

# Municipal Water Law Policy Update

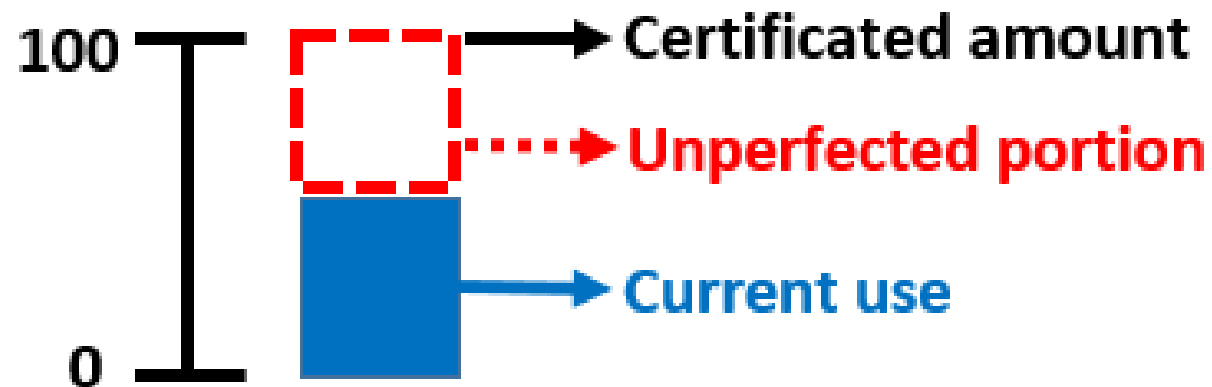
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Water Resources Program

# Introduction

- Since the Municipal Water Law (MWL) was passed there have been a number of court cases and decisions.
- Ecology's MWL policy (POL-2030) interprets the MWL.
- Ecology is updating our POL-2030 to improve transparency and consistency.
- As part of that process we want your input.
- We have identified some topics we want to discuss, but ***we hope to hear your feedback about other MWL-related topics as well.***

## 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.





## Background

- The Supreme Court's decision in *Theodoratus v. Ecology* implied that municipal water suppliers could not rely on system capacity to validate unperfected water rights.
- Led to uncertainty as to the status of municipal rights.



