

**GUIDANCE FOR ASSISTING STAFF IN PROCESSING TRUST WATER RIGHTS**

Resource Contact: Trust Water Right Coordinator

Effective Date: XXXXXXXXX

Revised: NEW

References:	RCW 90.03.380	Chapter 90.14 RCW
	RCW 90.03.390	Chapter 90.38 RCW
	RCW 90.44.100	Chapter 90.42 RCW
	<u>POL-1020</u>	<u>PRO-1000</u>
	<u>PRO-1050</u>	<u>POL-1120</u>
	<u>GUID-1210</u>	<u>POL-1200</u>
	<u>Washington Water Acquisition Program Strategy</u>	
	<u>Trust Water Right Program Guidelines</u>	
	<u>Sinking Creek</u>	

**Purpose:** To provide guidance and ensure statewide consistency and efficiency to the Water Resources Program staff that work directly with the processing of trust water rights under Chapters 90.38 and 90.42 RCW.

**Application:** This guidance should be followed when Water Resources Program staff provides advice to the public or processes trust water right applications or applications for change or transfer of a water right that includes a trust water right proposal under Chapter 90.42 RCW. Chapter 90.38 RCW provides similar trust water right acquisition statutes for the Yakima Basin.

**This guidance supersedes any previous conflicting guidance regarding trust water right acquisitions and may be supplemented from time to time as the program gains additional experience in the acquisition and management of trust water rights.**

ABOUT THIS DOCUMENT: This document is intended for use by staff in electronic format and includes hyperlinks and cross-references.

This document presents guidance and procedures intended to assist staff and managers in the Water Resources Program, the Dept. of Fish and Wildlife and the Conservation Commission, conservation districts, and the not-for-profit organizations assisting Ecology with acquisition of water rights throughout the state. The document begins with common questions that often arise when trust water right transactions are negotiated or processed by Ecology. Two chapters offering general guidance pertaining to trust water agreements and managing trust water rights are then followed by procedures specific to each type of trust water transaction.

To use this guidance effectively, it is critical to properly identify the type of trust water transaction you are working with. Trust water transactions can be very complex, particularly when they are combined with other water right changes that are reviewed under different legal standards. If a transaction associated with a water right encompasses more than one transaction type and the acquisition or donation cannot be restructured to eliminate the overlap of transaction types, then the procedures for each transaction type should be reviewed and the most stringent standards and its associated procedure should be applied to the review. The most common form of this will be publicly funded water conservation projects that are exempt from RCW 90.03.380, combined with other changes to the same water right that are not exempt from RCW 90.03.380.

## **Chapter 1 – Frequently Asked Questions about Trust Water Rights**

**What is a trust water right?** A trust water right, as defined in RCW 90.42, is any water right acquired by the state for management in the state's trust water program. The definition in RCW 90.38 is slightly different. A trust water right in the Yakima River basin is the portion of a water right no longer required for beneficial use as a result of a water conservation project that improves an existing system. Any other water right acquired by the department for management in the Yakima River basin trust water right program is a trust water right. RCW 90.42.020(3) and RCW 90.38.010(3).

**What statutes govern trust water rights?** Primary authority is in Chapters 90.38 and 90.42 RCW. Related authorities are in RCW 90.38.380, RCW 90.03.390, and Chapter 90.66 RCW.

**Are trust water rights only for instream purposes?** No. Trust water rights can be for many purposes. See RCW 90.38.040(3) and RCW 90.42.040(1).

**Is Ecology required to change the purpose of use of a trust water right to instream flow?** Yes. Review of the change of purpose of use is performed under RCW 90.03.380 and RCW 90.03.390 in all but the following two trust water right transactions:

- a) Temporary or permanent donations for instream flow purposes (RCW 90.42.080(5));  
or,
- b) Trust water rights acquired by the state through funding conservation (RCW 90.42.040(7)).

**Are there water rights that cannot be placed into the trust water right program?** Some rights cannot be accepted into the trust water right program:

- 1 Ground water rights that cannot be related to specific stream reaches are not eligible (RCW 90.42.040(2)).
- 2 Temporary or permanent donations that do not benefit instream flow are also not eligible (RCW 90.42.080(1)(b)).
- 3 Family Farm Water Act permits and certificates, unless ONE OR MORE of the following conditions are met:
  - a) It is acquired under a lease agreement.
  - b) The place of use is within the boundaries of an urban growth area designated under Chapter 36.70A RCW.
  - c) The place of use is within areas designated for urban growth under Chapter 36.70 RCW if not planning under Chapter 36.70A RCW.
  - d) Water is made surplus through increased efficiencies in practices or technologies of water rights that existed on or before July 28, 1991.
  - e) The trust water right is retained and authorized for beneficial use within the same WRIA and/or the urban growth area.

**What kinds of water rights may be held by the trust water right program, but Ecology would normally not acquire using public funds?**

- 1 Water rights subject to interruption due to instream flow rule provisions will generally not be acquired through the expenditure of public funds or for mitigation purposes.
- 2 Water rights with either severe limitations or lack of seniority that would not sufficiently benefit fisheries.
- 3 Supplemental or stand-by rights, unless they are acquired in conjunction with the primary water right.

**How does relinquishment apply to trust water rights?** Trust water rights are exempted from relinquishment. RCW 90.42.040(6) and RCW 90.14.140(2)(h).

**What happens to the water right when the term of a temporary donation ends?** When a temporary donation ends or expires, the water right reverts to the donor in the same amounts as were accepted into the trust water right program. RCW 90.42.080(9) and RCW 90.38.040(7).

**Does placing a water right into the trust water program for instream flow purposes “restart” or “suspend” the 5-year relinquishment clock?** If a water right is accepted into the trust water program for instream flow purposes, that water right is then, in fact, used or exercised for the purposes stated on the trust water right. Once the acquisition agreement term ends and the water right removed from the trust water right program, the water right holder would receive the right with a “reset” 5-year clock. This may also be true of donated water rights; however, acceptance of a donated water right into the trust water program is not evidence of the validity or

quantity of the water right. Acceptance of the donated water right into trust in and of itself is not sufficient to determine whether the relinquishment clock would reset.

**What is the relinquishment “parking lot” and how does it work?** The “parking lot” operates by allowing a water right holder to donate all, or a portion of, a water right to the trust water right program for instream flow purposes without an extent and validity review under RCW 90.03.380 or RCW 90.03.390 prior to acceptance of the donation and changing the purpose of use to instream flow. RCW 90.42.080(1)(b),(4), (5), and (9). The trust water right, plus any portion of the right that would continue to be used, cannot exceed the amount of water used under the donated water right in the previous 5 years. Acceptance of a donated water right into the trust water right program’s “parking lot” does not require public notice of the donation and is not evidence of the validity or quantity of the water right. For the “parking lot” to operate as the legislature intended, no additional action by Ecology to review the application or to exercise the water right the water right should be taken.

**Is a trust water right application form required to accept a water right into the trust water right program?** Generally, yes. The Irrigation Efficiency Grants Program (IEGP) uses a consolidated application form that includes all the information requested on the trust water right application form. In the Yakima basin, short-term leases and donations for instream purposes should be requested on the trust water right application form. Short-term leases require that either the water right holder or Ecology must also petition the Superior Court and receive an Order Pendente Lite to change the purpose of use to instream flow. (Pre-Trial Orders #6 and #12 in Appendices I and J). If the acquisition in the Yakima basin is permanent, a Pre-Trial Order #17 Notice (Appendix K) are necessary. Also, Ecology must file a motion and then receive an Order Joining a Party (Appendices L and M) to received acknowledgement from the superior court that the change of water right to a trust water right held by Ecology has been completed.

**How is the place of use of a trust water right for instream flows described?** The place of use of an instream flow water right is defined within a primary reach and, if appropriate, a secondary reach. The primary reach is the portion of a water body that benefits from both the former consumptive use and return flow waters of a trust water right. It is the reach above the return flows to the stream or river. The secondary reach is the portion of a water body that benefits only from the former consumptive portion of a trust water right because it had received return flow waters while the water right was exercised. It is below where any return flows associated with water use under the right. RCW 90.42.020(2) and RCW 90.38.010(2).

**How are the instantaneous and annual quantities of an instream flow trust water right determined.** The full instantaneous and annual quantities under the water right or portion of the water right to be acquired may be asserted as a trust water right for instream flow purposes against other rights within the primary reach. In the secondary reach, only the consumptive quantities associated with the use of the water right may be asserted against other water right holders. In the Yakima basin, this must be done consistent with the schedule of historic use, unless storage is utilized to reschedule delivery of the water. In other basins, a schedule of historic use is recommended because it is not easily argued that the exercise of the trust water right on the same schedule as it was historically used would impair other water rights. RCW 90.38.040(4), Trust Water Program Guidelines, and GUID-1210

See the Trust Water Rights Program Guidelines for an example calculation of the primary and secondary reach quantities associated with acquisition of an irrigation right by the trust water right program for instream flow purposes.

**What is the meaning of the term “exercise the trust water right?”** Exercising a water right means putting the water to a beneficial use. For an out-of-stream use, exercising the right is obvious by the physical diversion of water from a stream and the associated application of water to a beneficial use such as irrigation of a crop. For an instream use, the water no longer diverted is used for incremental enhancement of instream and riparian habitat. Often, the best evidence of its beneficial use is the absence of use for the purposes historically made under the water right. If flow in a stream is low, one may also see evidence of the exercise of a trust water right when junior diversions are curtailed or regulated by the watermaster or stream patrolman in favor of the senior instream flow trust water right.

