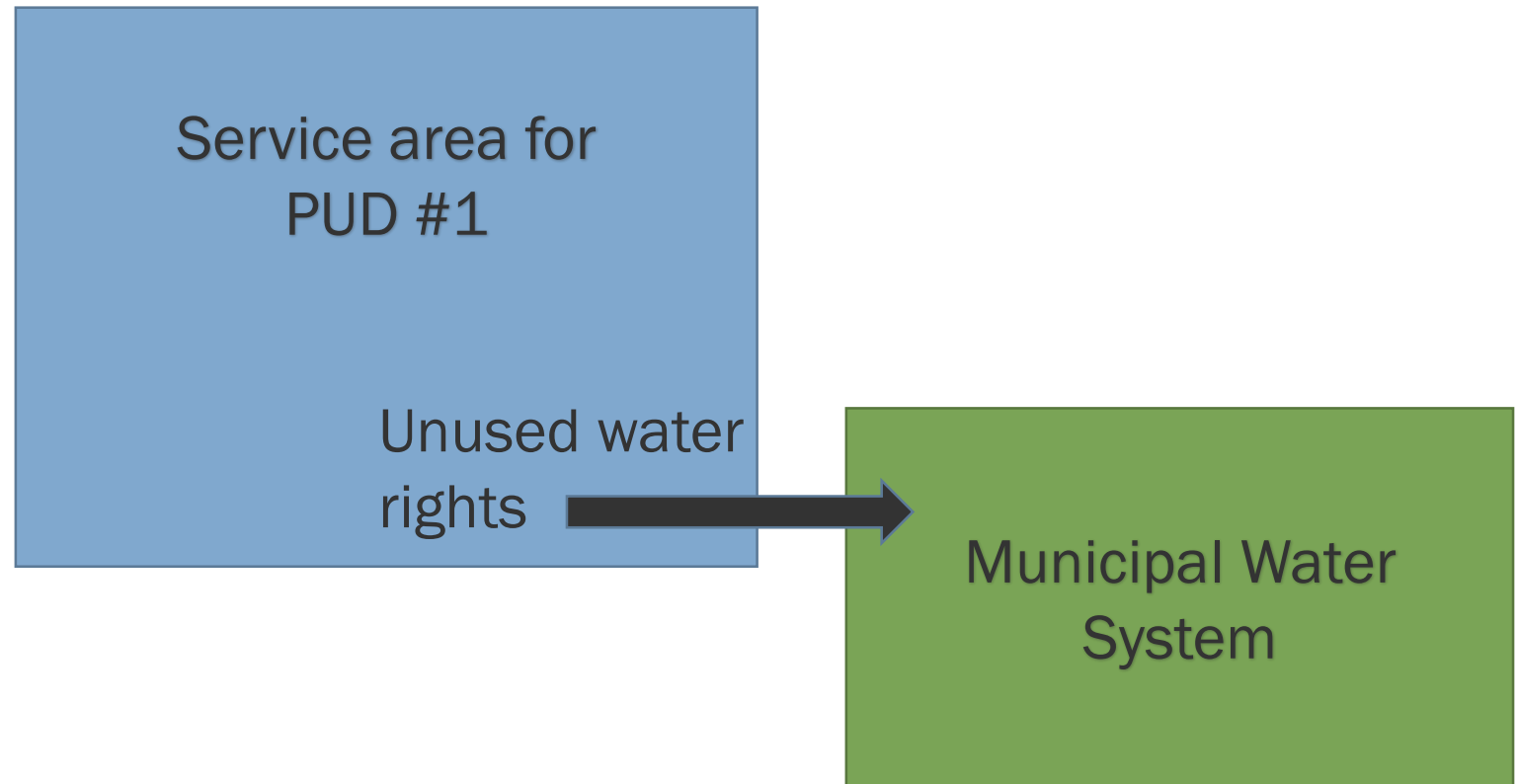
Community  
water  
system

## Utility Consolidations (2)



What happens to unused (inchoate) water rights that were owned by the community water system?