# Municipal Water Law (MWL)

- 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

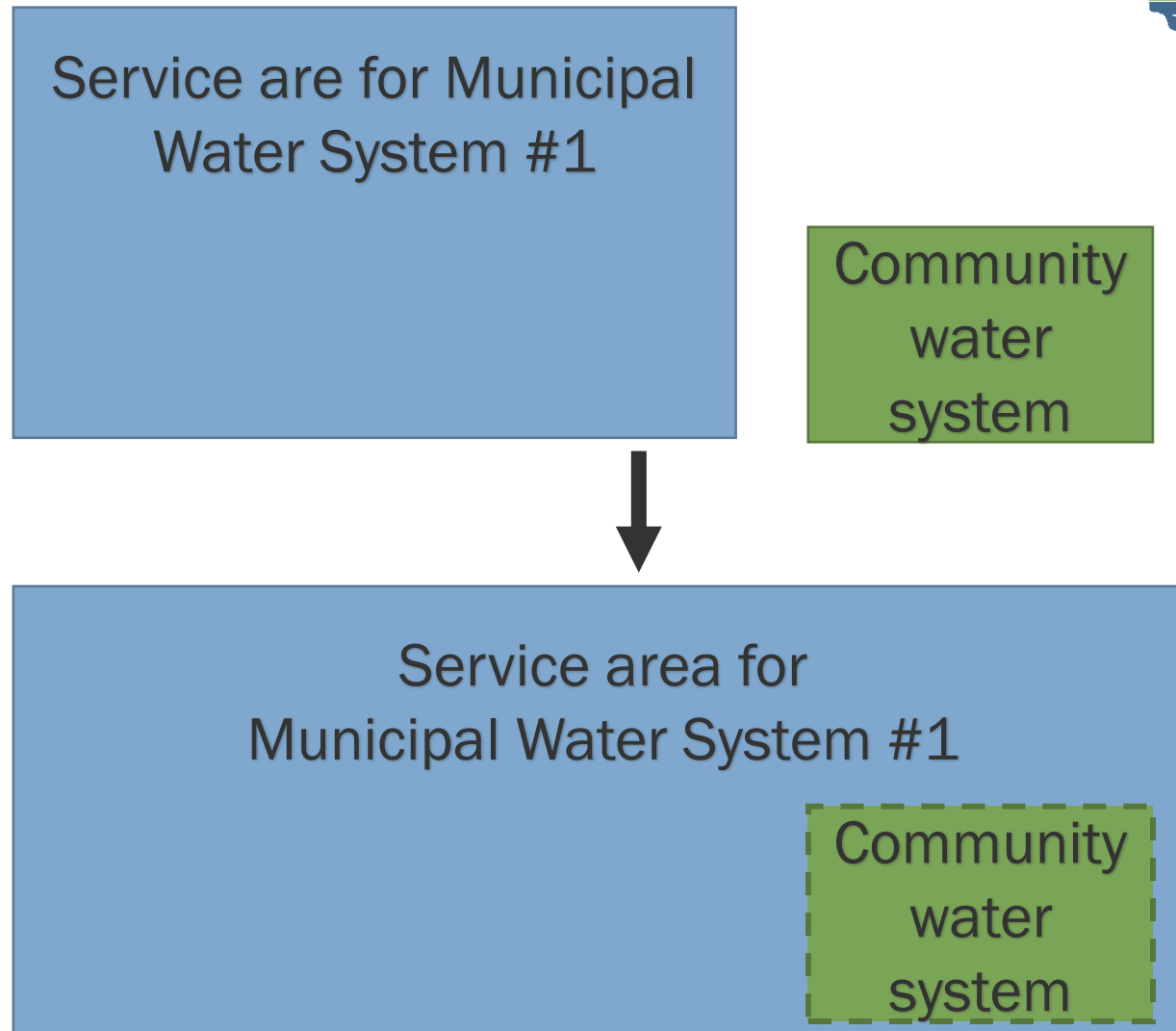
- POL-2030 describes current implementation approach of the MWL and is advisory only.
- Many issues have come up in which Ecology has made water right decisions that are not specifically addressed in the statute or POL-2030, for example:
  - Active compliance.
  - Utility consolidations.
  - Requests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



## Active Compliance

- Water rights for municipal supply purposes are protected from relinquishment.
- Crown West appeals court decision called out Ecology's definition in POL-2030.
- Has been a point of disagreement between Ecology and utilities.
- **Initial Position:** A water right qualifies for “municipal supply purposes” if it is:
  - a) Beneficially used consistent with RCW 90.03.015(4).
  - b) Identified in a DOH-approved Water System Plan.

# Utility Consolidation



What happens to unperfected water rights that were owned by the community water system?