## **Chapter 2 -- Managing a trust water right.**

Ecology's ability to exercise and, if necessary, protect a trust water right is an important consideration when public funds are used to acquire a water right. Staff capability, agency priorities and available resources, and legal authority to regulate other water users are key determinants of our ability to protect a trust water right. These matters are of only limited concern if exercising the water right when adequate water is available for all users is the primary goal.

A trust water right(s) can be exercised in accordance with the trust water report of examination and or the agreement reached when the water right was accepted into the trust water rights program. If public funding is used in acquisition of the water right, the trust water right is to be used to satisfy a public purpose. Most often the public purpose is instream flow enhancement.

It is common for only a portion of a water right to be conveyed to the trust water rights program. In those instances, the trust water right is held or exercised by the state and any remaining portion of the water right held by the original right holder may be exercised by that right holder. To ensure that the acquired portion of the water right together with the portion that remains with the original holder is not enlarged to the detriment or injury of other junior water rights competing for the same stream or river, additional care must be taken when the trust water right is exercised.

Managing one or more trust water rights typically comprises the following tasks:

- A. Post-acquisition verification inspections
  - 1 Completion of the acquisition or conservation project should be confirmed prior to exercise of the trust water right. For projects other than those under the IEGP, Ecology staff should perform the verification inspection. Verification should include an assessment of compliance with conditions of the funding agreement.

- 2 Projects funded by the IEGP administered by the Conservation Commission are inspected and certified by an engineer as having been constructed as designed prior to complete distribution of funds. Their certification may suffice to confirm that the conditions and provisions and other specifications of the trust water transaction have been satisfied.
- 3 Compliance checks should be periodically conducted for the life of the trust water right acquisition.

B. Regulation of other water rights to protect a trust water right.

- 1 Regulation of another diversionary water right to protect a trust water right cannot be done unless prior public notice of the creation of the trust water right has been given. Public notice at the time of acquisition that included the authorized beneficial use(s) of the trust water right is sufficient.
- 2 Regulation of junior water rights by Ecology's watermaster can be performed if the junior water right(s) and the trust water right have been subjected to a superior court adjudication of water rights or are state-issued permits and certificates. (Sinking Creek).
- 3 Where the trust water right and junior water rights have not been adjudicated or are not state-issued permits or certificates, then an alternative means of seeking relief must be used. Ecology must file a claim with the local superior court seeking relief from the interference or impairment of the trust water right by the junior water right claim.
- 4 Where unauthorized water use or wasteful practices interfere with or impair the trust water right, Ecology has authority to regulate. (RCW 90.03.005 and RCW 90.03.400). The regional section manager and program enforcement staff should be consulted if it becomes apparent that a water right held in trust is being impaired by an unauthorized use or wasteful practices.
- 5 Trust water right for instream purposes are identified within a primary reach and/or within a secondary reach. The primary and secondary stream reaches are normally identified by river miles above the mouth of the stream.

These reaches are important attributes of the trust water right because it will affect how other water rights within the primary or secondary reaches may be regulated to protect the trust water right, if regulation is necessary. Within the primary reach or upstream of it, a junior water user that interferes with the maintenance of the instantaneous rate of the water right may be regulated in favor of the trust water right. In the secondary reach or upstream of it, a junior user that interferes with maintenance of the consumptive quantity outlined in the schedule in the trust water right may be regulated in favor of the trust water right.

- C. Claims of impairment made against exercising a trust water right.
- 1 Claims of impairment against a trust water right may be made by other water right holders when the trust water right is exercised. See RCW 90.42.040(4), RCW 90.42.080(4), and RCW 90.42.080(8).
  - 2 Claims of impairment of other water rights by the trust water right must be investigated.
  - 3 If it is determined that the authorized beneficial use of a trust water right has impaired another water right that existed at the time of first exercising the trust right, the authorization to exercise the trust water right must be modified or terminated to eliminate the impairment, RCW 90.42.040(4).
  - 4 If necessary to resolve impairment to an existing water right, modification of the trust water right are processed consistent with Chapter 10

### Chapter 3 – Trust Water Agreements and Trust Water Right Applications

A trust water right is created when a water right is conveyed by purchase, lease, gift, or donation together with state's acceptance of the purchased, leased, gifted, or donated water right into the trust water right program. In some cases, a single process can be used to meet both requirements. In other cases, the two requirements are satisfied through two sequential steps. The water right is conveyed to the trust water right program through an agreement and an associated trust water right application, followed by acceptance of the water right by the state.

- a) An agreement may be documented in a letter of instruction, contract, or other instrument.
- b) A completed trust water application signed and submitted by the right holder.
- c) In the case of a donation or gift of a water right, a letter of acceptance indicates the state's acceptance of the water right into the trust water right program, subject to the terms in the letter of instruction. The trust water application may serve as the letter of instruction or agreement if the reasonable conditions are limited to the term of a donation.
- d) A trust water right report of examination documents change of purpose of use of the water right and the conditions placed upon the trust water right.
- e) In the Yakima basin, an Order Pendente Lite documents approval of the change of purpose of use and conditions of the short-term or temporary trust water right.

Prior to the close of negotiations with the right holder, the conditions of use, including the instantaneous quantities that can be exercised in trust and a schedule for the use of the water right, the potential for impairment of other rights, and any other conditions that must be imposed upon the water right holder should be identified.

If the prospective trust water right would result from an acquisition, rather than a donation, careful consideration should be given to how the trust water right will be managed to benefit the citizens of the state. Particular issues of concern relate to the legal and administrative ability of the state to exercise the trust water right during periods of low flow, when exercising the right

may require regulation of junior users by the watermaster or stream patrolman. See Chapter 2, section B.

Trust water agreements should describe the intent and conditions under which a water right is available to the trust water right program. Trust water agreements will generally take one of three forms:

- 1 The application can be used as a trust water right agreement if the right is donated for instream flow purposes and the conditions are limited to the term of the donation.
- 2 The agreement may be in the form of a letter identifying reasonable conditions that the donor of the right may place upon the donation or gift.
- 3 The agreement may be in the form of a contract, grant or loan agreement, or other instrument.

A completed trust water application should accompany or be match with and agreement:

- 1 The Application to Enter a Water Right into the Trust Water Right Program form is used for all trust water right acquisition except for trust water acquisitions through the state IEGP.
- 2 The trust water application form is to be completed even if the acquisition is associated with an application to change the remaining portion of water right that will continue to be exercised by the right holder.
- 3 The completed trust water application form is used for initial data entry of the trust water right acquisition.

Appendix 1 contains specific instructions for reviewing an application for trust water right to ensure completeness.

Trust water right applications associated with leases and purchases are generally related to state and/or federal grants or loans that have associated deadlines. To the extent possible, trust water applications should be processed as a matter of high priority for the Water Resources Program.

#### **Chapter 4 -- Acquisition resulting from a publicly funded water conservation project**

General processing of a water conservation project is as follows:

- 1 Application
  - a) Within the Irrigation Efficiency Grant Program, the Consolidated Application Form is prepared by local conservation districts, with assistance from Ecology if requested.
  - b) The conservation district uses the form jointly developed by Ecology and the Washington Conservation Commission.
  - c) If the project is not accomplished through the Irrigation Efficiency Grant Program, the Application to Enter a Water right into the Trust Water Right Program is used.

- 2 Trust water right acquisition through water conservation projects are not subject to 90.03.380 RCW (RCW 90.42.040(7)); (RCW 90.38.040(6)). The water conservation project is processed through Chapter 90.38 (Yakima Basin) and/or Chapter 90.42 RCW (statewide).
- 3 Only water rights existing prior to July 28, 1991 may be acquired through water conservation projects outside the Yakima Basin (RCW 90.42.020(5)).
- 4 Water acquired into trust is typically net water savings created by the water conservation project.
- 5 Public notice is required at the time of acquisition.
  - a) The applicant is responsible for publishing the public notice, except Ecology has agreed to publish public notices related to the Irrigation Efficiency Grant Program jointly administered with the Conservation Commission.
  - b) The department is responsible for sending notice to:
    - (1) Potentially affected local governments;
    - (2) Appropriate state agencies;
    - (3) Federally recognized tribal governments within the area, and;
    - (4) Other interested parties.
- 6 Affidavits of publication regarding trust water rights must receive priority for review consistent with the priority given the trust water transaction.
- 7 Public notice should include the quantity of water, expressed in acre-feet per year, but is not mandatory for trust water right transactions that may be:
  - (1) Initiated during the engineering phase of conservation or irrigation efficiency projects, or;
  - (2) Subject to continuing negotiations or investigation.
    - The need to take timely action on these trust water proposals, consistent with funding and construction deadlines requires that public notice be made at the earliest possible date. Due to the potential complexities in parallel planning, design and funding processes it difficult to know the actual quantity of water that may be ultimately placed into trust at the appropriate time for public notice.
- 8 Use the Appendix G -- Trust water right report form (Appendix G) to document the evaluation of the water conservation project and the associated water right to be considered for acceptance into the trust water rights program.
- 9 Evaluation Considerations:

- a) Extent and Validity
    - (1) The state may require evidence of a valid water right (RCW 90.42.050). In practice, no project should be funded that isn't legally authorized by a valid water right.
  - b) Quantification of the right that could be exercised while in trust
    - (1) Use the Trust Water Rights Program Guidelines developed under RCW 90.42.050 and GUID-1210 to determine the net water savings.
      - The water accepted into trust must represent "net water savings" from the conservation project.
  - c) Impairment
    - (1) An impairment analysis is required. (RCW 90.42.040(4)); (RCW 90.38.040(5)(a))
    - (2) If impairment becomes apparent while the trust water right is being exercised, the use of the right is ceased or modified to avoid the impairment. (RCW 90.42.040(4)); (RCW 90.38.020(4))
  - d) Public Interest Considerations
    - (1) Acquisitions through water conservation projects shall not be detrimental to the public interest. (RCW 90.42.040(4) )
- 10** Documentation of permanent trust water rights
- a) Record a Water Right Conveyance and Assignment (Quit Claim) or Statutory Warranty Deed at the appropriate County Auditor's Office as evidence of conveyance of the water right from the donor to the state. (Appendix N). If the right is under the jurisdiction of the Yakima River Adjudication, a Motion to Join Ecology to the Court Claim is required.
  - b) Issue a superseding certificate to document the permanent trust water right acquisition (RCW 90.42.040(2)); (RCW 90.38.040(1)).
  - c) Issue a superseding water right document to the right holder reflecting any portion of the water right not acquired by the state.
    - (1) For certificated water rights: Issue a superseding certificate(s);
    - (2) For rights documented by a water right claim or certificate of change: Issue a document using the Appendix H -- Template for Certificate of Trust Water Right Acquisition .
  - d) The certificate(s) are then recorded with the county auditor in accordance with RCW 90.03.330 and PRO-1000.
    - (1) The trust water right certificate is recorded at state expense;
    - (2) Any certificate issued to document the portion of a water right remaining with the private right holder is recorded at the right holder's expense.
  - e) Certificate(s) should be:
    - (1) Recorded in the appropriate water right file;
    - (2) Used to update the Water Right Tracking System (WRTS);
- 11** The seller may have a tax liability. Permanent acquisition of water rights in exchange for some consideration, whether monetary or otherwise, should be processed in accordance with PRO-1050, PROCEDURE FOR NOTIFICATION OF WATER RIGHT ACTIONS TO THE DEPARTMENT OF REVENUE

**12 Documentation of a temporary trust water right:**

- a) For water rights subject to the Yakima River adjudication, file the Order Pendente Lite approving the trust water transfer and enter the relevant data into WRIS and the trust water database.
  - All pertinent information regarding the acquisition of the water right;
  - Any authorized beneficial water use while the right is in trust, and;
  - The date or conditions under which the trust period will expire.
- b) For rights not subject to the Yakima river adjudication, an order or other instrument may be issued to document the short-term lease trust water right acquisition (RCW 90.42.040(2));
  - (1) An order is issued accompanied by a Appendix G -- Trust water right report form describing:
    - All pertinent information regarding the acquisition of the water right;
    - Any authorized beneficial water use while the right is in trust, and;
    - The date or conditions under which the trust period will expire.
  - (2) The order is added to the existing record of the water right.

**Chapter 5 -- Acquisition by Short term lease (five years or less)**

If a short-term lease is of a surface water right within the Yakima River basin, the trust water acceptance/approval process must include an Order Pendente Lite pursuant to Pre-Trial Order No. 12 of the Yakima Superior Court (Appendix I).

The general processing of a short term lease trust water right acquisition is as follows:

- 1 A short term trust water acquisition is proposed using the Application to Enter a Water Right into the Trust Water Right Program,
- 2 Short term leases are subject to RCW 90.03.380
- 3 Public notice
  - a) Must be consistent with RCW 90.03.280
  - b) Required prior to exercising the trust water right, but is encouraged at the time of acquisition.
  - c) Applicant is responsible for the cost of publication made under RCW 90.03.280.
  - d) Should be prepared at the time of acquisition, but is not required prior to exercising any leases that do not exceed five years (RCW90.42.040(8))
    - (1) In all instances when such notice is required, the department is responsible for sending notice to:
      - Potentially affected local governments;
      - Appropriate state agencies;

- Federally recognized tribal governments within the area, and;
  - Other interested parties.
- b) Affidavits of publication regarding the trust water rights should receive priority for review consistent with the priority given the trust water transaction.
- 5 Evaluation Considerations:
- a) Extent and Validity:
- (1) An extent and validity evaluation must be made, except as provided in Section 6.a.(2).
  - (2) If the purpose of the acquisition is to assist in achieving established instream flows, and the acquisition is for a portion of a water right, then an extent and validity evaluation is not performed on the portion of the right remaining with the water right holder. (RCW 90.42.040(9));
  - (3) POL-1200, EVALUATION OF CHANGES AND TRANSFERS TO WATER RIGHTS, applies to trust water right acquisitions that are subject to 90.03.380 RCW.
- b) Quantification of the right that could be exercised while in trust
- (1) When a water right is acquired on a temporary basis, the full water quantity diverted or withdrawn to exercise the right shall be placed into trust. (RCW 90.42.080(9)); (RCW 90.38.020(7))
  - (2) The water right available to be exercised in trust for instream flow purposes is limited to the greatest water quantity that has been exercised during the last five years prior to the acquisition, less any amount of water that will continue to be used by the right holder. (RCW 90.42.080(8)); (RCW 90.38.020(6))
  - (3) The water right may be exercised is to the full extent of the right.
    - The short-term lease is subject to RCW 90.03.380, RCW 90.03.390 or RCW 90.44.100.
- c) Impairment
- (1) For short-term lease acquisitions for instream flow purposes except within the Yakima Basin, no impairment analysis is required. (RCW 90.42.040(8))
  - (2) For acquisitions for instream flow purposes within the Yakima Basin, an impairment analysis must be made. Further, no water right may be “injured in any manner whatever” by the authorization. (RCW 90.38.040(5)(a)).
  - (3) If impairment is alleged while the trust water right is being exercised, the use of the right is ceased or modified to avoid the impairment. (RCW 90.42.080(8)); (RCW 90.38.020(6))
  - (4) Purposes other than instream flow purposes:
    - No impairment of existing water rights may be authorized.
    - If impairment becomes apparent while the trust water right is being exercised, the use of the right is ceased or modified to avoid the impairment. (RCW 90.42.040(4)); (RCW 90.38.020(4))
- d) Public Interest Considerations
- (1) Short term leases for instream flow purposes are not subject to public interest considerations. (RCW 90.42.040(8))

- (2) Short-term leases for non-instream flow purposes must not impair the public interest (RCW 90.42.040(4)).
  - (3) RCW 90.44.100 requires consideration of the public interest if the lease is of a groundwater right.
- 6 Documentation of short-term lease trust water rights
- a) For water rights subject to the Yakima River adjudication, file the Order Pendente Lite approving the trust water transfer and enter the relevant data into WRTS and the trust water database.
    - All pertinent information regarding the acquisition of the water right;
    - Any authorized beneficial water use while the right is in trust, and;
    - The date or conditions under which the trust period will expire.
  - b) For rights not subject to the Yakima river adjudication, an order or other instrument may be issued to document the trust water right acquisition (RCW 90.42.040(2));
- (3) Issue an order accompanied by a **Appendix G -- Trust** water right report form(Appendix G) describing:
    - All pertinent information regarding the acquisition of the water right;
    - Any authorized beneficial water use while the right is in trust, and;
    - The date or conditions under which the trust period will expire.
  - (4) The order is added to the existing record of the water right.

#### **Chapter 6 -- Acquisition by Long Term Lease (greater than five years)**

The processing of a longer term lease into trust is as follows:

- 1 The Application to Enter a Water Right into the Trust Water Right Program is used.
- 2 Public notice:
  - a) Must be consistent with RCW 90.03.280.
  - b) Applicant is responsible for the cost of publication made under RCW 90.03.280.
  - c) Public notice is required at the time of acquisition.
- 3 In all instances when such notice is required, the department is responsible for sending notice to:
  - a) Potentially affected local governments;
  - b) Appropriate state agencies;
  - c) Federally recognized tribal governments within the area, and;
  - d) Other interested parties.

Affidavits of publication regarding trust water rights must receive priority for review consistent with the priority given the trust water transaction.

- 4 Evaluation Considerations:
  - a) Extent and Validity

- (1) When a water right is acquired on a temporary basis, the full water quantity diverted or withdrawn to exercise the right shall be placed into trust. (RCW 90.42.080(9)); (RCW 90.38.020(7))
  - (2) RCW 90.03.380 and RCW 90.03.390 or RCW 90.44.100 apply to the change of purpose of use.
  - (3) POL-1120, WATER RESOURCES PROGRAM POLICY FOR CONDUCTING TENTATIVE DETERMINATIONS OF WATER RIGHTS, applies to long term leases of water rights.
  - (4) GUID-1210 Determining Irrigation Efficiency and Consumptive Use applies to calculating the quantities associated with the secondary reach of the trust water right
- b) Quantification of the portion of a leased water right that may be exercised while in trust
- (1) Instream Flow Purposes
    - If the water right is acquired to assist in achieving established instream flows, the full quantity of water used under the right before the acquisition can be accepted into trust (RCW 90.42.040(9)); (RCW 90.38.020(7)).
    - The water right that may be exercised while in trust for instream flow purposes is limited to the highest water use within the five years prior to acceptance of the water right into trust, less any water quantity that will continue to be used by the right holder (RCW 90.42.080(8)); (RCW 90.38.020(6)).
  - (2) Purposes other than instream flows
    - The full extent of the water right may be accepted into the Trust Water Right Program.
    - The water right that may be exercised is to its full extent of the right.
    - A long-term lease is subject to RCW 90.03.380 and RCW 90.03.390 or RCW 90.44.100 (change/transfer statutes).
- c) Impairment
- (1) For long term leases made for instream flow purposes except within the Yakima Basin, no impairment analysis is required (RCW 90.42.040(8)).
  - (2) For long-term leases for instream flow purposes within the Yakima Basin, an impairment analysis must be made. Further, no water right may be “injured in any manner whatever” by the authorization (RCW 90.38.040(5)(a)).
  - (3) If impairment becomes apparent while the trust water right is being exercised, the use of the right is ceased or modified to avoid the impairment (RCW 90.42.080(8)); (RCW 90.38.020(6)).
  - (4) Purposes other than instream flow purposes
    - No impairment of existing water rights may be authorized.
    - If impairment becomes apparent while the trust water right is being exercised, the use of the right is ceased or modified to avoid the impairment (RCW 90.42.040(4)); (RCW 90.38.020(4)).
- d) Public Interest Considerations:

- (1) Long-term leases exercised for any purpose are subject to public interest considerations (RCW 90.42.040(4)).