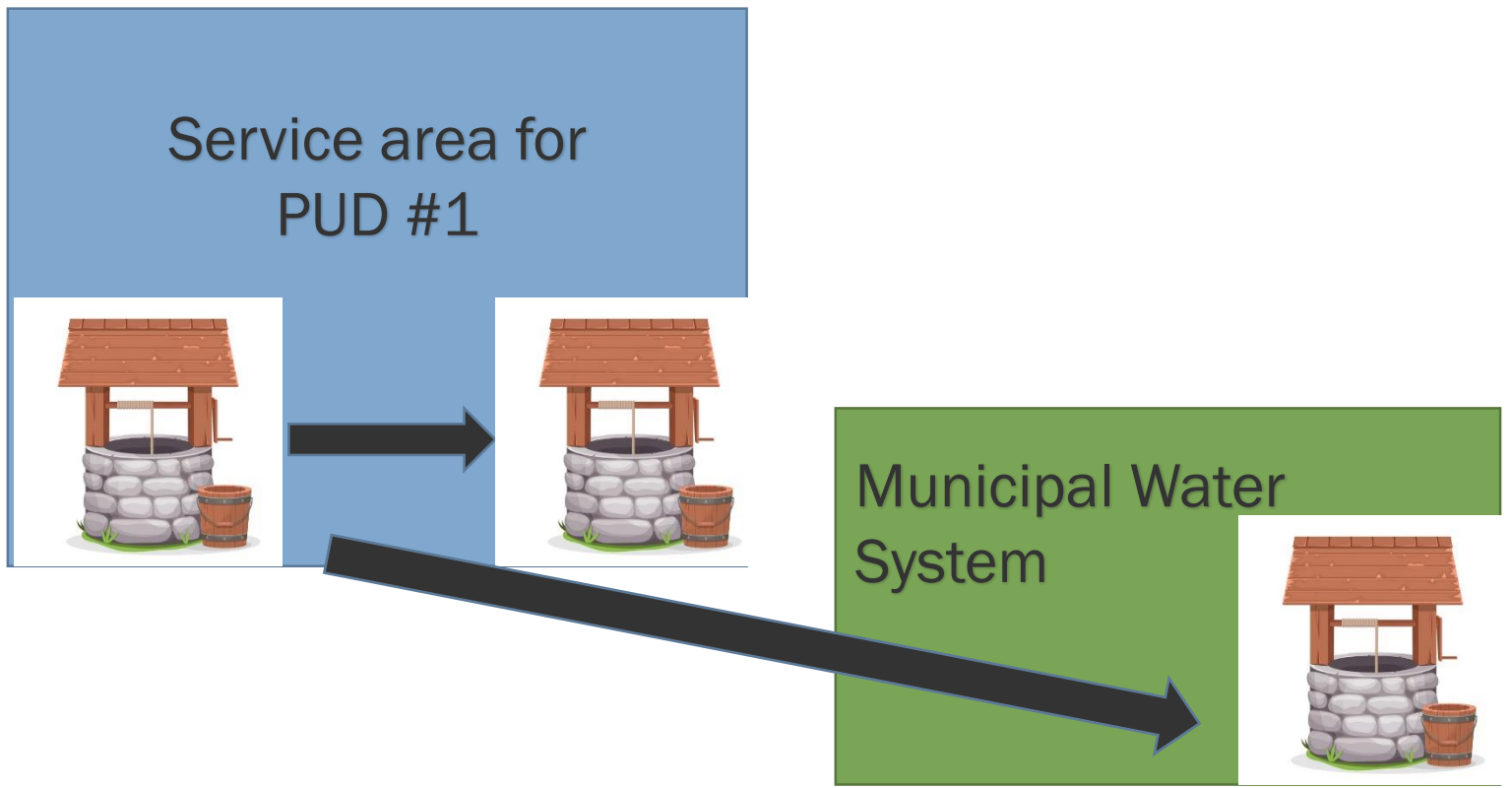
# Transferring Inchoate Water Rights



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



# Using Inchoate Water Rights for Mitigation



Under what conditions can municipal water rights be used for mitigation either within a utility service area or for another entity?

# MWL Policy Update Process

- Anticipate starting to get input on these and other major policy issues next month.
- Goal to have a draft policy update later this year (fall).
- Significant differences in desired outcomes between interests.
- Goal is to find common ground to support policies that ensure water for communities and the environment.







# Thank you

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