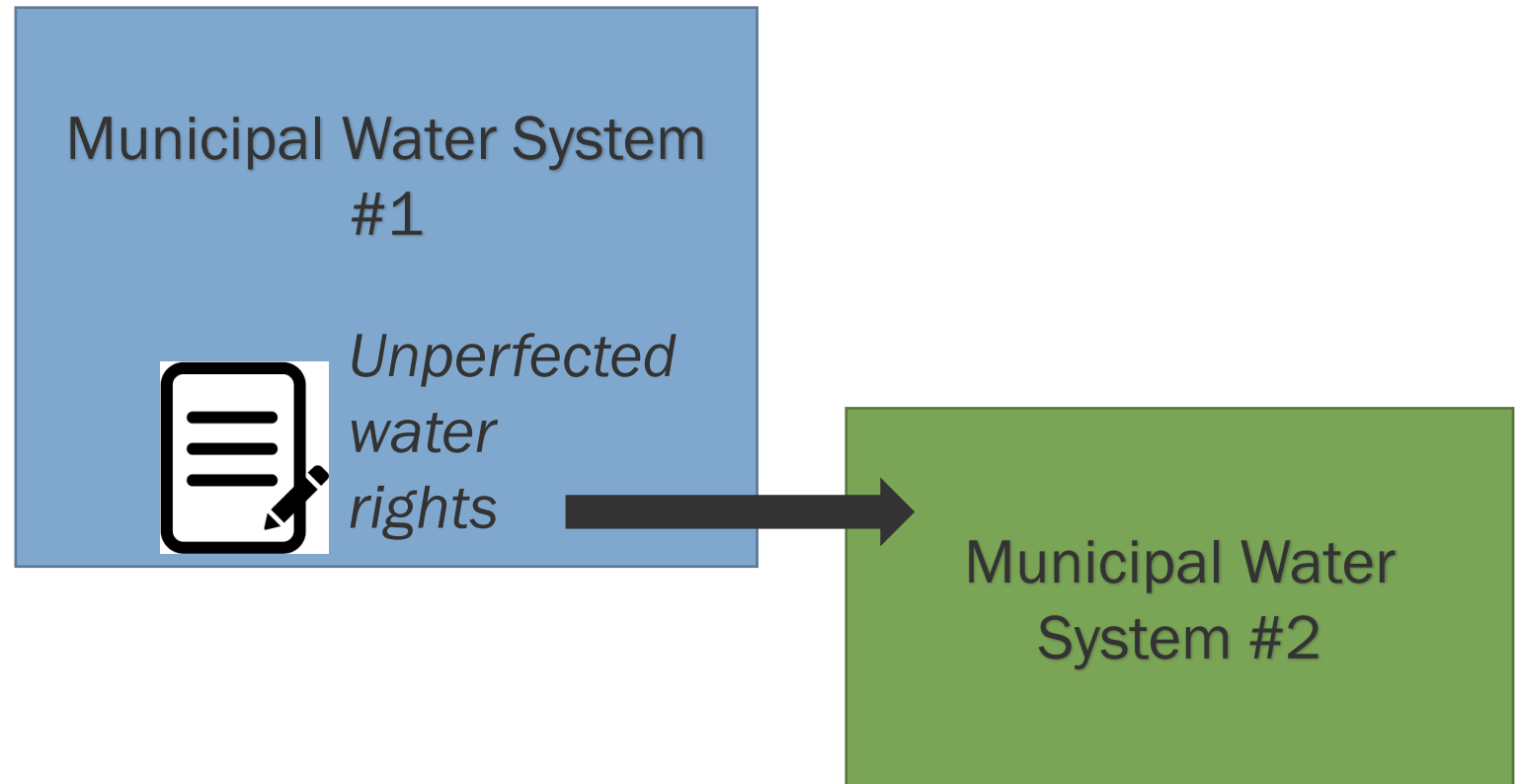


## Utility Consolidation

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

- In our example, the original intent is the quantity necessary to supply the “community water system”.
- The water right must qualify as being for “municipal supply purposes”.
- There must have been reasonable diligence by the “community water system” in our example to grow into the inchoate quantities.

# Transferring Unperfected Water Rights



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

## Transferring Unperfected Water Rights

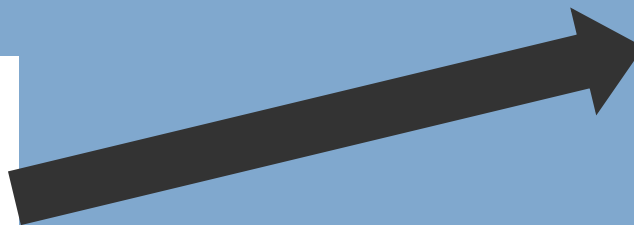
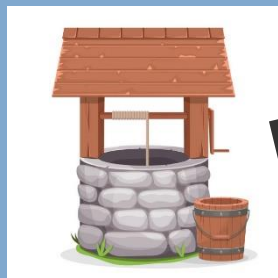
Initial Position: Only perfected quantities of a water right are valid for change and transfer to be sold to another utility.