5 Documentation of long-term lease trust water rights:

- (1) Issue an order accompanied by a **Trust Water Right Report** (Appendix G) describing:
  - All pertinent information regarding the acquisition of the water right;
  - Any authorized beneficial water use while the right is in trust, and;
  - The date or conditions under which the trust period will expire.
- (2) The order is added to the existing record of the water right.

**Chapter 7 -- Purchase by the state or with other public funds**

- 1 The application used for purchases is the Application to Enter a Water Right into the Trust Water Right Program.
- 2 Purchases are subject to RCW 90.03.380.
  - a) POL-1200, EVALUATION OF CHANGES AND TRANSFERS TO WATER RIGHTS, applies to trust water right acquisitions that are subject to 90.03.380 RCW.
  - b) POL-1120, WATER RESOURCES PROGRAM POLICY FOR CONDUCTING TENTATIVE DETERMINATIONS OF WATER RIGHTS, applies to purchases of water rights.
  - c) GUID-1210 Determining Irrigation efficiency and Consumptive Use applies to calculating the quantities associated with the secondary reach of the trust water right.
- 3 Public notice
  - a) Must be consistent with RCW 90.03.280.
  - b) Applicant is responsible for the cost of publication made under RCW 90.03.280.
  - c) Required prior to creating any trust water right under RCW 90.42.040(5).
  - d) In all instances when such notice is required, the department is responsible for sending notice to:
    - (1) Potentially affected local governments;
    - (2) Appropriate state agencies;
    - (3) Federally recognized tribal governments within the area, and;
    - (4) Other interested parties.
  - e) All proposed changes to adjudicated water rights in the Yakima basin must be noticed pursuant to Pre-Trial Order #12 of the Yakima County Superior Court (Appendix I)
- 4 Affidavits of publication regarding trust water rights must receive priority for review consistent with the priority given the trust water transaction.

- 5 Use the **Trust Water Right Report** form (Appendix G) to document the trust water right acquisition.
- 6 Documentation of permanent trust water rights.
  - a) Record a Water Right Conveyance and Assignment (Quit Claim) or Statutory Warranty Deed at the appropriate County Auditor's Office as evidence of conveyance of the water right from the donor to the state. (Appendix N). If the right is under the jurisdiction of the Yakima River Adjudication, a Motion to Join Ecology to the Court Claim is required
  - b) Issue a superseding certificate to document the permanent trust water right acquisition (RCW 90.42.040(2)); (RCW 90.38.040(1)).
  - c) Issue a superseding water right document to the right holder reflecting any portion of the water right not acquired by the state.
    - (1) For certificated water rights: Issue a superseding certificate(s);
    - (2) For rights documented by a water right claim or certificate of change: Issue a document using the Appendix H -- Template for Certificate of Trust Water Right Acquisition .
  - d) The certificate(s) are recorded with the County Auditor in accordance with RCW 90.03.330 and PRO-1000.
    - (1) The trust water right certificate is recorded at state expense;
    - (2) Any certificate issued to document water right remaining with the private right holder is recorded at the right holder's expense.
  - e) File the Certificate in the appropriate water right file;
    - (1) Update the Water Right Tracking System (WRTS);
- 7 The seller may have a tax liability. Permanent acquisition of water rights in exchange for some consideration, whether monetary or otherwise, should be processed in accordance with PRO-1050, PROCEDURE FOR NOTIFICATION OF WATER RIGHT ACTIONS TO THE DEPARTMENT OF REVENUE

## Chapter 8 –Donation of a Water Right to the TWRP

Processing a donation is governed in large part by the purpose of use of the prospective trust water right.

(1) If the donation is for instream flow, proceed to Section 4.A.

(2) If the donation is for a purpose other than instream flow, proceed to Section 4.B.

### A. Procedures for donations for instream flow purposes.

1 The application used for donations or gifts is the Application to Enter a Water Right into the Trust Water Right Program.

2 Processed under RCW 90.38.020(1)(b), 90.38.020(3), 90.38.020(4) 90.38.020(5), 90.38.020(7), 90.38.040(5)(a)-(c), 90.38.040, 90.42.080(1)(a), 90.42.080(3)-(5), 90.42.080(8) and (9).

3 No fee is required for donations of trust water rights.

4 Public notice:

Public notice is not required for donations for instream flow purposes until and unless the donated trust water right is exercised while in trust. A public notice is required prior to exercising the water right in trust.

If it is known that the donated water right is to be exercised while in trust, it is recommended that a public notice be made at the time of donation (RCW 90.42.040(8)).

a) In all instances when such notice is required, the department is responsible for sending notice to:

(1) Potentially affected local governments;

(2) Appropriate state agencies;

(3) Federally recognized tribal governments within the area, and;

(4) Other interested parties.

5 Processing of donations or gifts for Instream flow Purposes

(1) If a water right is donated to the Trust Water Right Program, the full water quantity diverted or withdrawn to exercise the right is eligible to be placed into trust. (RCW 90.38.020(7), RCW 90.42.080(9)); .

b) Limits of the water right that could be exercised while in trust:

- If the water right is donated on a temporary basis to assist in achieving established instream flows adopted by rule, the full quantity of water used to

exercise the right before the donation is eligible for acceptance in trust (RCW 90.42.040(9))

- The water right available to be exercised in trust for instream flow purposes is limited to the greatest water quantity that has been exercised during the five years prior to the donation, less any water quantity that will be used for any other purpose. (RCW 90.42.080(4)); (RCW 90.38.020(4))

**c) Impairment**

- (1) For temporary (less than five years) donations made for instream flow purposes outside the Yakima Basin, an impairment analysis is not required. (RCW 90.42.040(8)).
- (2) For donations made for instream flow purposes within the Yakima Basin, no water right may be “injured in any manner whatever” by the authorization. (RCW 90.38.040(5)(a)).

- d) Public Interest Considerations:** Permanent donations for instream flow purposes are subject to public interest considerations (90.42.040(4) RCW). Temporary instream flow donations are not (RCW 90.42.040(8)).

**6 Documentation of the Donated Trust Water Right**

- a) Temporary donations are acknowledged in letter form similar in content to the attached template (Appendix “E”), through an order, or other instrument.
- b) Permanent donations are documented through:
  - (1) Record a Water Right Conveyance and Assignment (Quit Claim) or Statutory Warranty Deed at the appropriate county auditor’s office as evidence of conveyance of the water right from the donor to the state. (Appendix N). If the right is under the jurisdiction of the Yakima River Adjudication, a Motion to Join Ecology to the Court Claim is required.
  - (2) Issue a superseding certificate of water right, or;
  - (3) Issue a Appendix H -- Template for Certificate of Trust Water Right Acquisition (Appendix H) if the right is documented by a water right claim or certificate of change. The certificate describes the trust water right and should be issued consistent with PRO-1000. The certificate of trust water right should be filed and record against the parcel number containing the point of diversion of the acquired water right and coincides with the uppermost extent of the primary reach of the trust water right.

**7** A donated water right need not be exercised while it is in the Trust Water Right Program.

**8** Instream flow trust water donations may be eligible for federal income tax deduction (90.38.020(5) and RCW 90.42.080(7)).

Advise the water right donor that the donation of a water right for instream flow purposes may be tax deductible. The donated water right shall be managed for an instream flow purpose. RCW 90.42.080(7).

**B. Procedures for donation of water rights for purposes other than instream flow.**

- a) If the donation is for a purpose other than for an instream flow purpose, a public notice must be made at the time the trust water right is created, RCW 90.42.040(5). A donation for purposes other than instream flow purposes must be processed through the change statute, RCW 90.03.380, RCW 90.03.390, or RCW 90.44.100, and a public notice complying with RCW 90.03.280 is required as part of that process.
- b) The requirement for public notice contained within RCW 90.42.040(5) prior to the creation of the trust water right can be satisfied by the notice of the application for change of water right, provided the notice of the application for change clearly states that the purpose is to establish a trust water right and provides notice of the purpose of use as a trust water right.
- c) An extent and validity evaluation must be made.
  - (1) Follow POL-1120, WATER RESOURCES PROGRAM POLICY FOR CONDUCTING TENTATIVE DETERMINATIONS OF WATER RIGHTS.
- d) The water right that may be placed into the Trust Water Right Program is the full extent of the water right.
- e) The water right that may be exercised is to the full extent of the right.
- f) If impairment is alleged after the donated trust water right is first exercised:
  - The department will investigate the allegation
  - The use of the right may be ceased or modified to avoid the impairment. (RCW 90.42.040(4)); (RCW 90.38.020(4))
  - Ecology's decision regarding the allegation of impairment is an appealable decision.
- g) Public interest is a consideration for water right donations for purposes other than for instream flow purposes.

