



MEMORANDUM

TO: Ed Fogels, Deputy Commissioner, ADNR
Brent Goodrum, Director, DMLW

From: David W. Schade, MPA, Water Resources Section Chief

Date: January 13, 2014

Subject: Reservations of Water – Status of Private Parties holding reservations

A handwritten signature in blue ink, appearing to read "David W. Schade".

Reservations of Water are managed under State Law, and therefore are far from uniform in their statutory and regulatory framework of water rights, including reservations. The following is a simplification of the different approaches to the reservations of water. It is a simple summary, not a full or legal analyses, of the reservation of water laws or process in the western states.

Alaska is, to my knowledge, the only State which provides for the holding of a “Certificate of Reservation” of water by private parties. Generally, “Reservations of Water” (also known as Instream Flow Reservations) are then managed by the water resources agency or a taskforce of state agencies established to manage water or riparian zones within that state. There are many differing permutation and combinations of water management systems, depending on the underlying statutory framework, as well as state climate, water use, history etc.

A number of states, such as Alaska, Arizona, Idaho, and Wyoming allow for non-governmental entities to apply for or promote reservations of water, as a water right, which is then adjudicated by the state agency (board) authorized to process water rights. Other states, such as California, Colorado, and Montana, give statutory authority to the State Fish and Game Agency and direct them to study and apply to the water management agency for reservations of water to be held for the public benefit. The state water resource agency then manages the water and considers these reservations as a valid water right. Washington State, has established by law that “when requested by the department of fish and wildlife to protect fish, game or other wildlife resources under the jurisdiction of the requesting state agency, . . . , establish such minimum flows or levels as are required to protect the resource” RCW 90.22.010. These are then considered as part of Washington States adjudication of competing water rights.

These laws and regulations for reservations of water are constantly in a state of change, and this is a brief overview which is current to the best of my information. Some aspects of each states process will change over time.