Why?

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

# Using Unperfected Water Rights for “Self- Mitigation”

Service area for  
Municipal Water System #1



Under what conditions can municipal water rights be used for mitigation within a utility's own service area?

## Using Unperfected Water Rights for “Self- Mitigation”

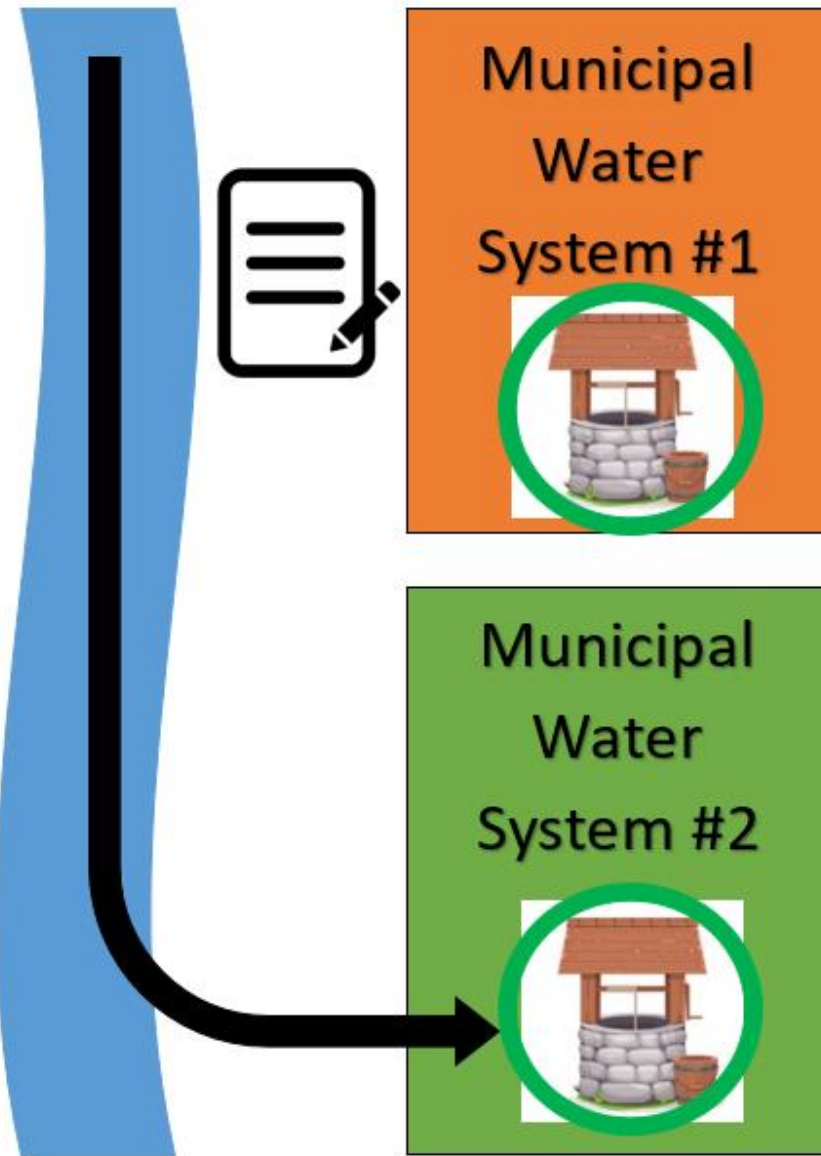
### Initial Position:

- When actively diverting/withdrawing water to augment streamflows (or groundwater) this is allowed under RCW 90.03.550 if they can show a benefit to instream resources.
- For “passive mitigation” (not diverting/withdrawing water to augment streamflows), mitigation must be added as a purpose of use and an ACQ analysis must be conducted under RCW 90.03.380.