**Chapter 9 -- Water right acquisitions made available through water savings incidental to processing an application for permit or application for change**

The

- 1 If a portion of the water right is identified as available for placement into the trust water program through processing an application for change under RCW 90.03.380, RCW 90.03.390, or RCW 90.44.100 RCW, and the applicant wishes to place the portion of the right identified as eligible into the trust water right program, the applicant should then be advised to file an **Application to Enter a Water Right into the Trust Water Right Program.**
- 2 A water right made available as described above can then be acquired through the procedures in Chapters 4 through 8, in accordance with the type and nature of the acquisition.

**Chapter 10 -- Modification of an existing trust water right**

RCW 90.42.040(4) and RCW 90.38.020(4) provide authority to modify trust water rights as a means to resolve impairment that may arise when a trust water right is exercised. The

procedures to be used for modifying a trust water right are the same procedures as were used to create the trust water right when it was accepted into the trust water rights program. Review the trust water right record to determine what type of acquisition process water used to create the trust water right, then follow the applicable procedures for public notice and changing the water rights identified in Chapters 4-8 as appropriate.

## **Chapter 11 -- Trust water right data**

*[This section will be modified when the Trust Water Database Business Team completes the redesign and approval process]*

- A. All water right applications, transactions, and stages of progress are recorded in the trust water right database.
  - 1 All trust water data is associated with a unique ID number generated by the trust water right database.
  - 2 Trust water right data is not entered directly into the WRTS database.
- B. Trust water right acquisition data
  - 1 An application shall be entered using the name of the water right holder or the intended final recipient of public money (payee). Organizations such as the Washington Water Trust or the Walla Walla Water Alliance may be entered as Trustee for the water right holder/payee.
  - 2 Data may be edited as water quantities and other information is refined through acquisition processing.
  - 3 If public money administered by the state is to be used, the contract number should be obtained from the administering agency and entered into the database.
  - 4 If acquisition data related to the expenditure of public funds has been previously entered, the regional acquisition data is added to that record.
  - 5 The correct acquisition data related to the expenditure of public funds can be identified through comparing the region record to the following:
    - a) Water right holder/payee name;
    - b) Water right document number;
    - c) Contract number;
    - d) Unique ID number generated by the database.
- C. All trust water right acquisition data related to the expenditure of public money is entered into the database by Ecology Headquarters staff.
  - 1 The correct acquisition data is identified through contact with the regional trust water right coordinator and the following data used to confirm the record:
    - a) Water right holder/payee name;
    - b) Water right document number;
    - c) Contract number;
    - d) A unique ID number will be generated by the database after planned enhancements to the database are complete.
    - e) Assign a control number based upon the original document number and typical numbering conventions for superseding documents used by the program, (i.e. those that would result from donations of a portion of a water right are assigned alphabetic designations in parentheses).

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Ken Slattery, Program Manager  
Water Resources Program

## Appendices

### **Appendix A - Trust water right form – Review checklist for completeness of Trust Water Right Application**

#### A. Process to review a trust water application upon filing:

Instructions provided with the form are to aid applicants. Additional information for staff advice to right holders and for internal review of the form is as follows:

#### 7 Applicant Information

- a) The water right holder or the person that is to ultimately receive public moneys should be identified as the applicant.
- b) If the application is being submitted by a third party, such as the Washington Water Trust, on behalf of the water right holder or the person that is to ultimately receive public moneys, that entity should be identified as the contact for the application.

#### 2 Water Right Information

- a) The water right document number (i.e., certificate, claim, etc.) that has been identified may be either the number contained within the water right document (as requested within the forms instructions or a data related control number. For clarity to the public, the number that is contained within the water right document should be used for processing the water right through public notice and contained in other documentation.
- b) Within the “check” boxes located throughout the form
  - (1) Confirm that the applicant has affirmed ownership of the water right or that owner signatures have been obtained.
  - (2) Confirm that the water right is not associated with an irrigation district that requires their permission to proceed.
  - (3) If the water right has not been exercised during the past five-years;
    - For donations that assist in providing instream flows, the extent of the water right quantified within trust cannot exceed the extent to which the water right was exercised during the five-years prior to the donation (90.42.080(4) RCW).
    - For leases, the extent of the water right quantified within trust cannot exceed the extent to which the water right was exercised during the five-years prior to the lease (90.42.080(8) RCW).
  - (4) Evidence as to the extent to which the water right has been exercised should be submitted at the time the trust water right application is filed. Potentially:
    - Water measuring records;
    - Pump electrical consumption records;

- Direct observation
- See POL-1120 for additional guidance.

**3** How is water to be made available for trust?

- a) This section is intended to provide additional detail related to the type of acquisition indicated within the check boxes.
- b) This section is to explain the actions that will be taken to make water right available for trust.
- c) This section becomes the basis for the quantification of the trustable water right.

**4** Purpose of Use: Part B

- a) The processing requirements of the trust water right transaction can vary according to the nature of the purpose while the water right is in trust.
- b) The water quantities to be placed into trust may be tentative pending additional evaluation and project planning to be accomplished

**5** Place of Use: Part B

A water body or other place that is expected to benefit while the water right is in trust should be identified.

- a) Whenever possible, a surface water body that is to benefit from placing a water right into trust should be identified.
- b) Nothing within statute prevents the acquisition of groundwater rights into trust, even if the water right is not associated with a surface water body.

**6** Signatures, ensure that are required signatures are present.

**7** Office use only boxes: These boxes are provided for processing purposes

**a)** Upper box, page one

**(1)** Each trust water right application must be assigned a unique number and recorded within this box.

**(2)** Fees

- No fee is required for any trust water right transaction under the following circumstances:
  - ◇ An application to process a change relating to donation of a trust water right to the state (RCW 90.03.470(3)(c)(i));
  - ◇ An application to process a change when the department otherwise acquires a trust water right for purposes of improving instream flows or for other public purposes (RCW 90.03.470(3)(c)(ii));

- A \$50.00 fee is required if the trust water acquisition does not meet the circumstances of "C" and the transaction is subject to 90.03.380 RCW
- (3) Trust water right acquisitions can be subject to the State Environmental Policy Act (SEPA). Acquisitions are not exempt from SEPA if they are of water quantities exceeding:
- One cubic foot per second of surface water;
  - 2,250 gallons per minute of ground water.
  - Water quantities for SEPA are determined by adding together all water rights subject to acquisition through any project that makes the water available for trust.
  - If the application is not exempt
    - ◊ The applicant should submit a checklist
    - ◊ The region supervisor must make a determination regarding SEPA
      - \* Declaration of non-significance
      - \* Mitigated Declaration of Non-significance
      - \* Environmental Impact Statement

**b) Lower box, page one**

- (1) The number of the water right from which the trust water is derived is entered.
- (2) The file number of the trust water right application is entered. Alternatively, this box may be used to identify a contract number under which payment of state funds may be made.

**c) Lower Box, page three: This box is used if it is necessary to return the application for completion**

B. A Appendix H -- Template for Certificate of Trust Water Right Acquisition is used to document the permanent acquisition of any water right that is based upon a registered water right claim or a previously issued certificate of change.

C. File Archiving

- 3 Trust water right files are archived through the same process as are other water right files
- 4 The files are marked as trust water right files and are to be scanned, filmed and sorted as a distinct type of water right activity.

**Appendix B.** Matrix that summarizes the processes and considerations

	Purchase (permanent acquisition)	Short Term lease (does not exceed five-years in duration)	Long Term Lease (a period that exceeds five-years)	Donation	Water Conservation Projects	Modification of an Existing Trust Water Right
Source of Trust Water	Permanent acquisition of all or part of a water right. (90.42.080(1)(a)); (90.38.020(1)(a)) RCW	Short term lease of all or part of a water right (90.42.080(1)(a)); (90.38.020(1)(a)) RCW	Long term lease of all or part of a water right (90.42.080(1)(a)); (90.38.020(1)(a)) RCW	Water Right holder donates all or part of a water right. (90.42.080(1)(a)); (90.38.020(1)(a)) RCW	Conveyance of all or a portion of net water savings of water rights existing as of July 28, 1991 (date pertains to statewide statute) Trust resulting from operational or system improvements. (90.42.080(1)(a)); (90.38.020(1)(a)) RCW	A water right that is held in the Trust water Right Program originating from a donation through 90.42.080(4) RCW or 90.38.020(4) RCW or a lease through 90.42.080(8) RCW or 90.38.020(6) RCW is modified to avoid impairment. Other trust water rights may be modified to be consistent with regional plans or to
Application	Application to Enter a Trust Water Right Program Statewide: 90.03.380/90.03.390 RCW apply as well as Chapter 90.42 (90.42.080(1)(a)); (90.38.020(1)(a)) RCW Yakima Basin: 90.03.380 does not apply to trust water transactions 90.38.040(6) RCW	Application to Enter a Trust Water Right Program Statewide: 90.03.380/90.03.390 RCW apply as well as Chapter 90.42 (90.42.080(1)(a)); (90.38.020(1)(a)) RCW Yakima Basin: 90.03.380 does not apply to trust water transactions 90.38.040(6) RCW	Application to Enter a Water Right into the Trust Water Right Program Statewide: 90.03.380/90.03.390 RCW apply as well as Chapter 90.42 (90.42.080(1)(a)); (90.38.020(1)(a)) RCW Yakima Basin: 90.03.380 does not apply to trust water transactions 90.38.040(6) RCW	Application to Enter a Water Right into the Trust Water Right Program Statewide: For instream flows: Chapter 90.42 applies. For other purposes: Additionally 90.03.380 RCW (90.42.080(1)(a)); Yakima Basin: 90.03.380 does not apply to trust water transactions 90.38.040(6) RCW	Consolidated Application for Irrigation Efficiencies Grants Program/Trust water Rights Program Statewide: For instream flows: Chapter 90.42 applies. 90.03.380 RCW does not apply (90.42.040(7)); Yakima Basin: 90.03.380 does not apply to trust water transactions 90.38.040(6) RCW	No application necessary
Statutory Processing Requirements	Statewide: 90.03.380/90.03.390 RCW apply as well as Chapter 90.42 (90.42.080(1)(a)); (90.38.020(1)(a)) RCW Yakima Basin: 90.03.380 does not apply to trust water transactions 90.38.040(6) RCW	Statewide: 90.03.380/90.03.390 RCW apply as well as Chapter 90.42 (90.42.080(1)(a)); (90.38.020(1)(a)) RCW Yakima Basin: 90.03.380 does not apply to trust water transactions 90.38.040(6) RCW	Statewide: 90.03.380/90.03.390 RCW apply as well as Chapter 90.42 (90.42.080(1)(a)); (90.38.020(1)(a)) RCW Yakima Basin: 90.03.380 does not apply to trust water transactions 90.38.040(6) RCW	Statewide: For instream flows: Chapter 90.42 applies. For other purposes: Additionally 90.03.380 RCW (90.42.080(1)(a)); Yakima Basin: 90.03.380 does not apply to trust water transactions 90.38.040(6) RCW	Statewide: For instream flows: Chapter 90.42 applies. 90.03.380 RCW does not apply (90.42.040(7)); Yakima Basin: 90.03.380 does not apply to trust water transactions 90.38.040(6) RCW	Chapter 90.42 (statewide) Chapter 90.38 RCW (Yakima Basin)

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	Purchase (permanent acquisition)	Short Term lease (does not exceed five-years in duration)	Long Term Lease (a period that exceeds five-years)	Donation	Water Conservation Projects	Modification of an Existing Trust Water Right
Notice -- Public and Agencies	Statewide: Required as in 90.03.280 RCW Yakima Basin: Required by 90.38.040(5)(b) RCW	Statewide: Notice prior to exercising the Trust right. Chapter 90.42.040(8) RCW Yakima Basin: Required prior to exercising the trust right by 90.38.040(5)(c) RCW	Statewide: Required as in 90.03.280 RCW Yakima Basin: Required by 90.38.040(5)(b) RCW	Statewide: Notice prior to exercising the Trust right. Chapter 90.42.040(8) RCW Yakima Basin: Required prior to exercising the trust right by 90.38.040(5)(c) RCW	Statewide: Notice required by 90.42.040(5) Yakima Basin: Required by 90.38.040(5)(b) RCW	Statewide: Notice required by 90.42.040(5) Yakima Basin: Required by 90.38.040(5)(b) RCW
Evaluation -- Extent and Validity of Water Right	Statewide: Consistent with 90.03.380 RCW Yakima Basin: To the historic extent of the right.	Statewide: Consistent with 90.03.380 RCW. Yakima Basin: Full extent of the right (90.38.020(7) RCW)	Statewide: Consistent with 90.03.380 RCW. Yakima Basin: Full extent of the right (90.38.020(7) RCW)	Statewide: Temporary: Finding is full extent of the water right (90.42.080(9) RCW) Permanent: To the extent of greatest use during the prior 5-years (90.42.080(4) RCW) Yakima Basin: Full extent of the right (90.38.020(7) RCW)	Statewide: Through agreement with right holder. May require evidence of validity. (90.42.030(2) RCW) Yakima Basin: Must be a valid water right. (90.38.030(2) RCW)	Modification must be consistent with the terms under which the right was acquired.
Impairment Analysis	Statewide: Consistent with 90.03.380 RCW (90.42.040(4) RCW) Yakima Basin: No impairment or injury in any manner what ever. (90.38.040(5)(a) RCW)	Statewide: Prior to exercising the Trust water Right. (90.42.040(8) RCW) Yakima Basin: No impairment or injury in any manner what ever. (90.38.040(5)(a) RCW)	Statewide: Consistent with 90.03.380 RCW (90.42.040(4) RCW) Yakima Basin: No impairment or injury in any manner what ever. (90.38.040(5)(a) RCW)	Statewide: Prior to exercising the Trust water Right. (90.42.040(8) RCW) Yakima Basin: No impairment or injury in any manner what ever. (90.38.040(5)(a) RCW)	Statewide: No impairment if exercised while in trust (90.42.040(4) RCW) Yakima Basin: No impairment or injury in any manner what ever. (90.38.040(5)(a) RCW)	Statewide: No impairment if exercised while in trust (90.42.040(4) RCW) Yakima Basin: No impairment or injury in any manner what ever. (90.38.040(5)(a) RCW)
Quantification of Water Placed in Trust	Statewide: To the extent of validity of the water right (90.03.380 RCW) Yakima Basin: To the extent of validity of the water right. (90.38.020(1)(a) RCW)	Statewide, Yakima Basin: No more than the greatest water use within the five-years prior to the trust water lease, less any water used by the right holder. (90.42.080(8) RCW); (90.38.020(6) RCW).	Statewide, Yakima Basin: No more than the greatest water use within the five-years prior to the trust water lease, less any water used by the right holder. (90.42.080(8) RCW); (90.38.020(6) RCW).	Statewide: Permanent donations and temporary donations for instream flows are limited to the greatest water use within the five-years prior to the trust, less water right retained by the right holder. (90.42.080(9) RCW); (90.42.080(4) RCW); (90.38.020(7) RCW)	Net water savings created by the water conservation project as determined by the state and the right holder. (90.42.030(2) RCW); (90.38.030(1) RCW)	No more than that quantified as the trust water right.
Public Interest Evaluation	Statewide, Yakima Basin: Must not impair the public interest. (90.42.040(4) RCW)	Statewide, Yakima Basin: Not a consideration (90.42.040(8) RCW)	Statewide, Yakima Basin: Must not impair the public interest. (90.42.040(4) RCW)	Statewide, Yakima Basin: Instream flow: Not a consideration (90.42.040(8) RCW) Other purposes: No detriment to the public interest (90.42.040(4) RCW)	Statewide, Yakima Basin: Must not impair the public interest. (90.42.040(4) RCW) State shall obtain public benefits (90.42.030(1) RCW)	Statewide, Yakima Basin: Must not impair the public interest. (90.42.040(4) RCW)

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	Purchase (permanent acquisition)	Short Term lease (does not exceed five-years in duration)	Long Term Lease (a period that exceeds five-years)	Donation	Water Conservation Projects	Modification of an Existing Trust Water Right
Quantification of Water Right Remaining with Right Holder	Must not exceed historic water right less water placed into Trust (90.03.380(1) RCW) Trust Water Right Report with an Order (90.03.380 (1) RCW)	Must not exceed historic water right less water placed into Trust (90.42.080(8) RCW) Trust Water Right Report with an Order (90.03.380 (1) RCW)	Must not exceed historic water right less water placed into Trust (90.42.080(8) RCW) Trust Water Right Report with an Order (90.03.380 (1) RCW)	Must not exceed historic water right less water placed into Trust (90.42.080(8) RCW) Acknowledgement, but if it is to be authorized a purpose in trust, a Trust Water Right Report is issued (90.42.040(2) RCW)	Must not exceed historic water right less water placed into Trust (90.42.030(2) RCW) Trust Water Right Report with an Order (90.42.040(2) RCW)	Not a consideration Trust Water Right Report with an Order (90.42.040(2) RCW)
Decision Document	Trust Water certificate of water right issued to the State of Washington. Certificate issued to right holder for any remainder of the water right. (90.42.040(2) RCW)	Contract Agreement signed by the water right holder and the Water Resources Program. (90.42.040(2) RCW)	Contract Agreement signed by the water right holder and the Water Resources Program. (90.42.040(2) RCW)	Permanent: Trust Water certificate of water right issued to the State of Washington. Certificate issued to right holder for any remainder of the water right. Temporary: Acknowledgement letter serves (90.42.040(2) RCW)	Permanent: Trust Water certificate of water right issued to the State of Washington. Certificate issued to right holder for any remainder of the water right. Contract Agreement signed by the water right holder and the Water Resources Program. (90.42.040(2) RCW)	Reissue final document issued at the time of acquisition reflecting modifications. (90.42.040(2) RCW)
Final Document to the Trust Water Right Program and to the Right Holder	Trust Water certificate of water right issued to the State of Washington. Certificate issued to right holder for any remainder of the water right. (90.42.040(2) RCW)	Contract Agreement signed by the water right holder and the Water Resources Program. (90.42.040(2) RCW)	Contract Agreement signed by the water right holder and the Water Resources Program. (90.42.040(2) RCW)	Permanent: Trust Water certificate of water right issued to the State of Washington. Certificate issued to right holder for any remainder of the water right. Temporary: Acknowledgement letter serves (90.42.040(2) RCW)	Permanent: Trust Water certificate of water right issued to the State of Washington. Certificate issued to right holder for any remainder of the water right. Contract Agreement signed by the water right holder and the Water Resources Program. (90.42.040(2) RCW)	Reissue final document issued at the time of acquisition reflecting modifications. (90.42.040(2) RCW)
Exercise of Trust Water Right	Statewide: Instream flow purposes: Must be exercised in accordance with such conditions (90.42.080(1)(a) RCW) Yakima Basin: Exercised to the full extent possible (90.38.020(2) RCW)	Statewide: Instream flow purposes: Must be exercised in accordance with such conditions (90.42.080(1)(a) RCW) Yakima Basin: Exercised to the full extent possible (90.38.020(2) RCW)	Statewide: Instream flow purposes: Must be exercised in accordance with such conditions (90.42.080(1)(a) RCW) Yakima Basin: Exercised to the full extent possible (90.38.020(2) RCW)	Statewide: May be held or authorized for beneficial public use. (90.42.040(1) RCW) Yakima Basin: Exercised to the full extent possible (90.38.020(2) RCW)	Statewide: Public benefits to be obtained to be comparable to public moneys expended. (90.42.030(1) RCW) Yakima Basin: Exercised to the full extent possible (90.38.020(2) RCW)	Statewide: Highest public benefits without impairment to existing rights or the public interest. (90.54.020(2) RCW) Yakima Basin: Exercised to the full extent possible (90.38.020(2) RCW)
Modification of a trust water right	Statewide: Consistent with the purposes associated with public funding. If impairment is found while exercising the trust water right (90.42.040(4) RCW) To obtain the maximum net benefits (90.54.020(2) RCW)	Statewide: Consistent with the purposes associated with public funding. If impairment is found while exercising the trust water right (90.42.080(8) RCW). To obtain the maximum net benefits (90.54.020(2) RCW)	Statewide: Consistent with the purposes associated with public funding. If impairment is found while exercising the trust water right (90.42.040(4) RCW) To obtain the maximum net benefits (90.54.020(2) RCW)	Statewide: To obtain the maximum net benefits (90.54.020(2) RCW) If not donated for instream flows and impairment is found while exercising the trust water right (90.42.040(4) RCW) If donated for instream flow purposes, use may be modified to avoid impairment (90.42.080(4) RCW)	Statewide: Consistent with the purposes associated with public funding. If impairment is found while exercising the trust water right (90.42.040(4) RCW) To obtain the maximum net benefits (90.54.020(2) RCW)	Statewide: To obtain the maximum net benefits (90.54.020(2) RCW)