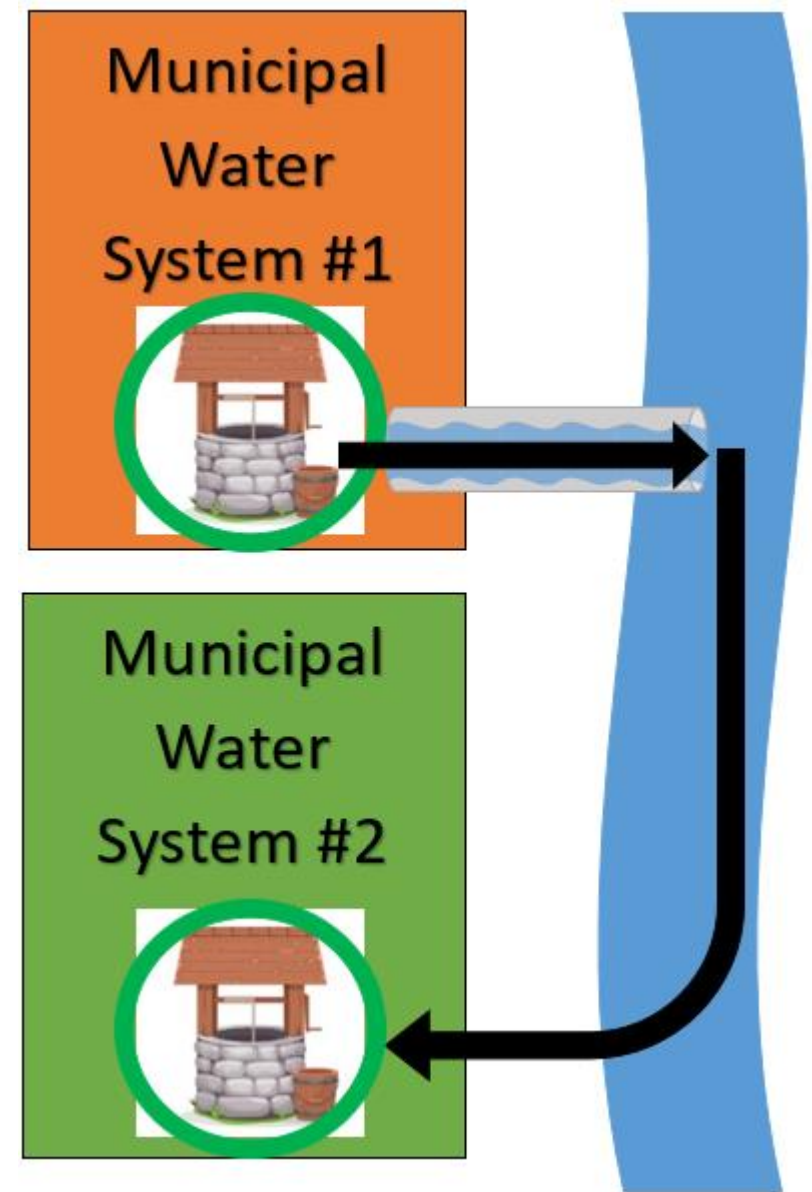


# Using Unperfected Water Rights to Mitigate for Other Entities:

## Passive & Active Mitigation



Passive  
Mitigation



Active  
Mitigation

# Using Unperfected Water Rights 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)

Under what conditions can municipal water rights be used for active and passive mitigation for another entity?

# Mitigation Using Municipal Water Rights

## Why?

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.





# Questions and Other Policy 2030 Topics



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# POL-2030 Next Steps

- Gathering input on these and other major policy issues in spring/summer.
- Anticipating draft policy update later this year (fall/winter).
- 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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