## GUIDANCE FOR ASSISTING STAFF IN PROCESSING TRUST WATER RIGHTS

### Appendix C -- Definitions

**“Alternate”** has often been used to mean a second water source or point through which a previously existing water right may be exercised, often at the discretion of the water right holder. Normally alternate water rights are not additive to the previously existing water right.

**“Net water savings”** means the amount of water that is determined to be conserved and usable within a specified stream reach or reaches for other purposes without impairment or detriment to water rights existing at the time that a water conservation project is undertaken, reducing the ability to deliver water, or reducing the supply of water that otherwise would have been available to other existing water uses.<sup>2</sup>

**“Primary reach”** means that portion of a water body that benefits from both the former consumptive use and return flow waters of a trust water right.

**“Public notice”** means, at a minimum, a notice published in a newspaper of general circulation published in the county or counties in which the storage, diversion, and use are to be made, and in other newspapers as the department determines is necessary, once a week for two consecutive weeks. At the same time the department shall send a notice containing pertinent information to all appropriate state agencies, potentially affected local governments and federally recognized tribal governments, and other interested parties.<sup>3</sup> Alternatively, “public notice” means the notice required by 90.03.280 RCW when the trust water right is subject to 90.03.380 RCW.

**“Secondary reach”** means that portion of a water body that benefits only from the former consumptive portion of a trust water right because it had received return flow waters while the water right was exercised.

**“Supplemental”** water rights have been used with a variety of meanings, including: to increase the instantaneous rate of withdrawal/diversion for a beneficial use associated with a previous water right; to increase the annual water quantity (acre-feet) for beneficial use associated with a previous water right to be appropriated at a rate not exceeding the rate of the previous water right; to increase both the instantaneous and annual quantities associated with an existing beneficial use of an existing water right. Additionally, the term supplemental has been used to recognize that a water right claim has been registered in the claim registry but the potential validity of the water right claim was not determined. This use of the term primarily occurred during the 1970’s.

**“Trust water agreement,”** means a document, agreement, or the trust water form that conveys the water right to the department for management as a trust water right. The document specifies the terms, conditions related to acquisition and use of the water right while in trust, and the circumstances under which the water right might revert to the water right holder.

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<sup>2</sup> 90.42.020(2) RCW

<sup>3</sup> 90.42.040(5) RCW

## **GUIDANCE FOR ASSISTING STAFF IN PROCESSING TRUST WATER RIGHTS**

**"Trust water right"** means any water right acquired by the state under Chapters 90.38 or 90.42 RCW for management in the state trust water rights program.<sup>4</sup>

**"Water conservation project"** means any project or program that achieves physical or operational improvements that provide for increased water use efficiency in existing systems of diversion, conveyance, application, or use of water under water rights existing on July 28, 1991.<sup>5</sup> Water conservation projects may include changes in point of diversion/withdrawal or place of use to accommodate new conveyances and distribution systems.<sup>6</sup>

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<sup>4</sup> 90.38.010(3) RCW; 90.42.020(3) RCW

<sup>5</sup> 90.42.020(5) RCW

<sup>6</sup> 90.42.030(2) RCW

**GUIDANCE FOR ASSISTING STAFF IN PROCESSING TRUST WATER RIGHTS**

**Appendix D** -- Progress Sheet for Trust Water Rights Applications

**PROGRESS SHEET – APPLICATION ENTER A WATER RIGHT INTO TRUST**

**Type of Trust Proposal:**

Donation  Water Conservation  Purchase  Lease <5 yrs  Lease >5 yrs  Other

**SUBJECT TO REAL ESTATE EXCISE TAX? YES  NO**

NAME: **«FName» «Lname»**  
**«Co»**  
**«Add1»**  
**«Add2»**  
**«City», «State» «Zip»**  
**«Phone»**

<b>Copies scanned &amp; e-mailed to Department of Revenue:</b>		
Date:	_____	_____
Initial:	_____	_____
	<i>Chg. Application</i>	<i>ROE/ROD Assignment</i>

**COUNTY «CNTY»**

**WRIA «WRIA» WRTS No. «WRATSN»**

**PURPOSE OF APPLICATION: «Proposed Purpose of Trust»**

Date Application received: **«DateAppRcvd»**

**Date mailed to interested parties:**

WDFW \_\_\_\_\_  State DOH \_\_\_\_\_  County DOH \_\_\_\_\_  
 Tribe \_\_\_\_\_  Other \_\_\_\_\_

**PUBLICATION: Newspaper: «Newspaper»**

OK'd by: \_\_\_\_\_ Date Notice Sent \_\_\_\_\_ Date Affidavit received: \_\_\_\_\_

Protest period expires: \_\_\_\_\_

Checked by: \_\_\_\_\_ Date: \_\_\_\_\_  
 Protests: \_\_\_\_\_  Fee rcvd \_\_\_\_\_

**FIELD EXAMINATION:**

Examination made: \_\_\_\_\_ By: \_\_\_\_\_

Date Trust Water Report issued or Date Donation Acknowledged: \_\_\_\_\_

**PROJECT COMPLETION FIELD EXAMINATION**

DATE: \_\_\_\_\_ BY: \_\_\_\_\_

**Appendix E – Public Notices**

- a) Contents of the public notice for a trust water right should include<sup>7</sup>:
- (1) The water right holder's name;
  - (2) The water right number and priority date of the water right;
  - (3) A brief description of the water right;
  - (4) The water source;
  - (5) The existing point of diversion/withdrawal;
  - (6) The existing purpose of use;
  - (7) The water quantities to be acquired;
  - (8) The proposed purpose of use as a trust water right;
  - (9) The water body in which the trust water right will be exercised, if for instream flows;
  - (10) Any other information that might be necessary for the general understanding of the trust water right proposal;
  - (11) Protest and comments boilerplate: Protests or objections to approval of this application must include a detailed statement of the basis for objections; protests must be accompanied by a fifty dollar (\$50.00) recording fee and filed with the Department of Ecology, at the address shown below, within thirty (30) days from

---

(Last date of publication to be entered above by publisher)

State of Washington  
Department of Ecology  
Water Resources Program  
Address

**NOTE:** If the trust water right is not to be immediately exercised within the trust water right program, then a second public notice is required prior to first exercising the trust water right.

**NOTE:** A new public notice is required if the authorized purpose or other substantive information related to the exercising of the trust water right changes.

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<sup>7</sup> Due to the variety of potential trust water transactions, the contents and requirements to provide public notice will vary

## GUIDANCE FOR ASSISTING STAFF IN PROCESSING TRUST WATER RIGHTS

### Appendix F – Model letter for Acceptance of a Trust Water Right Donation

June 28, 2006

Name  
Address  
City, ST xxxxx-xxxx

Dear Name,

The purpose of this letter is to acknowledge your recent donation to the Washington State Trust Water Right Program. The trust water right has been given the control number . Please refer to that number when corresponding with us regarding the trust water right donation.

The Department of Ecology, pursuant to RCW 90.42.080(1)(b), acknowledges the donation to the Trust Water Right Program, the amount of gallons per minute and acre-feet per year for the benefit of the . The trust water right is for instream flow purposes from Dateto Date.

The parent water right, , authorized the withdrawal of gallons per minute, up to acre-feet per year for the irrigation of acres during the irrigation season and up to acre-feet per year for continuous domestic use. The recorded place of use is located within of Section , T. N., R. E.W.M.

Section 90.42.080 provides in part that the total of any portion of the water right remaining with the donor plus the donated portion of the water right may not exceed the extent to which the water right was exercised during the five years before the donation. Additionally, the donated water right's status as a trust water right is not evidence of the validity or quantity of the right. When the period of trust ends, the water right will revert back to the water right holder or landowner in the full quantity and for the original purposes.

In accordance with 90.42.040(6) RCW, 90.14.140(h) RCW, and 90.14.215 RCW, a water right is not subject to relinquishment while it is managed within the Trust Water Right Program.

Please write our office if you would like to extend the temporary transfer.

If you have questions or concerns, please call the Region Office Region Office at Contact.

Sincerely,

Signature Block  
Water Resources Program

cc:

**GUIDANCE FOR ASSISTING STAFF IN PROCESSING TRUST WATER RIGHTS**

**Appendix G -- Trust water right report form**

STATE OF WASHINGTON  
 DEPARTMENT OF ECOLOGY  
Type of Trust Transaction  
**TRUST WATER REPORT**  
 TO APPROPRIATE PUBLIC WATERS OF THE STATE OF WASHINGTON

- 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 263, Laws of Washington for 1945, and amendments thereto, and the rules and regulations of the Department of Ecology.)

PRIORITY DATE <i>Priority date of right or claimed date of first use</i>	WATER RIGHT DOCUMENT <i>Document number</i>
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NAME

*Name on trust form or application*

ADDRESS (STREET) <i>Mailing address</i>	(CITY) <i>City</i>	(STATE) <i>State</i>	(ZIP CODE) <i>Zip</i>
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**PUBLIC WATERS TO BE PUT INTO TRUST**

SOURCE <i>Name the water source</i>
TRIBUTARY OF (IF SURFACE WATERS) <i>Name the water body to which the source contributes</i>

MAXIMUM CUBIC FEET PER SECOND <i>Rate of diversion if surface water</i>	MAXIMUM GALLONS PER MINUTE	MAXIMUM ACRE FEET PER YEAR
--	----------------------------	----------------------------

QUANTITY, TYPE OF USE, PERIOD OF USE

Primary Reach: *Beginning of primary reach by river mile* to End of primary reach by river mile

Secondary Reach:

**LOCATION OF INSTREAM FLOWS**

Instream flow remains in the stream within the reaches as follows:

**Primary Reach:**

Start Point – GPS                      Stream Mile – xx  
 End Point – GPS                        Stream Mile – xx

**Secondary Reach:**

Start Point – GPS                      Stream Mile – xx  
 End Point – GPS                        Stream Mile – xx

**GUIDANCE FOR ASSISTING STAFF IN PROCESSING TRUST WATER RIGHTS**

**DESCRIPTION OF PROPOSED WORKS**

**DEVELOPMENT SCHEDULE**

IRRIGATION EFFICIENCIES PROGRAM ACCEPTANCE DATE:	PROJECT APPROVAL OR FUNDED DATE:	WATER PUT INTO TRUST PROGRAM ON THIS DATE:
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**REPORT**

**BACKGROUND**

**Application:**

**Notice:**

**SEPA:**

**Attributes of Water Right**

**Proposed Trust Water Right Project**

Name of Applicant:		
Contact Name:		
Date of Application for Trust:		
	<b><u>Proposed Trust Water</u></b>	<b><u>Remaining Water for Use</u></b>
Instantaneous Quantity – Q(i):		
Annual Quantity – Q(a):		
Irrigated Acres:	<i>Not applicable</i>	
Source:		
Point of Diversion:	<i>No diversion</i>	<i>No change</i>
Purpose of Use:		<i>No change</i>
Period of Use:		<i>No change</i>
Place of Use:	<i>Instream</i>	<i>No change</i>

**INVESTIGATION**

**Project Description**

Water System

## **GUIDANCE FOR ASSISTING STAFF IN PROCESSING TRUST WATER RIGHTS**

### Existing Water Rights

## **TRUST AVAILABILITY OF THE WATER RIGHT**

### **Purpose of Trust Water**

### **Validity of the Water Right**

### **Trust Water Right Calculation**

### **Trust Water Place of Use**

Trust Water use for instream flow is generally split into primary and secondary reaches in order to distinguish the contribution of return flows from a water use and the benefits of any reduction in consumptive water use. The annual quantity placed into Trust is calculated differently for a primary reach and secondary reach due to the effects of return flows. The primary reach of a stream is the portion that benefits from both the reintroduction of return flows and any reduced consumptive water use. It is considered to be the reach starting at the point of diversion for the subject right, and extending downstream to a point on the stream where return flows from the irrigated lands have rejoin the stream. The secondary reach, that portion that benefits by the reintroduction of water that would otherwise be lost to consumptive use, is the reach extending from the end of the primary reach to such point downstream as it is practical and feasible to regulate for the subject right. Since this irrigation efficiency project did not reduce consumptive use, there is no benefited secondary reach of the stream.

### Primary Reach

### Secondary Reach

### **Impairment to Existing Rights**

“Impair” or “impairment” means to 1) adversely impact the physical availability of water for a beneficial use that is entitled to protection, and/or 2) to prevent the beneficial use of the water to which one is entitled, and/or 3) degrade the quality of the source to the point that water is unsuitable for use by existing water right holders (WAC 173-150).

The proposed trust water right has been evaluated as to the potential for impairment to existing water rights in the area. The water retained instream trust water right will be available to other water rights in accordance with seniority and no impairment of any water right will occur. The primary reach has been designated in part to avoid potential impairment to existing water rights.

## GUIDANCE FOR ASSISTING STAFF IN PROCESSING TRUST WATER RIGHTS

No diversion of water in excess of what has been historically put to beneficial use is authorized through approval of this change of purpose of use. The total combined amounts of water beneficially used between the trust water right and the portion of the water right remaining with the right holder will not exceed the greatest use within the last five (5) years of water use, nor will the total exceed the historical extent of the water right.

### **CONCLUSION**

It is the conclusion of this examiner that, in accordance with Chapter 90.42 RCW, this application for trust water under XXXXXXXX will not impair existing rights provided the terms and conditions below are followed, nor will it be detrimental to public interest.

### **RECOMMENDATIONS**

It is recommended that this document be used as an instrument to authorize the acquisition of XXXX cfs and XXXX acre-feet from XXXXXXXXXXXX into the state trust water right program to be used for the purpose of instream flows from X, 200X to X, 200X.

#### **Affected Reach of River**

(map)

**Section 9, Township 6 North, Range 35 E.W.M. (College Place – U.S.G.S. 7.5 minute)**

#### **Provisions**

**A Donations for instream flows *(to be used only if the donated right is not intended for the relinquishment parking lot)***

*This water right donation is expressly for the purpose of instream flows and shall be managed in accordance with 90.42.080(7) RCW.*

B. Re: Relinquishment

*The department advises that the water right holder have a plan to put the water right to a beneficial use when it is removed from the water right trust program. There is a possible interpretation of the law that the periods of non-use prior to placing a water right into trust and any period of non-use occurring after the water right reverts back out of trust could be added together to total five successive years of non-use. Five successive years of non-use could raise questions as to whether the water right has relinquished.*

C. Re: Future purposes

**GUIDANCE FOR ASSISTING STAFF IN PROCESSING TRUST WATER RIGHTS**

- 1 *This trust water right is being held within the trust water right program for use at a future date for public purposes compatible with the findings made at the time of acquisition.*

C. Re: Validity and quantity of donated water rights

*The acceptance of a donated water right into trust is not evidence of the validity or quantity associated with the water right, 90.42.080(4) RCW.*

D. Re: Validity and quantity of leased water rights

*The leasing of a water right into trust is not evidence of the validity or quantity associated with the water right, 90.42.080(8) RCW*

E. Re: Real Estate Excise Tax

*“This decision may indicate a Real Estate Excise Tax liability for the seller of water rights. The Department of Revenue has requested notification of potentially taxable water right related actions, and therefore will be given notice of this decision, including document copies. Please contact the state Department of Revenue to obtain specific requirements for your project. Phone: (360) 570-3265. The mailing address is: Department of Revenue, Real Estate Excise Tax, PO Box 47477, Olympia WA 98504-7477. Internet: <http://dor.wa.gov/> E-mail: [REETSP@DOR.WA.GOV](mailto:REETSP@DOR.WA.GOV).”*

F. Re: Metering:

For water conservation projects, metering requirements may be imposed upon any portion of a water right remaining with the water right holder. See Chapter 173-173 WAC.

“This authorization to make use of public waters of the State is subject to existing rights, including any existing rights held by the United States for the benefit of Indians under treaty or otherwise.”

“Any water right holder who believes this or her water right is impaired by this Trust Water Right may request that Ecology review the impairment claim. If impairment under RCW 90.42.070 is determined to have occurred, Ecology shall cease or modify use of the Trust Water Right to eliminate impairment.”

“Consistent with RCW 90.42.080(1)(a), this Trust Water Right shall be managed by Ecology as an instream flow right for the XXXXXXXXX, as described on this Trust Water Report.

Report By: \_\_\_\_\_

Date:

**FINDINGS OF FACT AND DECISION**

Upon reviewing the above report, I find all facts relevant and material to the subject application have been thoroughly investigated. Furthermore, I find the appropriation as recommended will not be detrimental to existing water rights.

Therefore, I ORDER the change in purpose of use under XXXXXXXXXX be approved subject to the existing rights and provisions specified in the foregoing report.

Dated this XX day of XXXX, 2005 in XXXXXXX, Washington.

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XXXXXXXX, Section Manager  
Water Resources Program  
Department of Ecology  
XXXXXXXX Regional Office

**Appendix H** – Template for Certificate of Trust Water Right Acquisition

**Certificate of Acquisition of Water Right**

**Certificate No. Number**

In accordance with the provisions of Chapter 90.38 and or 90.42 RCW, this certificate is issued to document the permanent acquisition into the State Trust Water Right Program of (water quantity) from (water right document type) number (number), priority date (priority date).

The original water use was for (purpose of use) during the period from season start to season end each year located within (place of use).

The authorized Trust Water Right Program purpose of use is (trust water right purpose) from season start to season end each year. The purpose of use is located (trust water purpose location).